



WITNESS STATEMENT OF PROFESSOR STEPHEN WALKLEY SMALLBONE

I, Professor Stephen Walkley Smallbone of [REDACTED], in the State of Tasmania, retired, [REDACTED], do solemnly and sincerely declare that:

- 1 I make this statement in my personal capacity.
- 2 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

- 3 I have the following qualifications:
 - (a) Bachelor of Arts from the University of Queensland
 - (b) Graduate Diploma of Psychology from the University of Tasmania, and
 - (c) Doctor of Philosophy from Griffith University.
- 4 I am currently Professor Emeritus at the Griffith Criminology Institute.
- 5 My previous roles have relevantly included:
 - (a) Professor, School of Criminology and Criminal Justice, Griffith University (2009 – 2016)
 - (b) Australian Research Council Future Fellow (2010 – 2014)
 - (c) Associate Professor, School of Criminology and Criminal Justice, Griffith University (2006 – 2008)
 - (d) Senior Lecturer; School of Criminology and Criminal Justice, Griffith University (2001 – 2005)
 - (e) Director, Griffith Youth Forensic Youth Service, Griffith University (2001 – 2016)
 - (f) Director, Forensic Psychology Training, School of Applied Psychology, Griffith University (2000 – 2003)

- (g) Lecturer, School of Criminology & Criminal Justice, Griffith University (1998 – 2000)
- (h) Adjunct Lecturer in Clinical Psychology, Griffith University (1997 – 1998)
- (i) Senior Psychologist, Queensland Corrective Services (1994 – 1997), and
- (j) Psychologist, Queensland Corrective Services (1990 – 1993).

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

- 6 On 27 October 2020 I was appointed, along with Professor Timothy McCormack, 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 McCormack 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 **SWS-1** are the Terms of Reference of 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 McCormack and I were instructed to continue our work on the understanding that it 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. For example, we wrote to all persons who had made written submissions relating to 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 sexual abuse complaints involving Department of Education personnel or students.

- 10 Professor McCormack and I submitted our Final Report on the Independent Inquiry to the Secretary, Department of Justice, on 7 June 2021. Attached to this statement and marked **SWS-2** 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 **SWS-3** is a public version of the recommendations extracted from the Final Report.

OBSERVATIONS ON THE TASMANIAN CONTEXT FROM THE INDEPENDENT INQUIRY

- 11 I am 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 in the course of carrying out the Independent Inquiry which may have some relevance to its work. I have not undertaken any work or review subsequent to the Final Report, and so cannot comment on developments since that time.

The Importance of Systems

- 12 The Terms of Reference for the Independent Inquiry were focused on systems, and our Final Report analysed the systems that we found, and the legislative context within which they operated.
- 13 We were told that a substantial majority of the teachers in Tasmanian government schools had graduated from a single university, the University of

Tasmania. We thought this presented a challenge and an opportunity. The main challenge is that there is little diversity of educational experience among teachers in Tasmanian government schools. However we thought that there was a significant opportunity to ensure that trainee teachers are provided with accurate and up-to-date information about how to understand, prevent, and respond to sexual abuse in schools.

- 14 At the time of our Inquiry we believed there was little attention given in the University of Tasmania education courses to the problem of sexual abuse, and nothing of note on how, where, when and why sexual abuse may occur in schools. Accordingly we recommended that the Department of Education engage with the University of Tasmania to review and improve teacher training with respect to understanding, preventing, and responding to student sexual abuse.

Culture

- 15 In our report we concluded that, historically, in the 1970s, 1980s and 1990s, the predominant response of the Department of Education to sexual abuse concerns and complaints was to protect itself from what it apparently saw as the legal, financial and reputational risks attached to those concerns and complaints. We heard some people suggest that a legacy culture of prioritising adults' interests over those of students continued, and we heard concern that in some schools, the adult voice was perceived as the voice of truth.
- 16 During the conduct of the Independent Inquiry, we saw many examples of parents and others, including teachers and principals, actively but ultimately unsuccessfully opposing the decisions of the Department of Education to transfer known abusers to a new school. This is a matter which is connected with recommendation 2 of the Final Report.
- 17 Our observations in the course of our Inquiry suggested that the culture and leadership of the Department of Education had changed for the better, particularly over the last decade. Nevertheless, we still saw residual cultural problems, including examples where students' concerns and complaints were assumed to be untrue, and where rules and expectations about staff conduct were assumed to serve the purpose of protecting adults from misunderstandings

and even from false and malicious allegations by students, rather than of protecting the students themselves.

- 18 An effective safeguarding system must account for what appears to be a common, and in many cases even subconscious, tendency for adults to first and foremost protect their own and other adults' interests. One solution to this is to recognise that such biases exist, and to implement policies and training to address them. Accordingly in our report we recommended that the principle of 'acting in the best interests of students' be embedded in all considerations, decisions and actions concerning student safeguarding.

Prevention

- 19 Professor McCormack and I found that the focus of the Department of Education's policies related to the safety of children was to respond to allegations of child sexual abuse, rather than to prevent abuse from occurring. I have observed this is to be a common limitation in many child-serving organisations in Australia and elsewhere. In our report, Professor McCormack and I asserted that children's interests are best served by systems designed to prevent abuse from occurring in the first place. We recommended that this principle be firmly embedded in the Department of Education's safeguarding systems, expressed clearly in its safeguarding policies, reflected in its procedures, and communicated to staff, students, their parents and guardians, and the general public.
- 20 In our report we provided a range of examples of preventive actions by school staff. For example, we heard of instances of good practice where staff intervened positively at an early stage where teacher colleagues were engaging in small boundary violations with students, rather than waiting until more serious problems arose. However, we observed that such practices relied on the good judgement and capabilities of individual teachers, and that there was little guidance by way of Departmental policy, practice directions, or training, for how teachers could take such actions.
- 21 For understanding and preventing abuse in schools, we suggested the most useful theoretical and applied approaches are those that contextualise the problem in terms of ecological systems (how risk and protective factors arise in the interactions between the individual student and their family, peers, school

and neighbourhood) and situational factors (the particular times, locations, activities, and interactions that give rise to immediate risks).

- 22 In my opinion, situational prevention is a particularly useful approach for schools and other organisations. Essentially, situational prevention is a method for identifying and counter-acting specific factors that may otherwise enable, facilitate, or precipitate abuse and other problem behaviour. While conducting the Independent Inquiry, Professor McCormack and I spoke with some principals who were very aware of risky places and activities in their school — where students might go alone, or where adults could go with children and not be found. Unfortunately, there were also some principals who were disinclined to believe that child sexual abuse occurs in schools as often as is alleged, because of impressions that allegations may be false or exaggerated, or that children are unreliable witnesses.
- 23 These are the kinds of matters which we considered in the context of recommendation 3 of the Final Report.

Early intervention

- 24 Tasmania's mandatory reporting scheme was introduced in the 1970s. As I understand it, its original focus was on the reporting of domestic abuse by professional groups such as social workers and medical practitioners. The present scheme requires certain persons, including school principals, teachers and volunteers, to make a formal report of any suspected or known harm or abuse of children, including child sexual abuse. It requires the reporter to have formed a reasonable belief that abuse has occurred or is likely to be occurring. As in other jurisdictions, Tasmania's mandatory reporting system does not require reporting of observations or concerns relevant to abuse that fall below that threshold. We noted this in connection with recommendations 10 and 11 of the Final Report.
- 25 Very often, an actual abuse incident is preceded by a period of relevant conduct that to an observer may seem ambiguous or of minor concern. Each event in the lead up to an abuse incident may not have required a response under the applicable policies. Thus a pattern of concerning behaviour may remain undetected until the situation becomes more serious, and often not until abuse has begun to occur.

- 26 During our Inquiry, Professor McCormack and I heard examples of good prevention practice where teachers and school leaders had intervened informally with other teachers when they observed situations or conduct that concerned them, but that would not otherwise be of sufficient weight to require a mandatory report. In one example, we were told by an experienced teacher of an instance of her observing a junior male teacher on a school bus allowing a student to braid his hair. The teacher who spoke with us described how she found a quiet moment later to talk with that junior teacher about the importance of professional boundaries. She told us that the teacher responded with gratitude, and committed to being more mindful in the future. As with other examples of good prevention practice we heard of, the practice of intervening early and carefully when small concerns arise was not a formalised requirement and was not being undertaken under the instruction and guidance of the Department of Education.
- 27 The great advantage of having a lower reporting threshold is that reporting of rule breaking can occur without the weight of worry falling on teachers about making mistaken allegations, because there is no harm from the error and their fellow teachers are not automatically assumed to be involved in misconduct. This ensures the focus of reporting is on prevention, rather than reacting to current or past misconduct.
- 28 A requirement for Department of Education staff to speak up about minor concerns encourages reporting at an early stage, when various types of action may be taken. For example, if there is a rule about doors not being shut when a teacher meets with a student, there is an opportunity to raise a query with a teacher who breaks that rule without that query carrying the gravity of an allegation of suspected child sexual abuse.
- 29 We recommended that the Department of Education develop instructions, guidelines and training for teachers and student support staff for the purposes of early intervention and reporting 'small' concerns. Department of Education staff who make such reports should be told what happens to their report, and whether they need to continue to observe and report or whether they have fulfilled their duty once a report is made.

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

- 30 While the Department of Education had developed some professional standards documents and child safe policies beginning in the mid-2000s, and particularly following the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (**National Royal Commission**), at the time of preparing the Final Report the Department of Education had no single, integrated policy covering student safeguarding. In particular, while many of the policies developed by the Department of Education focused on preventing and responding to abuse perpetrated by Department of Education staff, issues of peer-to-peer sexual abuse and online child sexual abuse were less well addressed.
- 31 In our report, Professor McCormack and I recommended, as a priority, that the Department of Education develop a comprehensive student safeguarding policy. We envisaged that this would provide policy and practical guidance on all key approaches to preventing and responding to abuse of students, with links to more detailed information, guidelines, protocols, and resources for a range of relevant matters. We expected the process of developing such a policy would likely identify key gaps in current approaches, and give direction to the integration and consolidation of relevant existing policies.

STATE SERVICE CODE OF CONDUCT

- 32 At the time of our Inquiry, Department of Education staff were subject to the same *State Service Code of Conduct* (**Code of Conduct**) contained in section 9 of the *State Service Act 2000* (Tas) as the rest of the State Service. The Department of Education had never had, and still did not have, a schools-specific code of conduct. Internal investigations and disciplinary procedures relied instead on standards set out in the generic State Service Code of Conduct. We found that the Code of Conduct was ill-suited to the particular contexts of schools. It is a generic code of conduct in the sense that it applies to the entire State Service and nothing in the Code is specifically tailored for the unique context of schools.

- 33 While the Department of Education had implemented policies and guidelines which go some way towards setting a professional conduct framework for Department of Education staff, except where an employee was charged with a criminal offence, formal disciplinary proceedings against Department of Education staff members could only be instigated where there was a breach of the generic Code of Conduct.
- 34 The Department of Education needs its own code of conduct. There was apparent broad agreement from the people we interviewed for the Inquiry that the generic Code of Conduct was an inadequate fit for the Department of Education context. Department of Education staff expressed strong support for a Department of Education-specific code of conduct, to formalise rules and expectations about behaviour in schools, to enable Department of Education-specific responses and investigations, to elevate the status of safeguarding obligations for Department of Education employees and volunteers, and to create school-specific disciplinary measures.
- 35 A Department of Education-specific code of conduct should fill the gaps which were left by the Code of Conduct, including by responding to both serious breaches of such a code and to minor rule breaking.
- 36 This was reflected in recommendation 12 of our Final Report.

SEXUAL ABUSE BY STUDENTS

- 37 Child sexual abuse is a diverse, multifaceted problem, which presents in many forms. The most commonly considered form of child sexual abuse is adult–youth abuse, which is reflected in policies and systems focused on preventing adults from engaging in abusive behaviours or when adults become subjects of concern.
- 38 However there is evidence that peer-peer sexual abuse may be more prevalent than adult-child abuse in organisational settings, including schools. It is much more difficult to use the existing system to deal with a report or suspicion that a young person is displaying harmful sexual behaviours than it is to deal with allegations involving an adult perpetrator. In general, not enough attention was paid when a young person is alleged to display harmful sexual behaviours.

- 39 Where a child is displaying sexual behaviours, there can be complex considerations to work through. For example, there are two sets of children's interests that need to be taken into account and, in some cases, a judgment must be made as to whether young people's sexual behaviour is problematic, harmful, or developmentally appropriate.
- 40 There will always need to be some discretion in responding to young people displaying problematic or harmful sexual behaviours. On one hand, there may be a tendency to overlook or minimise the seriousness of some concerning behaviours. On the other hand, as community and organisational concerns about peer-peer abuse increase, more innocuous or ordinary sexual behaviour by youth can be drawn into the net of concern. Because the Department of Education has statutory responsibilities to provide education to all children, it can find itself caught in a complex position.
- 41 So far as we observed, schools experienced a lack of policy and practice clarity around this issue in the Department of Education in Tasmania.

RECORD KEEPING

- 42 In the course of our Inquiry, Professor McCormack and I identified that record keeping was a key area that the Department of Education ought to improve. Problems with the reliability, validity, accessibility and completeness of Department of Education records precluded us from determining trends in the incidence of sexual abuse in Tasmanian government schools over the last five or six decades. It was clear that the Department of Education had recognised many of the limitations of its student records systems, and for some time had been taking steps to rectify this.
- 43 Illustrative of the Department of Education's approach to records, one of the first documents we received from the Department of Education to conduct the Independent Inquiry was a spreadsheet of records of allegations of child sexual abuse concerning Department of Education staff and/or students (**Allegations Spreadsheet**). We were told that work on the Allegations Spreadsheet began in 2017 on the advice of the Solicitor General. We were told its primary purpose was to facilitate enquiries concerning the National Redress Scheme, civil claims,

police investigations and privacy information requests. The numbers we relied on in the Independent Inquiry came from the Allegations Spreadsheet.

- 44 The Allegations Spreadsheet was not exhaustive. We knew of some historic cases that had been the subject of criminal trial proceedings, for example, that were not included. We also became aware of numerous cases of alleged peer sexual abuse that were not listed in the spreadsheet.
- 45 The Allegations Spreadsheet was not designed for, and did not allow, the computing of basic descriptive statistics. We could not, for example, compute basic averages (e.g. average age or length of service for adults when alleged abuse incidents occurred; average time between incidents and complaints) or trends over time (e.g. whether prevalence has increased, decreased, or remained stable).
- 46 So far as we observed, there was an urgent need for the Department of Education to keep and maintain complete and analysable records of all sexual abuse concerns, including substantiated and unsubstantiated incidents and episodes, and all types of abuse (i.e. teacher-student, student-student, and online abuse). The Department of Education should ensure that all sexual abuse concerns, complaints, responses and outcomes are systematically recorded, and that these records are periodically analysed to monitor patterns and trends. Of particular importance, records should include outcomes for any and all students involved.

CONCLUSION

- 47 I understand that all of the recommendations made in the Final Report have been accepted for implementation by the 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

on 28 April 2022



Professor Stephen Walkley Smallbone

Before me



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Commissioner for Declarations

This Declaration was witnessed by audio-visual means in accordance with the 'Notice Under Section 17' dated 4 September 2021, as authorised by the *COVID-19 Disease (Miscellaneous Provisions) Act 2020*.