



WITNESS STATEMENT OF PROFESSOR TIMOTHY LLOYD HEARNDEN MCCORMACK

I, Professor Timothy Lloyd Hearnden McCormack of [REDACTED] in the State of Tasmania, Professor of International Law at the University of Tasmania, [REDACTED], do solemnly and sincerely declare that:

- 1 I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

BACKGROUND AND QUALIFICATIONS

- 2 I have the following qualifications:
 - (a) Bachelor of Laws (Honours) from the University of Tasmania; and
 - (b) Doctor of Philosophy from Monash University.
- 3 My current roles include:
 - (a) Professor of International Law at the University of Tasmania
 - (b) Special Adviser on War Crimes to the Prosecutor of the International Court, The Hague; and
 - (c) Honorary Professorial Fellow at the University of Melbourne.
- 4 My previous roles have relevantly included:
 - (a) Dean of Law at the University of Tasmania
 - (b) Professor of Law at the University of Melbourne; and
 - (c) Independent Inquirer (appointed with Prof Stephen Smallbone) into the Tasmanian Department of Education's Responses to Child Sexual Abuse.
- 5 Attached to this statement and marked **TMC-1** is a copy of my curriculum vitae.

INQUIRY INTO THE DEPARTMENT OF EDUCATION'S RESPONSES TO CHILD SEXUAL ABUSE

- 6 On 27 October 2020 I was appointed, along with Professor Stephen Smallbone, by the Tasmanian Attorney-General to undertake an Independent Inquiry into the Department of Education's responses to child sexual abuse (**Independent Inquiry**).
- 7 The Terms of Reference required Professor Smallbone and I to examine past and present Department of Education related systems (including legislation, regulatory systems, policies, guidelines and protocols) relevant to preventing and responding to child sexual abuse and where appropriate to make recommendations for improving these systems. Attached to this statement and marked **TMC-2** is a copy of the Terms of Reference for the Independent Inquiry. We were instructed to not make findings concerning individuals, nor to make recommendations concerning compensation. We were asked to complete our report by 31 May 2021.
- 8 Soon after commencing our work, on 23 November 2020, the Hon Peter Gutwein MP, Premier of Tasmania, announced that the Tasmanian government would establish the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* (**Commission of Inquiry**). Professor Smallbone and I were instructed to continue our work, which would be 'rolled into' the work of the Commission of Inquiry.
- 9 With the knowledge that the Commission of Inquiry would be (and now is) established, we decided that some matters that may otherwise have been examined within our Terms of Reference may instead be more appropriately dealt with by the Commission of Inquiry, if it were to so determine. For example, we wrote to all persons who had made written submissions relating to the Department of Education explaining that we would pass those submissions onto the Commission of Inquiry. We also decided to leave to the Commission of Inquiry questions about the roles of other Government agencies (for example, the Department of Communities Tasmania, Tasmania Police, the Office of the Director of Public Prosecutions), and the Tasmanian government

itself, in responding to historical and recent child sexual abuse complaints involving Department of Education personnel or students.

- 10 On 7 June 2021 Professor Smallbone and I submitted our Final Report on the Independent Inquiry. Attached to this statement and marked **TMC-3** is a confidential copy of the Final Report of the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse dated 7 June 2021 (**Final Report**). Attached to this statement and marked **TMC-4** is a public version of the recommendations extracted from the Final Report.
- 11 On 9 November 2021 the Final Report was tabled in the Parliament of Tasmania.
- 12 Also on 9 November 2021, the Main Findings and Recommendations section of our Final Report was released by the Department of Education to the public.
- 13 Professor Smallbone and I are content for the Final Report to speak for itself, and I do not intend, by this statement, to alter or amend that report in any way. To the extent it may assist the Commission of Inquiry in carrying out its task, I have emphasised some observations which arose for us in the course of carrying out the Independent Inquiry which may have some relevance to the Commission's work.

STATE SERVICE CODE OF CONDUCT

- 14 All Tasmanian public servants, including Department of Education employees and volunteers, are subject to the *State Service Code of Conduct* (**Code of Conduct**) contained in section 9 of the *State Service Act 2000* (Tas).
- 15 In our Final Report, Professor Smallbone and I concluded that although the Code of Conduct imposes important obligations on Tasmanian public servants and Department of Education employees, a weakness of the Code of Conduct is that it is generic. This is because it applies to the entire State Service and nothing in the Code of Conduct is specifically tailored for the unique context of schools. We were concerned that this undermined the utility of the Code of Conduct to adequately deal with allegations of child sexual abuse made against Department of Education employees.

- 16 During the Independent Inquiry, Professor Smallbone and I spoke with human resources staff within the Department of Education on several occasions. Those staff told us that one of their frustrations was the lack of a schools-specific code of conduct for teachers and other employees of the Department of Education, and that the best disciplinary measures could only be used against a person who had contravened their general obligations to the State when undertaking their responsibilities. Those staff expressed a view to Professor Smallbone and me that this made it harder for them to take more proactive measures than if the code of conduct was more specific or tailored to the Department of Education.
- 17 It was for this reason that we recommended that the Department of Education should have its own code of conduct that supplements the Code of Conduct with specific obligations on employees of the Department in relation to their interactions with students, including an explicit prohibition on sexual relations with students. This view is reflected in recommendation 12 of the Final Report.

DEPARTMENT OF EDUCATION POLICIES AND PROCEDURES FOR RESPONDING TO CHILD SEXUAL ABUSE

- 18 The Department of Education had procedures in place for adult-student child sexual abuse. However, at the time of our Inquiry there were no procedures in relation to alleged harmful sexual behaviour and it was left to schools to separately identify how they would manage the process of responding to alleged harmful sexual behaviour, and at what stage they would involve the police.
- 19 In a case study that I examined during the Independent Inquiry, the principal of a school where alleged harmful sexual behaviour had occurred informed Professor Smallbone and I that they felt ill-equipped to deal with the situation. While that principal stated that they utilised guidelines on responding to inappropriate sexual behaviour as drafted by a working group, they felt that the guidelines and procedures were inadequate when dealing with a real-life scenario of alleged harmful sexual behaviour.
- 20 In addition, the impression I received of the involvement and response of Tasmania Police to allegations of child sexual abuse in schools was that it was, at times, *ad hoc*. It appeared to depend on the school leadership in a particular

location, which particular police officers are in the local station and, sometimes, what incident had triggered the police involvement. An incident might occur outside of school grounds, or a student might go home and the family may discover that something has gone on, and rather than report the incident to the school the family may go to Tasmania Police themselves. That may then initiate school involvement. However, sometimes when police are notified of an allegation by someone other than school leadership, they may or may not report that to the school.

Lack of specific strategy for prevention of abuse

- 21 During our consultations for the Independent Inquiry we heard that the lack of a child safeguarding policy meant that there was no specific focus on a prevention strategy. In the absence of any such strategy it is left to school leadership teams to exercise their own discretion in establishing strategies to prevent sexual abuse occurring. School principals and leadership teams have taken a range of measures within their respective schools to make sexual abuse harder to perpetrate. Examples shared with us included clear lines of sight into classrooms and school prohibitions on Department of Education staff being alone with students other than in rooms or areas with clear line of sight. We formed the view that the preparation of a child safeguarding policy with emphasis on preventative measures would reduce the risk of sexual abuse.
- 22 Principals also often have substantial discretion in how they respond to allegations of child sexual abuse. For example, about how a complaint concerning abuse or misconduct should be escalated or dealt with at a local level. This discretion introduces the potential for inconsistent approaches or outcomes.

REPORTABLE CONDUCT SCHEME

- 23 I believe it is important that a reportable conduct scheme is in place. However, I would guard against any potential that a teacher or other Department of Education employee would consider a mandatory report to be the end of their personal responsibility in relation to alleged child sexual abuse.

- 24 Rather, it is important that the principal and the school's child safeguarding officer have some insight about a report that has been made so that they may consider other preventative measures that can be taken.

RECORD KEEPING

- 25 At the time of our Inquiry there was no comprehensive, integrated, child-centred, readily analysable record of sexual abuse allegations, concerns or incidents involving Department of Education staff or students. The Department of Education records were not in an orderly state during the Independent Inquiry. The Department of Education was not able to provide useful data to prepare any high-level analysis of trends in relation to allegations of sexual abuse.
- 26 A lack of accurate records undermines the Department's capacity to identify the effectiveness of any measures put in place in relation to child sexual abuse. That is because without accurate data, it is not possible to track whether a particular initiative is successful or not, or to identify 'hot-spot' schools or regions which might require particular attention. It also means that it is not possible to identify trends in reporting or compliance.
- 27 The lack of data was reflected in our first recommendation. We noted that:
- 'Problems with the reliability, validity, accessibility and completeness of Department of Education ... records, some dating from the 1960s, have precluded us from determining whether the incidence of sexual abuse in Tasmanian Government schools has declined, increased, or remained stable over the last five or six decades.'*
- 28 In the future it is important that the Department of Education capture information whenever a complaint is raised or an incident occurs. At a minimum this should include records about child sexual abuse, concerns, complaints and outcomes. These records should be periodically analysed for various strategic purposes.
- 29 We understand that a new Department of Education case management system is being developed in an attempt to improve data records and management. This work was being progressed at the time that the Independent Inquiry was carried out, however, I do not know if the new system is yet operational.

PREVENTATIVE DESIGN, SITUATIONAL PREVENTION AND PREVENTATIVE POLICIES

- 30 There is a lot of excellent work that is happening across the educational sector. Principals and senior school staff are taking steps of their own volition to prevent sexual abuse by implementing preventative policies and design. This work, however, needs to be systematised across the sector, along with a significant amount of professional learning for staff on what can be done to prevent sexual abuse.
- 31 When Professor Smallbone and I inspected schools as part of the Independent Inquiry, we were interested in the existence of clear lines of sight on school premises. As an example, we inspected a refurbished toilet block at a primary school that had been designed to improve situational prevention of child sexual abuse. The toilet block featured a window to the area where children wash their hands. The risks associated with toilet blocks were significantly reduced in that situation. The principal of the primary school said that the design decision had been suggested by the architect who had been commissioned to redesign the school, who recommended that the school build the toilet block in that way because it was safer for children.
- 32 It was interesting that these were ideas and concepts that were not coming from the Department of Education, but were being considered by professionals external to the Department.
- 33 Even in very open school spaces, there is still room for discretion in order to increase situational prevention of child sexual abuse. For example, the principal of the primary school we visited had a policy that, if a teacher needs to meet with a student during a lunch break or after school, they must do so in a designated room that features large windows to increase visibility. I considered this to be an excellent example of a proactive, preventative mindset. Situational prevention by way of policy and design can make it more difficult for a person to engage in sexual abuse.
- 34 Other examples of prevention that Professor Smallbone and I also heard about included:
- (a) the installation of cameras in less frequented areas;

- (b) the implementation of policies regarding where students can be in the school at any given time (for example, before school, at recess or lunch, or after school); and
- (c) how teachers may and may not engage with students out of school hours, both in-person and online.

RESPONSES BY THE DEPARTMENT OF EDUCATION TO VICTIM-SURVIVORS OF CHILD SEXUAL ABUSE

Limited resources are available in schools to provide support to victim-survivors

- 35 It is fair to say that for current student complainants there are better support systems in place compared to 10 to 30 years ago.
- 36 However, a significant majority of the psychologists, social workers and principals we spoke to told us that their student support staff are completely overwhelmed and do not have enough resources to provide support to victim-survivors of child sexual abuse.
- 37 In addition, schools continue to experience issues responding to contemporary allegations of child sexual abuse. In one case study we considered, the school focused on the difficult background of the victim-survivor and the fact the perpetrator had come from 'a good family' and 'had made a mistake'. I found this attitude to be troubling. It was made more difficult by the fact that there was little guidance or training about how school staff should respond in the situation.

Levels of support from the Department of Education to victim-survivors

- 38 Common themes among the victim-survivors Professor Smallbone and I spoke with were a lack of communication from the Department of Education in relation to their complaint and the absence of an apology from the Department of Education. The victim-survivors we engaged with also spoke of a compounding sense of lack of commitment on the part of the Department of Education to do anything about rectifying structural or procedural weaknesses that contributed to the incidence of abuse.

- 39 A number of the victim-survivors we spoke to expressed dissatisfaction about the lack of response or effective action by school leadership or Department of Education senior executives in relation to their complaint.
- 40 I am aware that the Department of Education has made some adult victim-survivors aware of a website or a telephone number that they can call to access psychological support when those victim-survivors specifically requested it. However, none of those victim-survivors were proactively offered access to psychological support by the Department of Education.
- 41 This was reflected in the experiences of a number of the now-adult victim-survivors we spoke to. They told us that simply being provided with a phone number by the Department of Education was an insufficient means of providing them with support; they did not experience proactive engagement from the Department of Education and felt that the burden was on individual victim-survivors to seek out appropriate support and resources.
- 42 These victim-survivors expressed a sense of disinterest and abandonment by the Department of Education — particularly in light of the fact that no apology had been made to them at the time we spoke with them.
- 43 I was pleased to read the public apology issued by the Tasmanian government to victim-survivors on 9 November 2021. While I cannot speak for victim-survivors, I suspect that a personal apology would be even more meaningful to them than a generalised public apology, particularly where perpetrators are still employed by the Department of Education or are yet to be held accountable.

CONCLUSION

- 44 All of the recommendations made following the Final Report have been accepted for implementation by the Tasmanian State Government. I am available to discuss any aspect of this statement.

I make this solemn declaration under the *Oaths Act 2001* (Tas).

Declared at Hobart, Tasmania

On 22 April 2022



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Professor Timothy Lloyd Hearnden McCormack

Before me

