



**Commission of Inquiry into  
the Tasmanian Government's  
Responses to Child Sexual  
Abuse in Institutional Settings**

## **WITNESS STATEMENT OF STEVEN SMITH**

I, Steven Edward Smith of [REDACTED] in the State of Tasmania, Senior Industrial Advocate, [REDACTED] do solemnly and sincerely declare that:

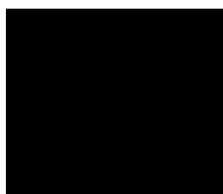
- 1 I am authorised by the Australian Education Union Tasmanian Branch (**the Branch**) to make this statement on its behalf.
- 2 I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

### **BACKGROUND AND QUALIFICATIONS**

- 3 I have the following qualifications:
  - (a) LLB(Hons).
- 4 My current roles include:
  - (a) Senior Industrial Advocate of the Branch, which I have held since October 2019.
- 5 My previous roles have relevantly included:
  - (a) Youth worker at a medium-term youth refuge in Sydney, New South Wales.
- 6 I am a practicing solicitor and member of the Law Society of Tasmania.

### **THE ROLE OF THE BRANCH**

- 7 The Branch is the Tasmanian state branch of the Australian Education Union (AEU), the federal union for teachers, principals, education support staff and all educators working in government schools and government-funded early childhood, TAFE and adult education.
- 8 The Branch services the personal, professional and industrial relations needs of its more than 5000 members. The Branch works with its members to improve their conditions of employment, to advance their professional interests, and to promote the value of educators in the community. The services the Branch provides to its members consist of supporting members to deal with day-to-day problems at workplaces, offering support and advocacy to individual members or groups, and representing members in industrial matters.



## **PREVALENCE AND TREATMENT OF CHILD SEXUAL ABUSE IN TASMANIAN SCHOOLS**

- 9        The Branch's perception is that allegations of child sexual abuse against Tasmanian teachers are a significant issue.
- 10       Our records roughly indicate that we have supported roughly 1 or 2 members a year in relation to the Department of Education investigations to determine whether an employee has breached the *State Service Act 2000* Code of Conduct (the **Code of Conduct**) in respect of allegations that could amount to child sexual abuse under Employment Direction No. 5 of that Act (**ED5 Investigation**). There has been a marked increase in the number of ED5 Investigations relating to allegations that could amount to child sexual abuse in the last 2 years.
- 11       My view is that that increase has been driven in part by the increased awareness of child sexual abuse resulting from the announcement of this Commission of Inquiry, the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) and the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse undertaken by Professor Stephen Smallbone and Professor Tim McCormack (**Education Report**). Also, it is due to the Department of Education initiating processes against employees where it did not think that previous allegations had been properly assessed.
- 12       Positively, the Branch is not aware of members being concerned about reporting allegations of child sexual abuse perpetrated by another teacher to their principal or being concerned that such allegations are not being escalated to the Department of Education's Learning Services Unit (**Learning Services**) and or its Workplace Relations Unit (**Workplace Relations**). In my observation teachers and schools take allegations of child sexual abuse allegations or allegations that may amount to child sexual abuse very seriously and give primacy to the protection of children.
- 13       Once the Department of Education receives a report alleging child sexual abuse, I have not observed any reluctance by the Department to investigate the person involved, or to take any necessary disciplinary action.
- 14       While the Branch is aware of instances of children allegedly engaging in harmful sexual behaviours towards other children in Tasmanian schools, it is rarely contacted regarding such issues because there is no AEU member 'at risk' and members know that they must notify CPS and management. Our experience is that most potentially harmful sexual behaviour issues are managed by the school at first instance.

- 15 One aspect of the current management of matters that involve or could involve child sexual abuse that does not involve the Branch is appropriate mental health support for the children and their families. We hope that the Commission will consider this issue.

### **SUPPORTING MEMBERS ACCUSED OF CHILD SEXUAL ABUSE**

- 16 The Branch may provide support to members who are alleged to have engaged in an act of child sexual abuse. The Branch is currently assisting some members to respond to historical allegations of child sexual abuse which were not dealt with fully or properly in the past, including matters considered in the Education Report. The Branch is not currently supporting any members in responding to this Commission of Inquiry.
- 17 The core approach of the Branch is to ensure that members accused of any act that may be child sexual abuse have their rights respected through the investigation process undertaken by the Department of Education, and similar investigations undertaken by entities such as the Teachers Registration Board, the Registrar of Registration to Work with Vulnerable People and Tasmania Police.
- 18 While the basic approach to supporting members remains the same for all matters, our focus is heightened where there are allegations against members of behaviour that could amount to child sexual abuse. Firstly, this is because the potential consequences for the member include termination, loss of career, and criminal prosecution. Secondly, this is because we are concerned to ensure that, as we support our member, we do not act in a way that could add to the child or children's trauma. Thirdly, the nature of these matters is that there is a natural desire to not risk letting an abuser to stay at work; this is appropriately part of the pressure on the decision maker.
- 19 The current media and public interest in child sexual abuse related matters puts additional pressure on the system and, in particular, on the decision maker.
- 20 In child sexual abuse related matters, the Branch first discusses the allegations with the member, then supports the member to write their own submission in response to the allegations.
- 21 The Branch limits the support it provides to members accused of child sexual abuse to assistance with navigating the Department of Education investigative process and working with the member to ensure that their submission says what they intend it to say. The Branch takes a neutral position, with a focus on the member's welfare. The Branch does not seek to judge or determine whether the alleged acts happened or not. However,

if a member admits wrongdoing in respect of alleged child sexual abuse, the Branch is not bound to continue to support them and would cease to do so. This situation has not arisen to my knowledge.

### **CODE OF CONDUCT**

- 22 My perception is that the Department of Education has in the last two years become more proactive with investigations into child sexual abuse allegations against educators, particularly those less 'serious' offences such as behaviours that could amount to grooming.
- 23 This change appears to be that now any allegation that involves behaviours that could possibly be part of a pattern of grooming are being carefully investigated initially, and my perception is that unless the conclusion of the preliminary investigation is that unless it is clear or beyond any reasonable doubt that there was no breach of duty, an ED5 Investigation process will follow.
- 24 The Department of Education's current application of the Code of Conduct and ED5 Investigation process may be appropriate for dealing with normal workplace disputes and conflicts.
- 25 It is a robust system that tries to balance fairness and expediency.
- 26 The system has elements that can be unfair in some circumstances. For example, there is no opportunity for the accused to cross examine witnesses; and the decision maker is wholly reliant on the investigation report and the educator's response to make their decision. Further the capacity to appeal is essentially limited to situations where the Head of Agency has made a decision that no reasonable decision maker could make.
- 27 These limitations in the ED5 process are a compromise between the rights of individuals and the need for employment related management systems that are cost effective and reasonable.
- 28 In relation to potential child sexual abuse matters, there is an additional pressure on the Head of Agency and those involved in the ED5 process to protect the agency from any risk that they fail to terminate an employee who subsequently is revealed to have committed child abuse.
- 29 Is there value in considering if a person independent of the Department of Education should be making decisions in matters that involve a Child Sexual Abuse risk that reasonably assessed could result in termination rather than the Head of Agency? I



suggest this approach to making the assessment as to which matters should be dealt with by an independent person, as I have not worked out an appropriate alternative way of otherwise assessing the seriousness of allegations.

- 30 The existence of any training and its adequacy for decision makers also should be reviewed.
- 31 The Code of Conduct has increasingly been used to attempt to respond to behaviours that could be part of a grooming process.
- 32 However, it is not always clear from the allegations of breach if there are any sexual concerns.
- 33 We appreciate that whether there are sexual concerns is not always evident from the initial allegations raised or indeed until something additional is revealed during the actual ED5 investigation. It should be considered if the process can evolve so that as soon as such concerns are raised the accused is informed.
- 34 The concept of grooming is one that has developed over recent years. My understanding is that there is now a relatively well-developed analysis of what is involved in grooming; Grace Tame has, for example, referred to six stages. It should be considered, if training of the Head of Agency / decision maker and other staff associated with the investigation process in regard to Grooming should be required.
- 35 The Department of Education maintains some policies outside of the Code of Conduct which seek to minimise the risk of child sexual abuse outside of the immediate school environment; for example, governing the proper use of social media by teachers. The Department of Education's Conduct and Behaviour Standards and Professional Standards for Staff both address the behaviour of teachers outside of school hours. Principals are to ensure that all employees read and understand these policies at the beginning of each school year. Our feedback is that some schools are very good at ensuring that policies are actively reviewed, for example at one school they put staff into teams to review a policy and find those things they did not know, they then report to the group. Others give time to review in the days prior to students returning in term 1. Some members report only reviewing the policies every other year. The impression I have is that employees are aware of these policies. However, the extent of understanding is variable.

- 36 I am not aware of the processes used by the Department of Education to ensure that staff are required to indicate that they have read and understood these policies, or how such is monitored.
- 37 I note that there is a group of educators who may not be familiar with the relevant policies. There is no process to ensure that relief educators including teacher assistants are made aware of relevant policies and protective practices, which is a concerning gap. We are also not aware of what process if any there is to ensure proper induction of new contract or permanent staff, noting that the review processes occur the beginning of Term 1.

### **Recommendations for change**

- 38 While the introduction of an education-specific code of conduct which addresses some of the current practical limitations of the Code of Conduct is a possible solution, it may not be strictly necessary. I am wary of a new code being introduced that could conflict with the State Service Code of Conduct.
- 39 I suggest that the Department of Education review its policies and procedures under or alongside the current Code of Conduct and ED5 Investigation processes to better adapt its capability to deal with serious allegations including child sexual abuse allegations. That review should consider, amongst other things:

- (a) A policy to protect children from being subject to poor or inadequate interview practices, and children and educators from the possible consequences of poor interview practices. While clause 7.3 of ED5 instructs the Head of Agency to ensure "sensitive and appropriate" process, we have seen no policy in this respect, and no practices to monitor compliance. I am not aware of any training provided by the Department for educators and principals regarding best practice interviewing processes.

I also note that this clause applies once a formal ED5 has commenced, and technically it does not apply to the initial or preliminary investigations. Educators and principals currently carry out interviews with students in these preliminary processes. In my view from an allegation being raised there should be clear process for engaging with the children involved and trained staff who undertake those interviews and processes.

- (b) Should the decision maker be the Head of Agency? Allegations relating to child sexual abuse are politically potent for the Head of Agency. This pressure conflicts with the obligation to make a fair and reasonable decision.

- (c) Training around grooming should be provided to those involved in the investigation process and all those who make decisions related to the processes involved in addressing relevant allegations.
- (d) To ensure fairness, consideration should be given to ensuring that all relevant documents and information are provided to the investigator and accused. And related to this, that the accused has the right to wait to respond to questions from the investigator until they have been provided with all the relevant documentation without that being treated in any way as indicative of guilt or innocence.

### **INVESTIGATIONS INTO POTENTIAL CODE OF CONDUCT BREACHES**

- 40 In my experience, where an Educator is accused of wrongdoing which may breach the Code of Conduct and result in disciplinary action, the Department of Education generally commences an ED5 Investigation – including where an Official is accused of child sexual abuse.
- 41 This usually follows some preliminary investigations. There can be a school based initial investigation that leads to Learning Services being asked to become involved. Our understanding is that Learning Services will then undertake a preliminary investigation and provide a report to Workplace Relations who then report to the Secretary of the Department of Education. The Secretary of the Department of Education will then make the decision to initiate an ED5 investigation or not.
- 42 Allegations of child sexual abuse are different to the usual disciplinary issues that are the subject of ED5 investigations (for example, workplace harassment between adults, workplace discrimination or misappropriation of funds). Accordingly, special care must be taken by investigators and decision-makers when an ED5 Investigation process involves allegations of child sexual abuse, to reflect the seriousness of the allegations for the child and the teacher involved.
- 43 There are several key issues with the current ED5 Investigation process, which I discuss below.

### **No access to preliminary investigative material**

- 44 Before an ED5 Investigation is commenced, our understanding is that Learning Services prepares a set of preliminary investigative materials for the Secretary of the Department of Education. The Secretary ultimately determines whether the person is likely to have breached the Code of Conduct based on those preliminary investigative materials and,

therefore, whether the teacher should be suspended or terminated. We assume that those preliminary investigative materials often contain statements prepared by the school and correspondence relating to the allegations.

45 Branch members who later become the subject of an ED5 Investigation are not given access to those preliminary investigative materials automatically.

46 In my view this undermines procedural fairness for persons who are subject to ED5 Investigations. I think that the Department of Education should be required to provide preliminary investigative materials to the subject of an investigation once a determination is made to commence an ED5 process.

#### **Lack of investigative skills and training**

47 We are not informed of the level or extent of training provided to the Department of Education Officials responsible for investigating child sexual abuse allegations against educators, and for the decision-makers who receive that investigative material and make determinations under the Code of Conduct (for example, the Secretary of the Department of Education).

48 In our view the extent and adequacy of training in this regard should be reviewed.

49 Investigations preliminary to ED5 Investigations have been started and conducted by principals, assistant principals, and teachers; busy people who are not to my knowledge normally trained in investigative techniques or interviewing practices. This creates risk of error.

50 We do not know the extent to which Departmental Officials involved in preliminary investigations are trained in the skills required to undertake a fair investigation. Nor do we know the extent to which the Secretary of the Department of Education has been trained to assess evidence and assess the credit of witnesses and alleged perpetrators to enable them to make a decision that is fair and just.

51 The severe consequences of child sexual abuse for children, and the reputational and professional consequences that allegations of child sexual abuse pose for teachers, call for preliminary investigation procedures to be conducted in a disciplined and skilled manner from the outset.

#### **Failure to complete investigations**



- 52 If someone is no longer an employee (in the case of a permanent employee because they resign or retire or, in the case of a fixed term employee, because their contract has come to an end) the Department of Education will not normally continue the ED5 Investigation.
- 53 My interpretation of ED5 is that it does not prevent the Department of Education from continuing an investigation that it has already commenced into a person who is no longer an employee of the Department of Education.
- 54 While I can understand why there might be no need to continue an investigation into a routine disciplinary matter following the employee's resignation, the Department of Education should in my view complete what it can of an ED5 Investigation which does or may relate to child sexual abuse, even when the subject of that investigation ceases being an employee.
- 55 The outcome and determination of the ED5 Investigation may be instrumental to the Department of Education providing support to the victim-survivor, or to assist in preventing an alleged perpetrator from further harming children in the community. Completing the process would also provide the Department with an opportunity to identify any systemic issues that may have contributed.

#### **Lack of timeliness**

- 56 The time it takes for the Department of Education to complete an ED5 Investigation is of serious concern, with some investigations taking years.
- 57 This issue is particularly highlighted by the fact that there are often other processes on foot, particularly investigations by the Teachers Registration Board and Working with Vulnerable People. The Branch has seen instances where relatively minor allegations which could be construed as being sexually inappropriate have been raised in the ED5 Investigation process, causing the Department of Education to notify the Teachers Registration Board and the Department of Justice.
- 58 The Educator may have their registration to teach and / or their Working with Vulnerable People registration suspended pending investigation. This can be financially devastating for the teacher involved as it may enliven a right for the Department of Education to cease paying the educator, before the ED5 Investigation is complete, as part of an Employment Direction No. 6 process — that is, on the basis that they are no longer able to undertake their teaching duties because they do not hold a current teaching registration or Working with Vulnerable People registration and are therefore not entitled to be paid as registration is a requirement for the position.



59 In my view for these reasons, the Department of Education should review its processes related to ED5 Investigations to ascertain what causes delay and whether improved processes and/or resources are required.

#### **Limited opportunities for review**

60 A teacher who is the subject of an adverse determination by the Secretary of the Department of Education following an ED5 Investigation may lodge a review of that decision to the Tasmanian Industrial Commission.

61 In such a review, the question for the Tasmanian Industrial Commission to consider is whether the decision made by the Secretary of the Department of Education is a decision that could have been made by a reasonable decision-maker. The materials on which that decision was made are not freshly examined and, understandably, our members are not provided with a right of cross-examination.

62 For many ED5 Investigations, arguably limiting the scope of the review makes practical sense given the significant resources that would be required for a fresh determination to be made as part of every review. However, where an ED5 Investigation concerns allegations of child sexual abuse, the consequences of a finding of breach of the Code of Conduct are very significant for the accused, particularly in a small place like Tasmania.

63 Given those consequences, I think consideration of changing the system to allow a de novo review is appropriate.

64 I am not aware of the approach taken in other jurisdictions.

65 In any event, the issues which I outlined above underscore the importance of ensuring that the people conducting investigations, both within schools and at the Departmental level, have the training and skills necessary to do so effectively and fairly.

#### **INTERVIEWING CHILDREN**

66 I have commented above on the importance of the processes related to getting evidence from students.

67 My view is that whenever allegations are made that could amount to CSA that all those interviewing children should have been trained in trauma informed interview methods and apply those methods.

- 68 Very specialised skills are involved in interviewing children. To my knowledge the Department of Education does not train existing staff, or employ specialist staff, to seek information from children in a trauma-informed way.
- 69 My understanding is that the early investigative interviews are conducted by untrained persons who have little extra capacity to take on that work, usually a principal, assistant principal or some other senior school staff member.
- 70 It is generally accepted that interviews of children that are not conducted by trained interviewers can lead to dangerous results. Particularly in respect of autistic children or children with mental ill health, because of the propensity of untrained interviewers to ask a child leading questions, to interview a child alone with no parent or support persons, to interview a child on multiple occasions, or to interview a child for an inappropriate amount of time.
- 71 Recently, I spoke to a senior Tasmania Police officer who informed me that Tasmania Police engaged an interstate police force to training Tasmanian officers regarding trauma-informed interviews with children and that, in his view, that training really works.
- 72 My view is that the Department of Education should take a similar step and arrange for training for relevant staff, such as principals and assistant principals, or employ and trained specialised staff members, to take statements from children. Further, I suggest that the Department of Education consider involving trained social workers in such interviews to support children when making a statement.

### **PROTECTIVE PRACTICES TRAINING**

- 73 In my view the Department of Education should introduce protective practices training for relief teachers and relief teacher assistants.
- 74 In my view senior staff would also benefit from additional protective practices training. That particularly focus them on looking at school-based risks, much like we do for work health and safety risks.
- 75 As principals and assistant principals implement changes with good intent, they sometimes fail to understand the possible unintended consequences of those changes. For example, the Branch assisted in a matter concerning a school which created a breakout room for students with anxiety, which we understand was thought to be a great, trauma-informed idea. However, the school resourced the room with one male teacher. That teacher was then accused of inappropriate contact with a student. This should never

have occurred. In that situation, the school failed to implement protective practices, such as ensuring that there were always two staff members in the room, or installing CCTV cameras in the room, which might have minimised the potential risk of such an environment to students and teachers alike.

### **EDUCATION REPORT RECOMMENDATIONS**

- 76 The recommendations made by the Education Report are helpful, and the sections of the Education Report that have been released by the Tasmanian government by and large read very well.
- 77 I consider that the recommendation to appoint a Director of Safeguarding Children and Young People to monitor policies and procedures in preventing and responding to allegations of child sexual abuse is a positive development. However, that office must be properly resourced so that the team under them works well including at the school level.
- 78 Those in schools who are playing the role of ensuring the safeguarding of children (for example, those implementing the decisions of the Director of Safeguarding Children and Young People) need to be given sufficient time and resources to do that work, in addition to the other demands of their work or those other demands need to be reduced.

### **TEACHERS REGISTRATION BOARD**

- 79 Investigations into allegations of child sexual abuse made against teachers, are currently undertaken separately by the Department and the Teachers Registration Board.
- 80 In my view consideration should be given to how to manage these investigations concurrently with appropriate sharing of evidence. This could result in less duplication, more consistency, and less stress on witnesses and accused educators.
- 81 If successful, this will not only have the benefit of easing some of the resourcing issues that the Teachers Registration Board experiences, but also accelerate the overall process.

### **THE REGISTRAR UNDER THE REGISTRATION TO WORK WITH VULNERABLE PEOPLE ACT 2013 (Tas)**

- 82 The Branch considers that the Registrar under the *Registration to Work with Vulnerable People Act 2013 (Tas)* (**Registrar**) plays a major role in the child protection framework in Tasmania, separate from the Department of Education and Teachers Registration Board, by preventing child sexual abuse in a broader range of environments than just schools.



- 83 The Registrar can suspend teachers without having commenced any investigation into the legitimacy of the claims being made against that teacher. This action will most likely result in the educator then not being paid, as they no longer have the capacity to undertake their duties.
- 84 While I appreciate the importance of this power to act without delay, in my view where this can result in someone not then being able to work, the Department of Justice should be required to investigate the issues of concern without delay.

### **SUGGESTIONS FOR CHANGE**

- 85 In this statement, I have made a number of suggestions for changes to or for review by the Department of Education of the systems and processes it relies upon, as well as the Teachers Registration Board and Working with Vulnerable People. In summary, my suggestions are the following:
- (a) The Department of Education should review the adequacy of the current Code of Conduct and ED5 Investigation process to enable it to respond more effectively to child sexual abuse allegations. Some aspects to focus on include:
    - (i) introducing a policy to protect children by ensuring that they interviewed by those trained in trauma informed interview techniques.
    - (ii) consider involving trained social workers in interviews to support children in making a statement.
    - (iii) consideration should be given to how to manage TRB and Department of Education investigations concurrently with appropriate sharing of evidence. This could result in less duplication, more consistency, less cost, and less stress on students, witnesses and accused educators
    - (iv) enhancing procedural fairness by requiring preliminary investigative materials to be shared with the accused once a determination to commence an ED5 is made. And related to this, that the accused has the right to wait to respond to questions from the investigator until they have been provided with all the relevant documentation without that being treated in any way as indicative of guilt or innocence
    - (v) whether the decision maker should be the head of agency. Consider if where there are allegations that could amount to Child Sexual Abuse that could

result in termination, that the decision maker be independent of the Department of Education

- (vi) consider introducing a de novo or other more rigorous, merits-based right of review where allegations of child sexual abuse result in the termination of a teacher's employment
  - (vii) consider if changes need to be made to ensure that if the Department of Justice suspends an educators WWVP card without investigation, that the Department of Justice is required to then investigate the issues of concern without delay
  - (viii) the Department of Education should review its processes related to ED5 Investigations to ascertain what causes delay and whether improved processes and/or resources are required, and
  - (ix) the Department of Education should complete what it can of any ED5 Investigation which relates to child sexual abuse, even when the subject of that investigation ceases to be an employee or contractor.
- (b) The Department of Education must ensure that appropriate training is provided to school staff involved with investigations into allegations of child sexual abuse, including:
- (i) training in assessment of credit and evidence for all relevant staff, in particular the Head of Agency, involved in ED5 Investigations into serious matters such as child sexual abuse or, alternatively, ensuring that specialist investigators who possess existing skills are engaged to investigate such matters
  - (ii) training principals and assistant principals and other appropriate staff in modern trauma-based techniques for interviewing and taking statements from children or, alternatively, employing and training specialised staff members to do so or engaging properly trained third party investigators to do so, and
  - (iii) engaging social workers to support children who are the subject of interviews.
- (c) The Department of Education must ensure that appropriate training is provided to Officials in respect of protective practices, including:

- (i) training relief teachers and relief teacher assistants in respect of protective practices, and
  - (ii) providing additional training to senior school staff in respect of protective practices.
- (d) The Department of Education must ensure that the Office of Safeguarding Children and Young People is properly resourced.
- (e) The Department of Education and Teachers Registration Board should conduct their investigations concurrently and share resources.
- (f) The Tasmanian government should amend the *Registration to Work with Vulnerable People Act 2013* to require the Registrar for Working with Vulnerable People to commence a formal investigation into allegations made against a teacher as soon as possible after that teacher is suspended.

86 The Branch is hopeful that the imminent establishment of a new government Department, the Department of Education, Children and Young People, presents an opportunity to implement the above suggestions for change.

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

Declared at HOBART



Steven Smith

Before me

