



## WITNESS STATEMENT OF LIANA BUCHANAN

I, Liana Buchanan of 18/570 Bourke St, Melbourne, in the State of Victoria, Principal Commissioner, Commission for Children and Young People (CCYP), [REDACTED], do solemnly and sincerely declare that:

1. I am authorised by the Commission for Children and Young People 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) Bachelor of Laws;
  - (b) Bachelor of Arts;
  - (c) Graduate Certificate in Legal Practice; and
  - (d) Certificate of Practical Legal Training
4. I have a background in oversight and system reform for people experiencing disadvantage, sexual assault and family violence.
5. Since February 2015, I have been a part-time Commissioner of the Victorian Law Reform Commission. Since April 2016, I have also been the Principal Commissioner for Children and Young People (**Commissioner**). In April 2021, I was reappointed for an additional five year term as Commissioner.
6. Prior to my appointment as Commissioner at the CCYP, my roles included:
  - (a) between April 2013 and March 2016, I was the Executive Officer of the Federation of Community Legal Centres, where I led the peak body for Victoria's 50 community legal centres; and
  - (b) between August 2009 and April 2013, I was the Director of the Office of Correctional Services Review, where I was responsible for monitoring Victoria's corrections system.

7. I have also held legal and policy positions in a number of agencies including the Victorian Equal Opportunity Commission, Department of Justice, Office for the Status of Women (SA) and Women's Legal Service (SA).
8. Attached to this statement marked **LB-1** is a copy of my curriculum vitae.

### **COMMISSION FOR CHILDREN AND YOUNG PEOPLE**

9. The CCYP is an independent statutory body established to promote improvement and innovation in policies and practices affecting the safety and wellbeing of Victorian children and young people, including in the provision of out-of-home care and youth justice services for children. We have a particular focus on vulnerable children and young people.
10. There are three primary statutes that inform the CCYP's functions and powers. They are the:
  - (a) *Commission for Children and Young People Act 2012 (Vic) (CCYP Act)*, which is the legislation that establishes the CCYP and sets out its core objectives and functions;
  - (b) *Child Wellbeing and Safety Act 2005 (Vic) (CWAS Act)*, which contains the Child Safe Standards and the reportable conduct scheme, and the CCYP's functions in relation to both of those schemes; and
  - (c) *Children, Youth and Families Act 2005 (Vic) (CYF Act)*, which, among other things, sets out the responsibilities of the responsible Minister and the Secretary of the Department in relation to the best interests of a child (including a child in out-of-home care). The CCYP monitors services provided to children in out-of-home care and Youth Justice, including the extent to which treatment of children in these settings is compliant with the CYF Act.
11. Relevant aspects of these statutes are discussed below.

#### **CCYP Act**

12. The functions of the CCYP are detailed in section 8 of the CCYP Act. They include to:

- (a) provide advice to government, Ministers and human services about policies, practices and the provision of services relating to the safety or wellbeing of vulnerable children and young persons;
  - (b) promote the interests of vulnerable children and young persons in the Victorian community;
  - (c) monitor and report to Ministers on the implementation and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young persons;
  - (d) provide advice and recommendations to the Minister about child safety issues, at the request of the Minister;
  - (e) promote child-friendly and child-safe practices in the Victorian community; and
  - (f) review, report and provide information on issues related to working with children and the related legislation.
13. Part 4 of the CCYP Act sets out the CCYP's functions and powers in relation to out-of-home care. The CCYP's functions are to:
- (a) promote the provision of out-of-home care services that encourage the active participation of those children in the making of decisions that affect them;
  - (b) advise the Minister and the Secretary on the performance of out-of-home care services; and
  - (c) investigate and report on an out-of-home care service, at the request of the Minister.
14. Part 5 of the CCYP Act sets out the CCYP's inquiries powers and functions. It provides the CCYP's objective in an inquiry is to promote continuous improvement and innovation in policies and practices relating to child protection and the safety and wellbeing of vulnerable children and young persons, and children and young persons generally.
15. In doing so, the CCYP must conduct child death inquiries in relation to a child who has died and who was a child protection client at the time of their death or within

12 months prior to their death (s 34 of the CCYP Act), and is able to conduct certain inquiries in relation to:

- (a) a vulnerable child or young person (including a group of vulnerable children and young people) relating to their safety or wellbeing, services provided (or omitted to be provided) to them and may relate to a vulnerable child or young person who has died (s 37 of the CCYP Act);
- (b) a recommendation of the Minister, once the CCYP determines if it should conduct the inquiry in accordance with section 37 (s 38 of the CCYP Act); and
- (c) the provision of services, if the CCYP identifies a persistent or recurring systemic issue in the provision of those services and it considers a review will assist in the improvement of the provision of those services the CCYP is able to conduct that inquiry within its resources (s 39(1) of the CCYP Act). Pursuant to section 39(2), that inquiry must be in relation to:
  - (i) services provided or omitted to be provided by community services, health services, human services or a school;
  - (ii) child protection services or youth justice services provided, or omitted to be provided, by the Secretary;

to or in relation to:

- (iii) a vulnerable child or young person, or a group of vulnerable children or young people;
  - (iv) a child or group of children, if those services deal with matters affecting their safety or wellbeing; or
  - (v) a primary family carer or a group of primary family carers, if those services deal with matters affecting, or may otherwise affect, the safety or wellbeing of those carers' children.
16. Some examples of the CCYP establishing an inquiry under s 39 of the CCYP are discussed at paragraphs 30(a), 30(e), 30(g), 30(h) and 30(i) below.
17. The CCYP monitoring function is also enabled by s 60A of the CCYP Act which requires the Secretary of the Department of Families, Fairness and Housing and

the Secretary of the Department of Justice and Community Safety to provide the CCYP with information about all adverse events involving a child in out-of-home care and in youth justice detention respectively, and disclose any information relevant to the Commission's functions.

18. In executing this provision of the legislation, the Commission reviews each incident report to identify significant incidents or particularly vulnerable children and young people in out-of-home care or youth justice and to identify any systemic issues that require attention by the department. This includes, for example, issues relating to professional boundaries breaches in out-of-home care and youth justice centres, and sexual assault or exploitation of children living in residential care.

#### **CWAS Act**

19. The CCYP is also conferred additional functions under the CWAS Act. These functions include the:
- (a) Child Safe Standards, which is detailed in Part 6 of the CWAS Act; and
  - (b) Reportable conduct scheme, which is detailed in Part 5A of the CWAS Act.
20. The Child Safe Standards and reportable conduct scheme are discussed further at paragraphs 31 to 81 below.

#### **CYF Act**

21. The CYF Act informs the work performed by the CCYP. An example of this is section 174 of the CYF Act, which sets out the State's duties when placing a child into care away from their family. Those duties informed the CCYP's approach to a number of projects, including the reports into the out-of-home care system discussed at paragraphs 30(a), (e) and (h) below.

#### **CHILD SAFE STANDARDS: FUNCTIONS AND POWERS**

22. The purpose of the Child Safe Standards is discussed at paragraph 31 below.
23. Section 25 of the CWAS Act sets out the functions of the CCYP in relation to the oversight and enforcement of the Child Safe Standards, including to:

- (a) educate and provide advice to relevant authorities to promote compliance by relevant entities who are bound by the Child Safe Standards;
  - (b) educate and provide advice to relevant entities to ensure, in their operations the safety of children is promoted, child abuse is prevented and allegations of child abuse are properly responded to;
  - (c) oversee and enforce compliance by relevant entities with the Child Safe Standards; and
  - (d) perform any other functions as conferred by the CWAS Act, or exercise powers specified, such as, making requests for information or documents from organisations or authorities related to compliance with the Child Safe Standards, inspect premises and issue a formal notice to comply with the Child Safe Standards to an organisation.
24. In exercising these functions, the CWAS Act confers a number of powers on the CCYP, which are set out in Part 6, Divisions 3 to 7 of the CWAS Act. Some of those powers include:
- (a) the CCYP may issue requests for information or documents from a relevant entity bound by the Child Safe Standards, or to an authority, and the power to inspect a premises, subject to certain conditions (ss 26 to 29 of the CWAS Act);
  - (b) the CCYP may issue a notice to produce to a relevant entity to produce documents that the CCYP reasonably requires to determine whether a relevant entity is complying with the Child Safe Standards, subject to certain conditions. If an organisation fails to comply with a notice to produce, the Commission can apply to court for an order requiring the organisation to pay a pecuniary penalty and a declaration that the organisation has failed to comply with a notice to produce (ss 30, 32 to 34 of the CWAS Act);
  - (c) the CCYP may issue a notice to comply to a relevant entity, subject to certain conditions, if the CCYP reasonably believes the relevant entity is not complying with the Child Safe Standards. Failure to comply with a notice to produce under the Act may incur a penalty, which is

enforceable by the CCYP by application to a court (ss 31 to 34 of the CWAS Act).

#### **REPORTABLE CONDUCT SCHEME: FUNCTIONS AND POWERS**

25. The principles of the reportable conduct scheme are discussed at paragraph 58 below.
26. Part 5A of the CWAS Act sets out the functions of the CCYP in relation to the reportable conduct scheme, including:
  - (a) the administration, oversight and monitoring of the reportable conduct scheme;
  - (b) the provision of education and advice to entities in order to assist them to identify reportable conduct and to report and investigate reportable allegations;
  - (c) the provision of education and advice to regulators to promote compliance by entities with the reportable conduct scheme;
  - (d) to oversee the investigation of reportable allegations;
  - (e) to investigate reportable allegations if it is in the public interest to do so, or if another entity or regulator will not or is unable to do so;
  - (f) to investigate whether reportable allegations have been inappropriately handled or responded to by an entity or a regulator;
  - (g) to make recommendations to entities which are the subject of the above investigations;
  - (h) to exchange information (including the findings of investigations) with Victoria Police, regulators, entities and the Secretary of the Department of Justice and Community Safety;
  - (i) to monitor the compliance of entities with the reportable conduct scheme; and
  - (j) to report to the Minister and to Parliament on trends in the reporting and investigation of reportable allegations and the results of those investigations.

27. The CCYP Act confers the functions and powers of the CCYP onto the Principal Commissioner. In my role as Principal Commissioner at CCYP, I oversee the implementation of these functions.
28. In performing these functions, the CCYP has experience in a range of matters relevant to the terms of reference of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. These are addressed in turn below.

### **THE CCYP'S IMPACT ON THE SAFETY OF CHILDREN AT RISK OF SEXUAL ABUSE IN INSTITUTIONAL SETTINGS**

29. Having regard to the breadth of functions and powers conferred on the CCYP and the Principal Commissioner, it is my view that it is the combination of these functions that enables the CCYP to educate, advise, oversee, investigate and regulate organisations, including institutional care settings. These functions collectively provide a greater impact on the safety and wellbeing of a child in institutional care than just one specific power or function, and in turn assist with the protection of vulnerable children and young people from sexual abuse. These functions and powers are discussed in further detail at paragraph 30 below.
30. These functions are all relevant to institutional settings, and in my view are especially important in settings where the State has assumed legal and practical responsibility for children's care and supervision. The CCYP has published a range of materials regarding specific institutional settings. These materials include the following, which are also annexed to this statement and marked as follows:
- (a) **LB-2:** A report dated August 2015 entitled "*... as a good parent would...*", which is the outcome of an inquiry conducted regarding the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care.
- Recommendation 9 of that report was to develop child safe standards to enable organisations to develop rigorous and ongoing child safe practices to prevent the risk of staff-to-child sexual abuse. The report, and in particular recommendation 9, assisted with the creation of the now-mandated Child Safe Standards.



- (b) **LB-3:** A consultation paper submission dated 15 April 2016 to the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**). This paper references the CCYP's report annexed at LB-2 above, which found that the current residential care system for Victorian children created opportunities for the sexual abuse of children and did not prevent sexual abuse or offer consistent responses when it occurs. This submission discusses the nine key recommendations from that report and the areas identified for consideration and reform in institutional settings. In doing so, the CCYP discussed the Child Safe Standards as a means of strengthening reporting and data collection to better record and track sexual abuse and sexual exploitation allegations of children in institutional settings.
- (c) **LB-4:** A consultation paper submission dated 11 May 2016 to the Royal Commission on best practice principles in responding to complaints of sexual abuse in institutional contexts. That submission, among other things, endorses some of the findings of the Royal Commission and provides further submissions on best practice principles to address and manage appropriately complaints regarding child sexual abuse in institutional settings, the key features of an effective reportable conduct scheme, the importance of access to advice and support for institutions providing care for children who may be at risk of sexual harm. The submission drew on the Child Safe Standards as an example of a scheme that built capacity within organisations to improve suitability of organisations working with children and protect children who might be at risk of sexual abuse.
- (d) **LB-5:** A submission dated 17 January 2019 to the Royal Commission into Victoria's Mental Health System (**RCVMHS**). The CCYP, among other things, submitted that the RCVMHS should consider mental health services in institutional settings, such as child protection, out-of-home care and youth justice. In doing so, the CCYP drew from the information and data available to it from its inquiries functions and monitoring functions, particularly in relation to children and young people in out-of-home care and youth justice, to support its submission.

- (e) **LB-6:** A report entitled “*In our own words*” dated November 2019, which is the product of a systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system. That report drew on the reportable notifications made under the reportable conduct scheme to shed light on the trends in how concerns about safety and wellbeing of children and young people in care come to light in different care types.
- (f) **LB-7:** A submission dated 29 January 2021 to the Victorian Law Reform Commission’s reference into *Improving the Response of the Justice System to Sexual Offences*. The submission addressed key issues the CCYP had identified through its work, including the prevalence of negative attitudes to children and young people in the justice system, the inconsistency in the responses to children and young people in out-of-home care and with Victoria Police, and the inadequate identification and responses to sexual harm in the child protection, child and families, and family violence service systems. Relevantly, the CCYP was able to draw from its insights and expertise from the CCYP’s oversight, inquiry and regulatory functions.
- (g) **LB-8:** A report entitled “*Our youth, our way*” dated May 2021, which is the product of an inquiry by the CCYP into the over-representation of Aboriginal children and young people in the Victorian youth justice system. Some of the data that informed that report included the data the CCYP obtained as a result of its monitoring functions.
- (h) **LB-9:** A report entitled “*Out of sight*” dated June 2021, which is the product of a systemic inquiry by the CCYP into children and young people who are absent or missing from residential care. The inquiry found, among other things, that an alarmingly high number of children and young people who are absent or missing from residential care are sexually exploited, abused and assaulted, and the reporting of sexual exploitation, abuse and assault when they are absent or missing is not consistent and is under-represented in the department’s data. The report recommended a range of reforms including for the Victorian Government to commit to and maintain a joint, targeted, statewide response to child

sexual exploitation and the roll out of a sexual safety program to all residential care houses in Victoria.

- (i) **LB-10:** A report entitled “Keep caring” dated November 2020, which is the product of a systemic inquiry by the CCYP into services for young people transitioning from out-of-home care. The inquiry highlighted, among other things, the risk and experiences of sexual exploitation for young people in residential care, and the need for supports that respond to these experiences when young people transition from out-of-home care.
- (j) **LB-11:** A submission dated 17 March 2020 to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The submission draws attention to the importance of Victoria’s Child Safe Standards and Reportable Conduct Scheme to preventing and responding to abuse, including sexual abuse and sexual misconduct, of children and young people with disability in organisations, and draws on information from the CCYP’s inquiries and monitoring functions to highlight particular vulnerabilities of children and young people with disability in the out-of-home care and youth justice systems.
- (k) **LB-12:** The CCYP Annual Report 2019–20, which reports, among other things, the CCYP’s work monitoring progress against recommendations relating to improving safety from sexual abuse and exploitation made in previous inquiries, monitoring trends relating to sexual exploitation, abuse and assault incidents in out-of-home care and youth justice, engaging in media about sexual misconduct and grooming in institutions, engaging with stakeholders to improve child safety in religious institutions, and conducting compliance activity with an institution found to have had serious systemic failures in responding to reports of child abuse.

## **CHILD SAFE STANDARDS IN PRACTICE**

31. The Child Safe Standards are a compulsory legislative framework that support organisations to promote the safety of children by requiring them to implement systems, policies and processes to prevent, respond to and report allegations of child abuse. The Child Safe Standards are mandatory. Under section 17 of the

CWAS Act, the Child Safe Standards are published by the Minister in the Government Gazette.

32. Annexed to this statement and marked:
- (a) **LB-13** is a copy of a document available on our website, entitled Overview of the Child Safe Standards dated 13 June 2018. That document outlines the current Child Safe Standards that organisations must comply with, and the three principles to assist organisations to address key areas of risk; and
  - (b) **LB-14**, is a document available on our website, entitled A Guide for Creating a Child Safe Organisation, dated June 2018, fourth edition (Child Safe Standards Guide). This Child Safe Standards Guide is illustrative of the CCYP exercising its education, promotion and advisory functions for entities that are bound to comply with the Child Safe Standards.
33. As a mandatory set of standards with a very broad reach, the Child Safe Standards are very important in terms of changing the way children are seen in organisations, changing awareness in organisations about children and child safety issues and about supporting organisations to have all of the systems and processes necessary to keep children safe.
34. As identified at paragraphs 30(a) to 30(k) above:
- (a) I consider that the CCYP's inquiry functions and recommendations have assisted with the continual improvement of child-safety mechanisms in institutions; and
  - (b) since their implementation, the information that the CCYP has learned from its oversight of the Child Safe Standards has led to a large improvement in the CCYP's knowledge of issues and organisations or sectors at risk, which has in turn informed the Victorian Government and others through formal submissions, inquiries and other information sharing processes.
35. Further examples of the CCYP's work in connection with the Child Safe Standards are set out below.

*Education and promotion*

36. The CCYP has published extensively on the Child Safe Standards in the fulfillment of its function to educate and promote the Child Safe Standards. The educational and promotional activities presently undertaken by the CCYP include:
- (a) For organisations that need to comply, there is a large volume of educational guides and tools designed to assist organisations create a child safe organisation, implement the child safe standards and then maintain them. The CCYP routinely holds information sessions and webinars about the standards targeted at specific sectors.
  - (b) The CCYP leads the Child Safe Standards Community of Practice which brings together people leading or participating in their organisation's work to meet the Child Safe Standards. The CCYP also directly engages with sector representatives to educate and promote compliance with the Child Safe Standards. The CCYP co-regulates the Child Safe Standards with a number of other government agencies and statutory bodies, many of whom have also issued their own guidance tailored for the sectors they regulate.
  - (c) At an organisational level, the CCYP is able to offer specific guidance to improve compliance with the Child Safe Standards. For instance, some organisations that have limited capacities, such as volunteer run organisations, may have a range of priorities that means compliance with Child Safe Standards does not get immediate attention. Most organisations demonstrate goodwill and preparedness to implement the Child Safe Standards. The more support they are able to get with that task the better because this guidance and support translates to an increase in compliance with the standards. The CCYP is able to, and has, offered education and guidance at that level.

*Monitoring and enforcing compliance with the Child Safe Standards*

37. The CCYP's powers to monitor and enforce compliance are outlined at paragraphs 23 and 24 above. In my experience, some of the critical practical functions of these powers include:
- (a) issuing notices to produce and notices to comply; and
  - (b) inspecting premises where Commission staff can attend to observe activities carried out by the organisation, speak to staff and volunteers

and request information which assists in assessing some of the Child Safe Standards that relate to culture.

38. When an institution fails to comply with the standards the risk of child sexual abuse in that institution increases. Where organisations are uncooperative or have repeated or serious failings in compliance, or where greater harm or significant risk of harm to children has been identified, the CCYP can use these stronger enforcement tools to bring about compliance. In many cases, the fact that organisations know we can resort to enforcement measures is sufficient to prompt action.
39. Without these enforcement measures, there would be a lack of options to respond to the diversity of organisations and institutional risks. In particular we would lack options to deal with organisations that are reluctant to take the steps required to improve children's safety. Such an approach would be out of step with findings and recommendations of relevant inquiries, and ultimately children and young people would be left at increased risk of sexual abuse in institutions.
40. As discussed below at paragraph 56, the Commission submitted to the Victorian Government that additional enforcement options and tools would be beneficial, and legislation has since been passed to provide a broader suite of enforcement powers.

*Issuing notices to produce and notices to comply*

41. The ability to issue a notice to produce or a notice to comply is an essential tool. As I have stated above, most organisations demonstrate goodwill towards the CCYP and preparedness to implement the Child Safe Standards. However, we know from our work that there are organisations that do not demonstrate goodwill, are in scope for the standards and where children are at risk of sexual abuse. It is my observation from the Royal Commission and the 2012-2013 inquiry by the Victorian Parliament's Family and Community Development Committee (**Betrayal of Trust Inquiry**) that children in the past have been at significant risk of harm in institutional settings.
42. We also know from those inquiries and our own experience that:
  - (a) some organisations are very slow to act to implement the standards;
  - (b) some of those organisations don't think the Child Safe Standards apply to them and that children are not at risk; and

- (c) some of those organisations acknowledge that there have been harms to children in the past but have not recognised that the risks continue into present day.
43. It is therefore critical to the CCYP and for me, as the regulator, not only that the Child Safe Standards are mandatory, but that there are enforcement powers that we can use if we need to.
44. In practice, I have issued one notice to comply to an organisation. That was a significant step and one taken after a considerable amount of engagement with the organisation where they then failed to take the necessary action, and where information we held about risks to child safety justified escalated regulatory action.
45. Prior action by the CCYP before a notice to comply is issued would usually include requests for information from the organisation about their implementation of the Child Safe Standards, CCYP providing recommendations for actions the organisation should take to become compliant, offers by the CCYP to review policies and provide feedback and offers to answer questions from the organisation.
46. We find that compliance with the Child Safe Standards is simply not a priority for some organisations. This may be for a range of reasons. We see small or volunteer run organisations impacted by limited resources, other organisations such as religious organisations that are not accustomed to being regulated, organisations distracted by other issues or that simply have not yet created a culture or interest in prioritising child safety. A notice to comply can help to make compliance a priority for the organisation, because failure to comply with the notice enlivens the CCYP's ability to seek an order for a civil penalty and/or a declaration of non-compliance.
47. We have completed one intensive audit involving on-site inspections that related to an organisation that had significant historical failings but had not done the work that they needed to really maximise child safety now. We were able to publish an overview of this audit in a report tabled to the Victorian Parliament on 10 December 2020. That audit is contained annexure LB-12 at pages 72-73, annexed at paragraph 30(k)above.

48. Other assessments by the CCYP are still thorough but focus more on reviews of policies and procedures and do not delve as deeply into considerations of culture and practice as the intensive audit.
49. In most instances, the mandatory and legislated nature of the Child Safe Standards together with powers for the CCYP to monitor and enforce are sufficient to prompt organisations to take action to comply with their legal obligations. With additional resources, the CCYP would likely have greater reach to assess compliance by a greater number of organisations. Ideally the CCYP would expand the number of intensive audits and other assessments to more fulsomely monitor and enforce the requirements of the Child Safe Standards.
50. A common element of the regulatory approach of regulators in Australia is to see education and capacity building as the first step in a regulator's toolkit whereby you support the organisation to understand what it needs to do to comply. Escalated action involving enforcement is then taken where this approach is not successful in achieving compliance.
51. Our published Regulatory Approach dated June 2019 recognises that in many instances, we can bring about compliance through education and support, with more significant sanctions being used for organisations that are uncooperative or that have repeated or serious failings in compliance, or where greater harm or significant risk of harm to children has been identified. The duality of the CCYP's role is discussed further from paragraph 83. That document is available on the CCYP website.

### ***New Child Safe Standards***

52. The Victorian Government committed to a review of the Child Safe Standards when they were introduced in 2018. On 1 July 2021, as a result of that review, new Child Safe Standards were gazetted for Victoria. Those standards will commence on 1 July 2022 (**New Child Safe Standards**). The current Child Safe Standards remain in effect until the New Child Safe Standards commence. Some of the key amendments contained in the New Child Safe Standards include:
- (a) requirements to involve families in organisational efforts to keep young people safe;
1. to manage the risk of child abuse online;



2. to provide greater clarity over governance, systems, and processes to keep young people safe; and
  3. in relation to Aboriginal children and young people, a focus on cultural safety in which the diverse and unique identities and experiences of those children are respected and valued.
53. The New Child Safe Standards align with the National Principles for Child Safe Organisations, with the Victorian New Child Safe Standards adding a stand-alone standard to ensure cultural safety for Aboriginal children and young people.
54. In my view, one of the positive outcomes from the review was that the feedback from regulated organisations was generally very positive, and positive about the presence of mandatory standards. As a result the Victorian Government has retained the mandatory nature of the Child Safe Standards.
55. The 2018 review also found that the CCYP needed a broader range of powers and regulatory tools. As a result, and pursuant to the *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Bill 2021 (Vic)* the CCYP will be granted increased regulatory tools such as the capacity to issue official warnings, issue infringements, entry and inspection powers, take a broader range of actions to court for enforcement and penalty (including civil and criminal penalties), and accept enforceable undertakings.
56. I recommended and therefore welcome these amendments. I consider they will significantly strengthen the options available to the CCYP to assess and enforce compliance with the Child Safe Standards.
57. In my view, these tools will assist the CCYP address some of the gaps needed in instances where we are unable to support organisations to comply, and need further powers to ensure compliance, especially where children are at risk.

## **REPORTABLE CONDUCT SCHEME**

58. Another important regulatory scheme is the reportable conduct scheme. The reportable conduct scheme enables the Commission to independently oversee the handling of allegations of child abuse and child-related misconduct in certain organisations. The Victorian Reportable Conduct Scheme seeks to improve organisations' responses to allegations of child abuse and child-related misconduct by their workers and volunteers.

59. The reportable conduct scheme was created following the Victorian Parliament's Betrayal of Trust Inquiry. Among other things, the Inquiry recommended that the Victorian Government authorise an independent body to:
- (a) oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations;
  - (b) undertake independent investigations;
  - (c) scrutinise and audit systems and processes for handling allegations;
  - (d) monitor and report on trends; and
  - (e) build skills and knowledge within government departments, religious and non-government organisations to ensure they can competently handle allegations of suspected child abuse.
60. Organisations in scope of the Reportable Conduct Scheme are outlined in Schedules 3 to 5 of the CWAS Act and the *Child Wellbeing and Safety Regulations 2017* (Vic). They include a range of specified government and non-government organisations providing various services to children, including schools, support services, religious organisations, out-of-home care services, organisations providing residential or overnight care, and other children and youth services.
61. The CWAS Act specifies five types of reportable conduct: sexual offences (against, with or in the presence of, a child); sexual misconduct (against, with or in the presence of, a child); physical violence (against, with or in the presence of, a child); behaviour that causes significant emotional or psychological harm and significant neglect.
62. 'Sexual misconduct' captures a broad range of inappropriate behaviours of a sexual nature that can pose a significant risk to children. Most categories of reportable conduct, including sexual misconduct, include conduct that falls short of criminal conduct.
63. As outlined in paragraphs 26 to 28 above, the CCYP is conferred a range of functions and powers to oversee, administer, investigate and monitor the reportable conduct scheme.

***Reportable conduct scheme in practice***

64. Like the Child Safe Standards, I regard the reportable conduct scheme as an essential tool for improving attention to child safety in institutional settings. While the Child Safe Standards aim to ensure organisations take the steps necessary to prevent child abuse, the reportable conduct scheme is focused on ensuring allegations of harmful conduct against children are properly investigated. This is a vital function because we have seen through past inquiries and the Royal Commission into Institutional Responses to Child Sexual Abuse that too often in the past complaints, allegations or suspicions have not been thoroughly investigated; rather they have been concealed, minimised or mishandled for a raft of reasons.
65. Another benefit of the reportable conduct scheme is that the CCYP can refer individuals who have, after investigation, been found to have engaged in reportable conduct, to relevant regulators and the Department of Justice and Community Safety so that their capacity to continue to work with children can be reviewed.

*Gathering relevant data*

66. In four years of administering this scheme, we have had over 3,500 notifications of reportable conduct. The 2020-21 data on the notifications is detailed on page 76 of the CCYP's 2020-21 Annual Report, annexed to this statement and marked **LB-15**. That data identifies a trajectory of growth in reportable conduct notifications each year. This trajectory occurred despite Victoria experiencing COVID-related restrictions for significant periods during 2020 and 2021 which significantly reduced children's contact with organisations in those years.
67. The reportable conduct scheme data, for the first time, gives us and the community visibility into the prevalence and risks of child sexual abuse, sexual misconduct against children and other harmful conduct to children in Victorian organisations. There is considerable value in that data, which is in part demonstrated by the nature of the insights and information the CCYP is able to share with others, such as those exhibited at paragraph 30(e) and (f) above.

*Sharing information with co-regulators*

68. Another key benefit of the reportable conduct scheme is the information sharing processes that are set up between co-regulators. The powers and functions are contingent on the CCYP working in conjunction with other authorities and agencies, such as Victorian Police. The sharing of information between

co-regulators on both the Child Safe Standards and the reportable conduct scheme is critical, for example where a subject of allegation has worked in a school, and more than one regulator is investigating either actions by the school or by the subject of allegation.

69. Examples of how information can be shared is as follows:
- (a) Section 16E of the CWS Act obliges the CCYP to liaise with co-regulators to avoid unnecessary duplication and to share information and provide advice about the protection of children. We also share information with co-regulators and other agencies to assist them to perform their role regulating either organisations or individuals in relation to child safety.
  - (b) The CCYP can refer a substantiated allegation to Working with Children Check in the Department of Justice and Community Safety or to a professional accreditation body, for example, the Victorian Institute of Teaching (**VIT**) (the regulator for teachers in Victoria) or the Australian Health Practitioner Regulation Agency.
  - (c) The CCYP also often brings together the VIT, and other regulators such as the Victorian Registration and Qualification Authority or the Victorian Disability Worker Commission where all regulators share information about an individual matter to support each regulator to play its part and to reduce duplication in addressing child safety issues.
  - (d) Part 5A and Part 6A of the CWS Act outlines the provisions for the use and disclosure of confidential information by and between information sharing entities to promote the safety and wellbeing of children.
70. The CCYP also has a good working relationship with Victoria Police. Our process is that, in the context of the reportable conduct scheme, irrespective of whether we think or know that a matter may already have been reported to the police, we assess each notification as to whether it may include criminal conduct and if so, we must refer it to Victorian Police. Once that occurs, Victoria Police then advise us of their decision as to whether they will proceed with an investigation or not.
71. Organisations must investigate reportable conduct allegations, but the investigation is put on hold if there are potentially criminal matters reported to

Victoria Police. Once Victoria Police provides clearance, the organisation can proceed with its investigation.

72. If Victoria Police investigates a matter that also falls under the Reportable Conduct Scheme, the CCYP can request information on that matter from Victoria Police and share it with the relevant organisation.
73. If Victoria Police does not lay charges, or a case is not successfully prosecuted in court, it may still constitute substantiated reportable conduct. This is because the categories of reportable conduct are wider than conduct that would meet the definition of a criminal offence and also because the standard of proof in the Scheme is the balance of probabilities, not beyond reasonable doubt.
74. Another beneficial aspect of the process was that in the first two years of running the reportable conduct scheme, Victoria Police placed an embedded Victorian Police officer in the CCYP to assist with some of the working arrangement outlined above.
75. As a result of the Scheme the CCYP routinely shares with, and requires considerable information from, Victoria Police. The embedded officer role assisted Victoria Police to establish and efficiently manage the many hundreds of pieces of information and information requests that the CCYP sends annually. Efficient information flows between the CCYP and Victoria Police were established with the assistance of the embedded officer. The embedded officer, by working closely with the CCYP team, assisted the CCYP to gain a better appreciation of which allegations were potentially criminal and should be referred to Victoria Police.
76. The embedded officer was also a significant support to the work of the CCYP assisting when complex cases arose (for example historical allegations of child sexual abuse) and problem solving when individual Victoria Police members the CCYP was engaging with were unfamiliar with the Scheme, the CCYP or the benefits of sharing information with the CCYP to protect children from child abuse.
77. The embedded officer also facilitated an increase in the provision of valuable intelligence to Victoria Police on potential child abuse. Sharing of information by the CCYP as facilitated by the embedded officer assisted in a range of active criminal investigations. Further, the embedded officer facilitated processes whereby Victoria Police shared reportable conduct allegations with the CCYP that may not have otherwise come to light.

*The reduction of 'siloed' complaints*

78. The ultimate positive outcome and safeguard of the reportable conduct scheme is that it allows a broader range of conduct to be, if substantiated, referred to the Working with Children Check (which sits within the Department of Justice and Community Safety) so that an individual's capacity to keep working with children can be reconsidered and potentially removed.
79. This is achieved, in part, though the ongoing obligation on an organisation to investigate if the person the subject of an allegation has departed the organisation. Prior to the implementation of the reportable conduct scheme, a working with children check could only be reviewed and withdrawn if certain criminal charges were laid or a conviction imposed.
80. The reportable conduct scheme means, for example, that a person found to have engaged in sexual misconduct against a child can be referred to DJCS to have their WWCC reviewed even where no criminal offence has been made out.

*The increase of reportable conduct and improved internal processes for handling and investigating complaints*

81. Another significant benefit of the scheme is that we have seen a huge increase in reportable conduct notifications from organisations like schools, out-of-home care services and early childhood services that are both making notifications and improving their processes for completing their internal investigations.
82. For example, I observed that many organisations did not want to interview children who were either the alleged victim or key witnesses about an incident for fear of re-traumatising them, which left a considerable gap in their investigative process. In response, we have provided support and guidance on this issue to individual organisations and also developed resources to assist with interviewing children.
83. The requirement for an organisation to complete an investigation has enabled us to also assist with how those investigations are completed. Further information on what is required of an organisation when investigating a reportable conduct allegation is detailed in the CCYP's publication dated June 2018, *Investigating a Reportable Conduct Allegation* and is annexure **LB-16** to this statement.

## **THE CCYP'S DUAL MONITORING AND OVERSIGHT OF THE CHILD SAFE STANDARDS AND THE REPORTABLE CONDUCT SCHEME**

84. The monitoring and oversight functions of the CCYP in respect of both the Child Safe Standards and the reportable conduct scheme gives the CCYP the best information about the efficacy of both systems. There are several reasons for this.
85. First, one regulatory scheme informs the other:
- (a) Reportable conduct notifications give us clear intelligence to inform our approach to regulating the child safe standards. For instance, information that we obtain from reportable conduct notifications about the prevalence of reportable conduct against children and/or the way that an organisation responds to allegations of reportable conduct gives us information relevant to Child Safe Standards in those organisations. This information helps us to identify where we might need to engage in more proactive Child Safe Standards compliance work with particular organisations or sectors.
  - (b) Similarly, in some circumstances the CCYP has looked at an organisation or has some understanding of an organisation through its educational or compliance activities that can be applied when the CCYP receives a reportable conduct notification in relation to the organisation. If we know from our Child Safe Standards work that the organisation is less likely to have good capability in terms of a response, either because of the capacity of the organisation itself or because of issues affecting the sector, then we will know to be very proactive in working with the organisation on the way they approach the allegation and their investigation plan. This means we will give more targeted guidance all the way along the process.
86. It is my observation that over time the schemes have continued to assist in the promotion of each other. In my experience, the initial response to the reportable conduct scheme was varied, as many organisations did not have a good understanding of what they needed to do in response to an allegation of child abuse by a worker or a volunteer. The work of the Child Safe Standards helps build that knowledge and works in tandem with the reportable conduct scheme. One of the Child Safe Standards is a requirement to ensure the right processes are

in place to receive complaints and deal with them appropriately. The reportable conduct scheme is tailored to addressing the complaints that are referred out of those organisations.

87. In my view there is significant value in there being a single organisation that both gathers the information about the prevalence of the abuse of children in institutions and the nature of abuse, and also works to improve organisations' response to that abuse.
88. Second, the CCYP's role in both schemes means there are no information barriers in place. This enables more efficient and complete information sharing between its internal teams. For instance, there are no legislative barriers that prevent us from using information obtained from one regulatory scheme to inform our approach or prompt us to take action in another.
89. Third, the CCYP as a body has specialised knowledge and understanding of children, children's development and child sexual abuse. That knowledge and expertise continues to grow, because it is informed by the CCYP's role in administering the Child Safe Standards and reportable conduct scheme, as well as our other monitoring and oversight functions.
90. How actively the body engages with other regulators is relevant to the functioning of the regulatory schemes. The CCYP works closely with a number of regulatory bodies, and has formal memorandums of understanding in place with some. This reduces the risk of duplicated effort and enhances child safety by ensuring information relevant to children's safety is shared.

## **THE IMPORTANCE OF THE REPORTABLE CONDUCT SCHEME AND CHILD SAFE STANDARDS IN VICTORIA**

91. The CCYP and its functions in my view are essential to the continuous improvement of the safety of children at risk of sexual abuse in institutional settings in Victoria. It is unfortunately true that, despite a range of laws, regulators and good practices, today in Victoria there are children who are being sexually abused. That includes children in a form of institutional care or setting.
92. The Child Safe Standards and the reportable conduct scheme, in particular, are an essential part of improving the safety of children in institutional care or settings. As I have already discussed, each scheme informs the other. The data we now have from the reportable conduct scheme has persuaded me that these schemes



are essential in addressing the issue of preventing and acting on the risk of child sexual abuse. It is therefore my view that it would be important for any jurisdiction to have both Child Safe Standards and a reportable conduct scheme implemented so that they are able to operate concurrently.

## **DIRECT ENGAGEMENT WITH YOUNG PEOPLE IN YOUTH JUSTICE SETTINGS**

93. An example of how the CCYP's mix of functions offer a safeguard for children in institutions is our work in youth justice custody. The reportable conduct scheme applies to youth justice, requiring individual allegations to be reported to us and the CCYP oversees the investigation of any allegations in a youth justice setting. The Child Safe Standards also apply to youth justice settings.
94. In addition to these schemes, an important element of safeguarding against abuse of children in those settings is direct engagement between those children and independent people from outside Youth Justice. We ensure the CCYP regularly visits youth justice facilities to speak with children and young people in those facilities. This enables us, if needed, to receive complaints directly from children and young people. The CCYP does this through its Independent Visitor Program, which involves scheduled monthly visits by independent volunteers to Victoria's youth justice centres who move through the centres speaking with children and young people. In addition to the Independent Visitor Program, we have more recently arranged for the CCYP to be accessible by children and young people via the telephone system in Youth Justice. This allows children and young people to contact CCYP staff directly with a complaint or concern.
95. In May 2017, the CCYP concluded an inquiry into Victoria's youth justice centres, which was informed from, in part, direct engagement with youth in detention. The report entitled "*The Same Four Walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*" is annexure **LB-17** to this statement. That inquiry found that children and young people in Victoria's youth justice centres were subjected to unacceptable levels of isolation and routinely 'locked down' or isolated due to staffing issues.
96. Following this inquiry, the number of isolations imposed due to a child or young person's behaviour decreased by approximately two thirds from 4,820 isolations recorded in 2017-18 to 1,676 recorded in 2020-21.
97. In our 2020-21 Annual Report we also reported on the overall reduction in the number of children and young people locked down due to staff shortages.

However, we still see lockdowns and rotations due to staff shortages and continue to advocate for further strengthening of the workforce, and to ensure ongoing efforts are made to limit the use of isolation and lockdowns.

98. Another benefit of the CCYP's significant engagement in youth justice settings is that the leadership in youth justice understand the value of oversight and appreciate what needs to be managed in terms of keeping young people safe, and feeling safe if they do raise concerns. The CCYP engages regularly with staff in youth justice settings, and in my experience staff and leadership are experienced identifying incidents or concerns. In my view, this is an element that works well in Victoria.
99. There remain weaknesses and some particular risks in youth justice custodial settings. This includes:
  - (a) the pre-existing vulnerabilities of many children and young people who enter youth justice, noting the significant overlap between children in youth justice custody and children with a child protection history and past experience of trauma;
  - (b) a remaining risk, noting the extent of authority and control exercised over children and young people in these settings, that staff or volunteers in the youth justice system are involved in sexual abuse or sexual misconduct towards children.

#### **OTHER RELEVANT MEASURES IMPLEMENTED BY THE CCYP**

100. In the past 18 months, the CCYP has implemented a formal Youth Council that currently has eight young people aged between 15 and 20 from a range of backgrounds and with lived experience of some of the systems that we have a particular focus on, including the out-of-home care system and the youth justice system. So far, the Youth Council has assisted us with the CCYP's response to the COVID-19 pandemic challenges, systemic inquiries and is consulting on the New Child Safe Standards and other functions of the CCYP. The Youth Council has enabled us to involve young people far more broadly in our work. Whilst the Youth Council is not representative of all children and young people, their involvement in our work has enabled us to hear directly from young people on issues where they have lived experience.

101. The CCYP is also looking to establish a much broader youth network to ensure it continuously builds its engagement and involvement with children and young people in all of its work.
102. The CCYP also publishes an Empowerment and Participation Guide, marked as annexure **LB-18**. Its practical guidance helps organisations to develop strategies to empower and support participation by children. Efforts to empower children in organisations are critical. An organisation can have perfect policies, processes and systems but if children do not feel that they will be listened to if they speak up, and that they will be believed and action taken, the policies and systems will be of limited value.

#### **FURTHER CHALLENGES**

103. One challenge we face is the scale of change required in many thousands of diverse organisations. The effort, including efforts by the CCYP, will have to be sustained in the long term.
104. Another challenge is the extent to which myths about children and child abuse continue to prevail in many people's awareness and to shape responses. There is a need for continued education on that front.
105. I am sure the models we have in place in Victoria will be tweaked and, I hope, further improved with time. However, I am confident that the schemes in place in Victoria are critical and that they provide a sound basis for the prevention of, and improved responses to, child sexual abuse in institutional settings.

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

Declared at Melbourne

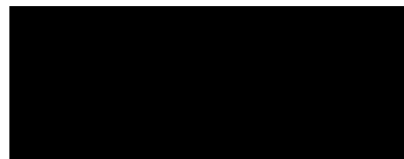


on 4 May 2022

.....

Signature of witness

Before me



.....  
[Full name of Justice, Commissioner for Declarations or Authorised Person]

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*.

Sophie Louise Uhlhorn

Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law

