

Statement of Timothy Bullard

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RFS-TAS-001 Mark

Name	Tim Bullard
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Occupation	Secretary of the Department of Education

Background

1. This statement is made by me in response to RFS-TAS-001, issued on 24 February 2022 by the President of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the Commission), the Honourable Marcia Neave AO.
2. My name is Timothy John Bullard, and I am the Secretary of the Department of Education ("the Department").
3. I graduated from the University of Tasmania in 1994 with a Bachelor of Arts/Bachelor of Laws (Honours). I commenced my career as a lawyer in the Office of the Solicitor-General, before moving to the United Kingdom in 2000, where I worked in Corporate Finance for international law firm Clifford Chance from 2000 until 2002
4. From 2002 until 2004 I worked as a policy officer for the London Borough of Redbridge where, as part of my responsibilities, I provided policy support to Local Education Authority, with a particular focus on seeking the views of children and young people and providing young people with agency. My work was featured at a national conference and showcased by the BBC.
5. In 2004 I returned to Australia and commenced at the Department of Premier and Cabinet working in various policy positions in the Policy Division; becoming Deputy Secretary (Policy) in 2014. During this time, I led work on a broad range of policy areas, including working with the

Department of Education and the Australian Government on the National Education Agreement and various national partnerships, assisting in the development of Child and Family Centres, and leading the Tasmanian team negotiating Better Schools (Gonski 1) funding.

6. In 2016 I commenced as Deputy Secretary (Strategy and Performance) at the Department where I was responsible for broad range of strategic functions. I acted for short periods as Secretary, whilst the previous incumbent was on leave, commencing an extended period of Acting Secretary from 28 November 2017 before being appointed Secretary of the Department on 29 March 2018. My tenure as Secretary is from 29 March 2018 for a period of five years.
7. During my time with the Department I have served on two of the three national boards that oversee the delivery of education in Australia, the Australian Curriculum, Assessment and Reporting Authority and the Australian Institute of Teaching and School Leadership.
8. The Department of Education is responsible for the delivery of early year services and public school education, adult and community education, and library and archive services throughout Tasmania. The Department reports to Minister Jaensch as the Minister for Education, Children and Youth.
9. Education services are delivered across the State through 194 government schools, 12 Child and Family Learning Centres and 47 libraries. The number of students from pre-kindergarten to senior secondary is around 59,500 FTE. The Department also has over 10,000 employees, with a majority of staff working in its government schools.
10. The 2022-2025 Department of Education Strategic Plan, *Learners First: Every Learner, Every Day* drives the Department's culture, evidence-based actions, approach to improvement and allocation of resources. The Strategic Plan articulates the Department's shared commitment that together we inspire and engage all learners to learn more every day (refer Annexures).
11. The delivery of education from kindergarten to year 12 is governed by the *Education Act 2016* (TAS) and the *Australian Education Act 2013* (CTH).
12. The work of the Department is supported by four Divisions, namely Learning, Support and Development, Strategy and Performance, and Corporate and Business Services. These Divisions support Child and Family Learning Centres, libraries and schools through the provision of services such as finance, human resources, facilities management, strategic policy advice, curriculum development, school improvement and school review.

13. The recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and the recent Independent Inquiry into the Department of Education's Responses to Child Sexual Abuse (DoE Inquiry) have provided the Tasmanian Government and the Department with a nationally consistent and evidence-based approach to improving our practices.
14. In response to the DoE Inquiry, we have established the Office of Safeguarding Children and Young People to lead the development of a whole-of-department child safeguarding strategy and policy framework.

Commitment

15. The Department of Education's vision is that Tasmanians are connected, resilient, and curious thinkers. This is underpinned by our obligations to ensure all children and young people have a right to an education, to be heard and to be kept safe from harm.
16. We know that, as a Department, our duty of care requires that we act 'in loco parentis' in keeping children in our care safe from harm.
17. The safety and wellbeing of children and young people in our care, therefore, underpins all aspects of our work. Our Strategic Plan also acknowledges the rights of the child to be kept safe from harm and it is also reflected in our Strategic Plan goal of wellbeing, which requires us to ensure that all learners are 'safe, feel supported and are able to flourish so they can engage in learning'.
18. Just as the Tasmanian Government has endorsed the National Principles for Child Safe Organisations, which give effect to the Child Safe Standards defined by the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA), the Department is committed to developing and refining our practices to align with and support the National Principles.
19. I am personally committed to embedding practices that safeguard children and young people across our Department, by making our systems, policies, practices and training stronger.

Areas for improvement

20. We will only be truly successful when every learner in our system has the agency and confidence to speak up when they don't feel safe, and every employee in the Department has the knowledge and capabilities to support those who report abuse, and appropriately manage and report suspected instances of child sex abuse once they become aware of them.

21. Whilst there has been improvement in our processes and policies over the last few years, we accept that there are areas in which we can, and must, do more work to ensure that we are all working in a way that keeps children and young people in our care safe, and places them at the centre of all our decisions. One of these areas is the investigation of allegations of child sexual abuse committed by current staff, and the processes that underpin those investigations.
22. As will be discussed in further detail in relation to the specific case studies, I acknowledge that some past investigations have not been undertaken in accordance with best practice processes or in a manner that is timely and acknowledge that they have, at times, fallen short of community standards and expectations.
23. It is also of personal concern to me that the best interests of children and young people have not always been properly served by the manner in which allegations have been managed.
24. Of particular note is the follow up support provided to children and young people who have made allegations of child sexual abuse against an employee or a peer. It appears that historically, effort has been directed at the management of the investigation and the employee/peer who is the subject of the allegations, rather than support for the child or young person making the allegations being prioritised.
25. The release of the DoE Inquiry corroborated evidence that we had begun to gather with regard to the lack of co-ordinated support for children making allegations and since that time we have put in place clear processes to ensure that this support occurs.
26. Information sharing within the Department, across agencies and with bodies such as the Teachers Registration Board (TRB) must also improve. There is more we must do, within the bounds of what is legally permissible, to enable information to be shared in a consistent and timely way to inform the decisions of all parties that have a role in keeping children and young people safe from harm.
27. In addition, I am of the opinion that in the past matters have not been dealt with as expediently as they should have been, including when this has involved other agencies.

There are a number of reasons for the time it takes to bring a matter to a resolution, including criminal investigations, time taken by independent investigators, the resources required to co-ordinate the investigation and the process dictated by Employment Direction No. 5. We must do

more to reduce the time we take to address allegations of child sexual abuse and bring closure to the incident for those who are involved.

28. Our record keeping systems have also been lacking. This has been due to a range of factors including schools maintaining local records and not always using central systems, a lack of functionality and interface capability with existing systems such as the Student Support System (SSS), and the capacity to share relevant information between agencies, such as Registration to Work with Vulnerable People (RWVP)¹ and Tasmania Police (TASPOL).² This has hindered the sharing of relevant information across the Department or in providing easy access to historical information and data to help inform our understanding of past matters. This means we have not always been able to effectively deal with allegations and suspicions of child sexual abuse. Whilst the use of the Department's record management system is now widespread in corporate areas it is not used by schools and the digitisation of historic records of abuse is still ongoing.
29. It is difficult to assess the degree to which children and young people have been believed in the past, as the records available tend to be as a result of an allegation being believed and therefore referred for action. The Department needs to continue to be clear and consistent in its expectations of staff in relation to the prevention, detection, and response to child sexual abuse and in their willingness and ability to listen to the voices of children and young people. The release of *Our Approach to Improvement – A guide to student voice and agency*, last year is a further step in supporting a consistent and culturally embedded approach to student voice and agency.
30. We must also do more to support our staff—to help them understand how to prevent, detect and respond to suspicions and allegations of child sexual abuse, to listen to the voices of children and young people, to respond appropriately and to speak up when something does not fit with the culture we are trying to build, where children and young people's safety is at the centre of our deliberations, values and actions, and where safeguarding the children and young people in our care is everybody's responsibility.
31. We are already working on these areas for improvement, and I am determined that, through this work, we will build a culture where every child and young person in our care can feel safe, supported and listened to.

¹ I note an information sharing agreement was entered into by the Department and RWVP in July 2018; refer to NTP-TAS-004 item 4

² I note a Memorandum of Understanding was entered into by the Department and TASPOL on 19 February 2022; refer to NTP-TAS-004 item 4 and page X below for further detail.

Current effort

32. I established the Office of Safeguarding Children and Young People to: lead culture change across the Department; to that ensure the safety, and voices and views of children and young people are the centre of our behaviours and decisions; and that our systems, practices, procedures, and professional learning put the best interests of all our children and young people first. This decision acknowledges not only the importance of this work, but the complexity of doing it well in an organisation that is as large and diverse as the Department.
33. As part of this, the Office is overseeing the implementation of the recommendations of the DoE Inquiry, and the implementation of seven outstanding recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA).
34. Since establishment of the Office of Safeguarding Children and Young People and release of the DoE Inquiry, we have:
- discussed the importance of being child safe with all senior leaders across the Department (including Principals), and provided guidance on our contemporary approaches to recognising and managing child sexual abuse;
 - communicated with all staff regarding safeguarding;
 - revised and simplified our protocols for staff to support them in responding to concerns or complaints about abuse in a range of different scenarios, including adult-student abuse; student-student abuse and abuse involving the internet and related technologies;
 - negotiated and finalised a Memorandum of Understanding with Tasmania Police for preventing and responding to sexual abuse in government schools;
 - commenced a review and revision of approximately 70 policies and procedures to ensure they explicitly refer to safeguarding children and young people as a key consideration, as well as emphasising the goal of understanding, preventing and responding to child sexual abuse;
 - conducted a system review of a significant, recent incident of child sexual abuse involving a staff member and student, and commenced implementation of the recommendations of this review;
 - commenced the development of a comprehensive, integrated student safeguarding policy and Code of Conduct for all Department staff;

- continued the development of a comprehensive Case Management Platform as a means of effectively recording, storing, and capturing all relevant child safety-related information and commenced a pilot of the first stage of this system;
- revised and updated the Department's current website and staff intranet pages to improve visibility of, and accessibility to, information about safeguarding children and young people;
- commenced the development of a stand-alone Safeguarding Children and Young People website that is more child and family focused, which will be easy to navigate and will provide practical guidance for all members of the community, and information on a range of child sexual abuse tools and supports;
- commenced discussions with the UTAS School of Education to explore ways the Bachelor of Education and Master of Teach programs can in future years include specific and substantive content and assessment on understanding, preventing and responding to child sexual abuse in schools; and
- updated the Department's mandatory reporting guidelines to ensure they are clear and easy to understand, and commenced the development of a fit-for-purpose mandatory training module for all staff that will place mandatory reporting obligations within the wider context of a safeguarding system.

35. This work will continue as a priority; however, we do not intend to stop there. We know there is much more to be done.

The future

36. We have planning underway to:

- a. work with the TRB and other government agencies to develop a more efficient and effective system of information-sharing;
- b. embed the newly developed Case Management Platform within the Department and explore opportunities to extend this system for use across other relevant State Government departments;
- c. create a range of professional development modules for all staff as part of embedding a child safe culture across the Department;
- d. revise and update all safeguarding-related policies and procedures to ensure they are focused on preventing child sexual abuse from occurring, as well as facilitating prompt, sensitive and effective responses to known concerns or allegations;

- e. develop risk management and assessment templates, guidelines and resources for use by schools and, in particular, School Safeguarding Officers; and
- f. develop and roll out annual training for school staff.

37. Through the standard 2022-23 State Budget process, resourcing decisions will be made in respect of the additional actions below:

- a. appointing a Student Safeguarding Officer in every government school, with appropriate induction and training being overseen by the Office of Safeguarding Children and Young People;
- b. working with each Safeguarding Officer to help them establish an individual and specific risk management plan and safeguarding risk assessment for their school, and
- c. developing and rolling out targeted information on understanding, preventing, identifying and responding to sexual abuse in inductions and annual training for all principals, teachers and teacher aides.

38. I would welcome any insights the Commission might be able to provide in terms of our current and planned approach, as well as suggestions for future focus as we work to address recommendations from the Royal Commission, the DoE Inquiry, and our own system reviews. We acknowledge that the scope of work is large and diverse, and it will require consistent and ongoing effort to embed it culturally within the organisation. Particular insights into prioritisation of effort for biggest impact would be particularly welcome.

Further context regarding the role of the Secretary in responding to allegations of abuse.

39. Without limiting the above, I wish to provide some further context in relation to how I, as Secretary, approach the making of determinations in relation to allegations of child sexual abuse made against an employee, after I have been briefed on the investigation of these allegations, including any findings of an investigator.

40. As Secretary of the Department, I have a duty of care to children and young people while they are in our care.

For this reason, it is Department practice that in every case where allegations of child sexual abuse are made against a current employee, the employee is requested, as soon as possible, to leave the workplace prior to service of formal documentation. If after initial examination of the circumstances it is concluded that employees may have breached the State Service Code of

Conduct, they are then formally suspended in accordance with Employment Direction No 4 at the same time as an investigation is commenced pursuant to Employment Direction No 5.

41. As Secretary of the Department, I am also a “person conducting a business or undertaking” (PCBU) for the purposes of workplace health and safety legislation and as such I must ensure, so far as reasonably practicable, that the Department’s workplaces pose no risk to the health and safety of any person, and I must do what is reasonable in the circumstances to mitigate or remove the risk or hazard.
42. In managing allegations of child sexual abuse against current employees I must, therefore, ensure that the processes in place to respond to the allegations are fair, proportionate, abide by the principles of natural justice, and comply with the relevant legislation and employment directions.
43. I am also cognisant of the fact that it is for me to prove the allegations to the requisite standard required by law (not for the employee to disprove them), and that any determination made by me against the employee must be established on the evidence to the requisite standard required under law (on the balance of probabilities).
44. I am also aware that any sanction imposed must be proportionate, taking into account both the seriousness of the employee’s action that gave rise to the allegation and the impact that action had on the child or young person.
45. Additionally, I am acutely aware that allegations against Department employees and subsequent investigation invariably have a negative impact on an employee’s wellbeing. I have, on a number of occasions, been informed of serious concerns for the safety and wellbeing of employees as a result of being investigated. In discharge of my responsibilities as employer, I have authorised access to additional personal and psychological support for these employees during the investigation.

Determination of allegations of child sexual abuse under Employment Direction No. 5

46. Determinations made by me for allegations of suspected child sexual abuse are made under *Employment Direction No. 5 (“ED5”)*. This direction sets out the procedures for the investigation and the determination of a breach of the State Service Code of Conduct found in section 9 of the *State Service Act 2000 (“the Code”)*.

47. The following provisions of the Code are the most applicable to matters alleging sexual abuse of a child:

1. An employee must behave honestly and with integrity in the course of State Service employment.
2. An employee must act with care and diligence in the course of State Service employment.
3. An employee, when acting in the course of State Service employment, must treat everyone with respect and without harassment, victimisation or discrimination.
4. An employee, when acting in the course of State Service employment, must comply with all applicable Australian law.
5. For the purpose of subsection (4) ,

Australian law means –

- (a) any Act (including this Act) or any instrument made under an Act; or
- (b) any law of the Commonwealth or a State or Territory, including any instrument made under such a law...

.....

(13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.

(14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.

48. Whilst an act of child abuse by an employee, if proven in a court of law, would constitute a breach of the Code by virtue of subsection 4, there are many instances where a prosecution does not proceed or is unsuccessful.

49. My experience is that, in these situations, the Code is not a framework well suited to the determination of allegations of child abuse. By way of example, if conduct cannot be established to have breached Australian law under subsection 4, then the determination of the matter will normally fall to subsection 1 – 3 as the basis for allegations made.

50. It is important to note that these subsections directly relate to conduct that is “in the course of State Service employment”. In other words, misconduct that occurs outside the work context (e.g. at a weekend social event or after a young person has left the school where the alleged

perpetrator is teaching), would not naturally invoke the ED5 process as it would not amount to “in the course of State Service employment”.

51. As recommended in the DoE inquiry, the Office of Safeguarding Children and Young People is currently working with other departmental business units to develop a Department-specific Code of Conduct that is more relevant and effective in terms of child sexual abuse. Consideration of its implementation within existing legislative frameworks is under active consideration.

52. There are additional statutory arrangements that provide broader powers beyond “in the course of employment”, though these provisions are not within my authority or control as Secretary of the Department. For example, the:

- *Teachers Registration Act 2000* enables the TRB to determine whether an applicant for registration is of good character or fit to be a teacher (ss.17J and K) and the TRB can also hold an inquiry in respect of any matter relating to a person who is or was a registered teacher (s.20);
- *Registration to Work with Vulnerable People Act 2013* enabled the Registrar in the Department of Justice to consider applications for Registration to Work with Vulnerable People (RWVP) whereby the registration of a person can be subject to conditions, suspended or cancelled (ss.35 and 49).

Clarifications as to the Background – Part A of RFS-001

53. Before addressing the Commission’s questions in RFS-001, I wish to clarify some points set out in the background at Paragraph A.

54. The Commission states at paragraph 6 of RFS-001 that:

Following a review in 2016, the Department concluded that the matter did not amount to allegations of sexual misconduct and that the matter was adequately investigated at the time, and no further action was necessary.

55. Firstly, there was no ‘review’ of the investigation by the Department of the allegation that occurred in 2016. The Department’s response and determination of [REDACTED] 2016 were not reviewed until 2020. Secondly, in 2021, Workplace Relations provided its view in a Minute to me that the allegations ‘did not amount to sexual misconduct’ and the matter was ‘adequately investigated at the time’.

56. I acknowledge that I relied on this advice.

57. Secondly, the Commission states at paragraph 8 of RFS-001 that:

the Department did not make a notification to the Teachers Registration Board (TRB) in relation to the allegation.

58. However, [REDACTED] of Workplace Relations notified the TRB on [REDACTED] 2021 in relation to the allegation.

Response of the Department and [REDACTED]

59. Without making a definitive finding of the allegation against Mark [REDACTED], I wish to identify some inadequacies in the initial investigation and the response of the Department to the allegations of [REDACTED]:

- a. There are no records that indicate that a school social worker reached out to [REDACTED]. The Department has not had any success in confirming whether this happened.
- b. The Principal, Justin [REDACTED] and/or Learning Services did not follow up a separate alleged incident that a student, [REDACTED], previously had used Mr Mark [REDACTED] phone and contacted [REDACTED], and no statement was obtained from this student, nor any support offered.
- c. Justin [REDACTED] and/or Learning Services did not seek to verify Mark [REDACTED]' claim that he was overseas at the time and that persons from [REDACTED] had contacted [REDACTED], nor did they consider whether it was possible to obtain a statement from these persons.
- d. Justin [REDACTED] and/or Learning Services did not report back to Workplace Relations the outcome of the investigation (being that Mark [REDACTED] was sent a Principal's warning letter). As such, Workplace did not make a notification to the Teachers Registration Board ("TRB") in accordance with the *Teachers Registration Act 2000*. As above, the TRB was subsequently notified by [REDACTED] in [REDACTED] 2021.

- e. Further, Justin [REDACTED] and/or Learning Services did not provide Workplace Relations with a copy of the text messages and the response of Mark [REDACTED] (refer Annexures *Allegations, Complaints and Statement DOC/22/38928*, pp2, 17-18).
- f. Justin [REDACTED] and/or Learning Services did not draw to the attention of Mark [REDACTED] to the Social Media Policy (2014) in place at the time. The policy stated that employee communication of a 'personal nature' with learners was inappropriate. It is noted, however, that a copy of the Professional Guidelines appears to have been handed to Mark [REDACTED].
- g. I note that the Social Media Policy (2014) was not clear with respect to employees 'liking' posts or 'following' students, or allowing a student to do the same with an employee. The policy stated that social media 'friending' (e.g. becoming a 'friend' on Facebook) should only be used when necessary for business or learning purposes. I recognise that this guidance could have been clearer. This has since been revised and the Social Media Procedure (2020) now expressly states that staff members must not 'friend' or 'follow' students or allow students or their friends to follow them, unless they are family members and the contact is reasonable.
- h. In the 2021 Minute to the Secretary, Workplace Relations provided the view that the incident was 'adequately investigated at the time'. Considering the matters outlined above, it is questionable whether this was the right conclusion.
- i. In [REDACTED] 2021, I determined that no ED5 was necessary. My decision was based on the Minute to the Secretary and the attached briefing material. I noted on the Minute that 'on the facts as established at the time it was determined Mark [REDACTED] was not in control of his device.' Upon reflection, I accept that it may not have been adequately established that Mark [REDACTED] was not in control of his device, particularly as no statement had been taken from either person. Further, Mr Mark [REDACTED] himself claimed that when he got his phone back, he wrote to [REDACTED], "sorry, drunk".
- j. I note that Workplace Relations did not view the screenshots of the text messages and Mark [REDACTED] written response to the allegations (per Annexure B, pp 2, 17-18). Accordingly, I was not provided with copies of these when I reviewed the Minute to the Secretary in [REDACTED] 2021.

- k. I have now reviewed the copies of the text messages and Mark [REDACTED] response, which Legal Services obtained from Learning Services in [REDACTED] 2022, while responding to this request (per annexure, as above).
- l. Given the above, I accept that I should have queried Workplace Relations' assertion that the matter was adequately investigated at the time.
- m. As the decision maker I am aware that it is my responsibility alone to determine whether or not to proceed to an ED5 investigation. Whilst Workplace Relations can advise me on its view, I acknowledge I am not bound to take it. For this reason, I do, at times, seek additional information or make a decision that does not accord with the advice I am provided with by Workplace Relations.
- n. On this occasion, the fact that the allegations did not, in my view, amount to sexual misconduct, the fact that the matter was dealt with by the Principal at the time, including counselling and issuing a formal direction, led me to conclude that the matter had been dealt with adequately.
- o. Without pre-empting an outcome in relation to this matter, having reviewed the matter and the additional evidence that I now have, I have now referred the matter back to Workplace Relations and requested that they provide me with fresh advice on commencement of an ED5 investigation.

Item 9 - Identify the policies and procedures of the Department in place in 2016 which set out the processes and procedures for responding to and investigating the Allegations.

Mandatory reporting and Department Processes to Respond to Alleged Abuse

60. In 2016, all Department employees were mandatory reporters and, as such, were required to report all known or reasonably suspected cases of abuse of a child under section 14 of the *Children Young Persons and their Families Act 1997*. 'Abuse' under the statute included 'sexual abuse' which was not defined. The Department's *guidelines regarding alleged of students by Department employees (2008)* defined 'sexual maltreatment' as:

When a child has been exposed or subjected to sexual behaviours or acts which are exploitative and/or inappropriate to his or her age or developmental level. Harm that results from sexual maltreatment may include emotional trauma, physical injury or impaired development, although the harm resulting from the maltreatment may not be readily identifiable or apparent.

61. Using the above definition as a guide, the allegations against Mark [REDACTED] did not suggest or raise queries of actual sexual abuse of a child.
62. I note the Department's current guidelines, revised in 2020, use a more expansive definition of 'child sexual abuse' used in the RCIRCSA to incorporate grooming behaviour, which encompasses a far broader range of conduct. However, the allegations against Mark [REDACTED] were not considered to constitute grooming behaviour at the time.
63. Therefore, I will focus my attention on the Department processes that were to be generally followed when an allegation, if proven, would have constituted a breach of the State Service Code of Conduct. However, to provide a complete framework, I will also provide the procedures for reporting suspected child abuse relevant to this period, noting that on the facts they do not appear relevant in this circumstance.
64. At that time, the Department's procedures for responding to allegations of abuse of a child by a Department employee were as follows:
 - a) *Procedures Regarding Alleged Maltreatment of Students by Employees of the Department of Education and the Arts (1995 and revised in 1996 and 1997);*
 - b) *Maltreatment Guidelines – Guidelines regarding alleged abuse of students by employees of the Department of Education (2008); and*
 - c) *Department of Education process where an allegation(s) of child sexual abuse is made against a current employee (2020).*

State Service Code of Conduct and Workplace Standards and Social Media Policies

65. At the time of the allegations, employees were also required to report any possible behaviour that was contrary to known standards or expected conduct under:
 - a) *State Service Act 2000 - section 9: The State Service Code of Conduct ("the Code");*
 - b) *Protective Practices for Staff in their Interactions with Students (2006);*
 - c) *Department's Conduct and Behaviour Standards; and*

d) Department's *Professional Standards for Staff: Policy & Guidelines* (2015).

66. The Department's Social Media Policy (2014) provided some guidance to employees on appropriate use of social media. The policy stated:

- a) Communication of a personal nature with learners is not appropriate;
- b) It is inappropriate to be overly familiar with students where there is no existing legitimate relationship (e.g. familial or sport);
- c) Social media 'friending' (e.g. Facebook 'friend') should only be used when necessary for business or learning purposes;
- d) Communication of a staff member's personal feelings for a student is not appropriate.

67. The Social Media Policy (2014) needed a dedicated review to keep up with the pace of change in this space. In 2018 a Social Media Policy Review working group was first formed and the Strategic System Improvement (SSI) unit in the DoE and took carriage of leading the development of a new Social Media Policy for the Department.

68. The policy suite was structured to address all in-scope issues raised throughout the consultation process against seven issue categories:

- a) Legal/HR issues
- b) Pace of change of social media
- c) Roles, responsibilities and capability of administrators
- d) Managing and protecting privacy (staff and learners)
- e) Managing and protecting reputation (personal, professional, organisational)
- f) Wellbeing (staff and learners)
- g) IT issues (archiving and risk management)

69. I note that the Department revised its social media policy with the Social Media Procedure (2020), which is clearer with respect to social media boundaries with learners.

70. The policy now provides:

Professional Standards for Staff Policy, staff who work at schools, libraries or CFCs MUST

NOT 'friend' or 'follow' learners, or allow learners to 'friend' or 'follow' them on their personal social media accounts, unless they are a member of the employee's family and that contact is reasonable.

71. The Department's Strategic Marketing, Communications and Media team now have ownership of the Social Media Guidelines. Since its release the policy has been internally reviewed. Approval on these updates will be requested with a plan to have the updated version online in April 2022.
72. In 2021 as part of the launch of the new Policy documents, comprehensive Training Modules were released through CANVAS. This is available to all staff to complete and is particularly aimed as a requirement for Social Media Administrators who manage social media pages in the Department e.g. this includes many School Business Managers who manage their school's Facebook page for instance.
73. Our Social Media Policy and Procedure are publicly available, but are written more for internal use rather than external use. We have a standard DoE Social Media Behaviour Statement that we promote all DoE social media pages including for schools and libraries to use in their about/bio section of their Facebook and Instagram pages. This includes the Terms of Use and expected behaviour on our pages:

<https://www.education.tas.gov.au/about-us/doe-social-media-terms-of-use>.

Employment Direction No. 5

74. The procedures for investigating a breach of the Code are set out in ED5. The Department's Workplace Relations unit is guided in its investigation processes by ED5, the Code and policies and procedures around conduct and behaviour. Once a matter is referred to me, and if I form a reasonable belief that the Code may have been breached, an ED5 is commenced, and I appoint an external investigator and a contact officer within Workplace Relations. Workplace Relations notifies Tasmania Police ("**TASPOL**"), the Department of Justice RWVP ("**RWVP**") and the Teachers Registration Board ("**TRB**"). A Senior Workplace Relations Consultant is guided by an internal document titled the *ED5 Investigation Checklist*. This ensures that all necessary steps are taken in a timely manner.
75. Workplace Relations advises that the process for a suspected breach of the Code in 2016 was as follows:

- a) The alleged breach was reported to Workplace Relations (then Conduct and Investigations Unit). This is done either directly by the staff member suspecting the breach, the Principal or Learning Services.
- b) Workplace Relations may have consulted with Learning Services to provide support to school-based employees, or make referrals for support, and obtain further information.
- c) After being briefed by the Principal or Learning Services, and being in possession of relevant evidence and supporting information, Workplace Relations would assess the nature and seriousness of the allegations and recommend a course of action to either the Principal or Learning Services.
- d) If the allegations were assessed as being at the lower level of seriousness, the matter would be handled locally in consultation between the Principal and Learning Services, without the Secretary being briefed on the matter.
- e) It is noted in the matter of Mark [REDACTED], that Workplace Relations was not informed at the time of the allegations of the content of the messaging exchange or as to the outcome of the matter and the disciplinary measure put in place (i.e. a warning letter from the Principal).
- f) This should have occurred.
- g) If the matter was more serious, Workplace Relations would brief the Secretary as to whether the matter should be investigated under ED5 (noting that all serious allegations would be referred to the Secretary for consideration).
- h) If the Secretary determined that the matter is to be investigated under ED5, an investigator will be appointed. The employee is formally advised, and, at the same time, they may be suspended from duty with pay pursuant to Employment Direction No.4 (ED4), pending the outcome of the investigation.
- i) Once the investigator has provided their report, and the employee has had the opportunity to consider and respond to that report, Workplace Relations would

refer the matter to the Secretary for determination. If the Secretary is satisfied that the employee has breached the Code, the Secretary then impose a sanction/s.

- j) Regardless of whether the matter is resolved at the school level, Learning Services level or under an ED5, the TRB must be notified if there is any disciplinary action against a teacher under the *Teachers Registration Act 2000*. Workplace Relations considers that 'disciplinary action' encompasses a warning letter from the Principal (of the type given to Mark [REDACTED]).
- k) It is noted that there was no notification to the TRB in 2016 and this should have occurred (a notification to TRB was provided in 2020).
- l) Workplace Relations would make a notification to RWVP, TASPOL and the Integrity Commission.

Item 10a – Response and Investigations – Outline the steps taken by the Department or [REDACTED] in response to the Allegations to assess the risk posed by Mark [REDACTED] to students at [REDACTED] generally

76. Based on my reading of the investigative file and advice from relevant officials, the following steps were taken by [REDACTED] and the Department:

- a) On [REDACTED] 2016, [REDACTED] (a student) was overheard by [REDACTED] (a teacher), discussing with her friend in the canteen area at [REDACTED] that she had received messages from Mark [REDACTED] via social media.
- b) On [REDACTED] 2016, [REDACTED] contacted [REDACTED], Assistant Principal of [REDACTED] and then produced a statement signed by [REDACTED] and Justin [REDACTED], Principal of [REDACTED]: page 1 of the File.
- c) Justin [REDACTED] contacted [REDACTED], Senior Workplace Consultant on [REDACTED] 2016. [REDACTED] advised that she had spoken with [REDACTED] of Workplace Relations, who asked for the statement to be forwarded to [REDACTED] HR Manager, Learning Services, to investigate the allegation further and provide support: page 14 of the File.

d) The file shows that [REDACTED] assessed the risk posed by Mark [REDACTED] alleged behaviour and, accordingly, did the following:

- i. [REDACTED] supported Justin [REDACTED] in speaking with [REDACTED]. Justin [REDACTED] recalls that he contacted [REDACTED] first before speaking with [REDACTED]. The interview occurred in the presence of [REDACTED] (Mr Justin [REDACTED]).
- ii. [REDACTED] provided [REDACTED]'s statement to Workplace Relations on [REDACTED] 2016.
- iii. [REDACTED] indicated by email of [REDACTED] to [REDACTED] that "I have suggested to Justin [REDACTED] that he puts the allegation to Mark [REDACTED] and gets his response and if he acknowledges it and is sorry for his behaviour that we will put a letter to him with a warning and remind him of the Professional Standards etc".
- iv. [REDACTED] further supported Justin [REDACTED] to invite Mark [REDACTED] to meet with him, together with a support person if required. This invitation was sent to Mark [REDACTED] on [REDACTED] 2016.
- v. A copy of the Professional Standards for Staff was also provided to Mr Mark [REDACTED] via email from Justin [REDACTED] following a meeting with Mr Mark [REDACTED] on [REDACTED] 2016.

e) On [REDACTED] 2016, Justin [REDACTED] and [REDACTED], then AST at [REDACTED], interviewed [REDACTED], who advised that Mark [REDACTED] contacted her via Instagram in [REDACTED] 2016. [REDACTED] provided screenshots of the messages from Mr Mark [REDACTED], with username [REDACTED]. She also provided a screenshot of a post of hers of sunset, which user [REDACTED] had left a comment, "nice sunset" (see Annexure B, pp 2 *Allegations, Complaints and Statement*).

f) Mark [REDACTED] met with Justin [REDACTED] on [REDACTED] 2016 and provided a written response later that day, admitting that while holidaying in [REDACTED] persons whom he was with from [REDACTED] had contacted a number of persons who had

liked one of his photos, one being [REDACTED] (see Annexure B, pp 2, 17-18 *Allegations, Complaints and Statement*).

- g) Mark [REDACTED] summary was provided to [REDACTED]. Verbatim handwritten notes, presumably of [REDACTED] recorded on an email from Justin [REDACTED] to [REDACTED] on 5 [REDACTED] 2016 provide a checklist for her assessment, that being that 1. Mr Mark [REDACTED] had “come to Prin” (Principal), 2. “remorse” and 3. “knows silly; tells us”.
- h) [REDACTED] enquired with Justin [REDACTED] via email dated [REDACTED] 2016 “are you comfortable with this explanation. If so, I can draft up a letter than you can send to him to close the matter”. Justin [REDACTED] recalls (in a discussion with [REDACTED] on [REDACTED] 2022 referenced below) that he discussed the response with [REDACTED] and which course of action to follow. Justin [REDACTED] recalls that at the time he did not believe that the use of social media was specifically mentioned in the Accountabilities Toolkit. (I note here, however, that the Accountabilities Toolkit was not in place until the commencement of 2017).
- i) There is no record of Justin [REDACTED] response; however, Justin [REDACTED] and [REDACTED] proceeded to then prepare the warning letter to Mark [REDACTED] dated [REDACTED] 2016.
- j) Throughout the assessment, [REDACTED] and Justin [REDACTED] appear to be in agreement that the matter could be resolved at school level. Ultimately, it would appear that Justin [REDACTED] and [REDACTED] assessment was that the explanation from Mark [REDACTED] was acceptable and no further action was taken at that time.
- k) Accordingly, a warning letter was issued to Mark [REDACTED] by Justin [REDACTED].
- l) It does not appear that Justin [REDACTED] or Learning Services advised Workplace Relations of the Principal’s warning letter sent to Mark [REDACTED]. Nor did Learning Services provide Workplace Relations with the copies of the text messages exchanged between [REDACTED] and person with user name [REDACTED].

Item 10b - Response and investigations – Outline the steps taken by the Department or [REDACTED] in response to the Allegations to provide support to the students the subject of the Allegations, their families, carers or other students or staff at [REDACTED].

77. On [REDACTED] 2022, [REDACTED] of Legal Services contacted Justin [REDACTED] in relation to what support was offered to [REDACTED].

78. Justin [REDACTED] advised that:

- a) he was confident in his recollection that he met with [REDACTED] on a number of occasions and that he had offered psychological support,
- b) he recalled [REDACTED] indicating that she did not see a need to engage with the social workers/psychologists and that she was “ok”, and
- c) he was also of the view that the school social worker was likely to have made contact directly with [REDACTED].

79. The Department has been unable to verify independently whether [REDACTED] was offered or received support.

Item 10c - Response and investigations – Outline the steps taken by the Department or [REDACTED] in response to the Allegations to communicate with the students the subject of the Allegations, their families, carers or other students or staff at [REDACTED] regarding actions taken in response to the allegations.

80. The records are unclear as to whether or not any person from DoE spoke with the family at the conclusion of the matter. However, the document titled “interview of [REDACTED]” suggests that Justin [REDACTED] also spoke with [REDACTED] on [REDACTED].

81. Justin [REDACTED] recalls that all communication with [REDACTED] and [REDACTED] was conducted by him and not Learning Services. Other than Justin [REDACTED] recollection, the Department has not been able to source any written correspondence to the student or their family in relation to the actions taken in response to the allegations.

82. The Department was unable to locate any counselling with other students, including student [REDACTED], who apparently previously had Mark [REDACTED] phone and contacted [REDACTED].

Item 11 - What were the investigative steps taken by the Department or [REDACTED] in 2016 in response to the Allegations?

83. The investigative steps taken by the Department are covered in my response to item 9.

Item 12 - Identify whether the Department or [REDACTED] response as described in answer to paragraphs 10 and 11 above complied with the Department's policies and procedures in place in 2016. If the Department's or [REDACTED] response did not comply with the policies and procedures in place in 2016, please explain the respects in which the Department's or [REDACTED] response did not comply.

84. Some aspects of the investigation and the response of [REDACTED] and the Department did not comply with our policies and procedures that were in place in 2016.

85. These aspects include:

- a) Learning Services and/or Justin [REDACTED] may have failed to properly investigate the allegation that another student (" [REDACTED] ") made use of Mr Mark [REDACTED] phone and commented on a photo of [REDACTED] on Instagram. Mark [REDACTED] refers to this student as [REDACTED]. A fulsome investigation would have included a statement from that student. However, there is no evidence that a statement was taken or that the student was offered any support.
- b) There was also no attempt from Learning Services or Justin [REDACTED] to obtain a statement from the friend of Mark [REDACTED] who contacted [REDACTED]. Mr Mark [REDACTED] stated that a " [REDACTED] " had his phone while he was holidaying in [REDACTED] and contacted [REDACTED] following a notification that she had liked one of the photos.
- c) Justin [REDACTED] did not refer Mark [REDACTED] to the Social Media Policy (2014). The policy could have been clearer about teachers and their interactions with students on social media. It provided that social media 'friending' (e.g. Facebook 'friend') should only be used when necessary for business or learning purposes. (The policy now provides that staff MUST NOT friend or follow students on social media).

- d) Learning Services and Justin [REDACTED] did not report back to Workplace Relations on the outcome of the investigation. Likewise, Workplace Relations did not enquire as to the outcome of the matter. As a result, Mark [REDACTED] was issued with a disciplinary measure, being a warning letter, and no notification was made to the TRB as required under the *Teachers Registration Act 2000*.

Item 13 - Identify the respects (if any) in which the Department's response to, and investigation of, the Allegations would be handled differently today. If these complaints would be handled differently today, please explain why this would be the case.

86. If these complaints were received today, the matter would be formally referred to me as a matter of course to enable me to consider whether I can form a reasonable belief that there may have been a breach of the State Service Code of Conduct. Previously incidents such as this may have been managed at school level.
87. To assist schools, the Office of Safeguarding Children and Young People is undertaking work to raise general awareness regarding inappropriate conduct and grooming behaviours to ensure that Principals are aware that any allegations concerning potential child sexual abuse are referred immediately to Workplace Relations and relevant mandatory notifications are made.
88. I further note that the employee's conduct would today be in direct contravention of the Social Media Guidelines (2020) by virtue of the employee following students on Instagram and allowing himself to be followed by students. This would be central to any employment investigation and determination.
89. I attach a table outlining the various policies and procedures of the department in place at particular points in time that addresses the Department's process for reporting, investigation, supporting students and staff and communicating outcomes (refer Annexures).

Item 14 - Please explain the basis of the conclusion in the Minute to the Secretary dated [REDACTED] 2021 (Annexure E) that 'the matter was adequately investigated at the time'.

90. The matter of Mark [REDACTED] was referred to me for consideration as part of the review of previous management actions relating to historical child sexual abuse allegations involving current employees to ensure that all appropriate steps had been taken. I made my determination that I

did not have reasonable grounds to believe that a breach of the *State Service Act* 2000 Code of Conduct had occurred based on the information in that Minute on [REDACTED] 2021.

91. Workplace Relations provided their view that the matter was adequately investigated at the time.

Their reasoning includes:

- The student was spoken to in the company of her parent;
- The alleged offending teacher was spoken to and asked to provide a response to the allegation. The response was that he agreed the contact had been made, but was made by one of his friends using the offending teacher's phone. He further outlined that he was remorseful and the conduct was "silly";
- The determination at school level was that a warning letter was appropriate. The letter was sent to Mark [REDACTED] on [REDACTED] 2016;
- In the context of the warning letter the teacher was reminded of his professional and conduct obligations pursuant to DoE policy and procedures and any further allegations would be referred to the Secretary; and
- While the conduct was clearly inappropriate, it was considered at the lower end of seriousness given that there was no sexual connotation.

92. While this was the view of Workplace Relations in its Minute, given the shortcomings in the investigations outlined above, there may be a question as to whether this view is open. I note that I signed the Minute on [REDACTED] 2021 and did not query that view. I have set out context as to why above.

93. I have requested that the matter be reconsidered by Workplace Relations in view of the additional information that was not available to it at the time the Minute was prepared, namely, the screen shots of messages and the response of Mark [REDACTED], and will reconsider whether an investigation under ED5 is necessary.

Item 15 - Please explain why the matter was not referred to the Teachers Registration Board.

94. Learning Services and Justin [REDACTED] did not report back to Workplace Relations on the outcome of the investigation. As a result, after Mark [REDACTED] was issued with a disciplinary measure, being a

warning letter, no notification was made to the TRB as required under the *Teachers Registration Act 2000*.

95. Workplace Relations should have been notified.

96. [REDACTED] made a referral to the TRB on [REDACTED] 2021 via email, attaching the original allegations.

97. The *Teachers Registration Act 2000* section 31 requires the employer to notify the TRB if there was a disciplinary action.

A REQUEST FOR DOCUMENTS

9 Produce a copy the following documents:

- (a) policies or procedures that are either referred to in, or relevant to, your response as in place at the relevant time. Where any document provided is no longer current, please provide the current version of that document as well
- (b) correspondence to or from Mark [REDACTED] about the Allegations
- (c) any report or record of the outcome of any review undertaken in response to the Allegations
- (d) the material that was made available to the person carrying out the investigation that followed the Allegations in 2016, and
- (e) the material that was made available to the person carrying out the review of the investigation into the Allegations in 2021.

10 Produce a copy of any documents (if any) supporting your responses to paragraphs 10 and 11 above.

Attachments

Item 9(a)

- i. *Procedures Regarding Alleged Maltreatment of Students by Employees of the Department of Education and the Arts (1995 and revised in 1996 and 1997);*
- ii. *Maltreatment Guidelines – Guidelines regarding alleged abuse of students by employees of the Department of Education (2008); and*

- iii. *Department of Education process where an allegation(s) of child sexual abuse is made against a current employee (2020).*
- iv. *Employment Direction No. 5*
- v. *Protective Practices for Staff in their Interactions with Students (2006);*
- vi. *Department's Conduct and Behaviour Standards; and*
- vii. *Department's Professional Standards for Staff: Policy & Guidelines (2015).*
- viii. *Social Media Policy (2014)*
- ix. *Social Media Procedures (2020)*

Item 9(b)

- i. *Allegation, complaints & Statement* [REDACTED]
- ii. *Statement by* [REDACTED]
- iii. *Warning Letter from* Justin [REDACTED]
- iv. *File note of* [REDACTED]

Item 9(c)

- i. *Allegation, complaints & Statement* [REDACTED]
- ii. *Statement by* [REDACTED]
- iii. *Warning Letter from* Justin [REDACTED]
- iv. *File note of* [REDACTED]

Item 10

- i. *Allegation, complaints & Statement* [REDACTED]

ANNEXURES

- A. 2022-2025 Department of Education Strategic Plan
- B. *Allegations, Complaints and Statement* [REDACTED], pp2, 17-18
- C. Master Table: *Policies, procedures and guidelines relating to child sexual abuse incidents*