

## Executive summary

Each year hundreds of thousands of children and young people in Victoria spend time involved with religious and other non-government organisations. These organisations provide a broad range of valuable services and social programs including child care, education, social activities, spiritual guidance and sports and recreation programs. Some organisations also provide temporary or permanent residential care away from the family.

The overwhelming majority of children who participate in organisational activities or who are cared for by personnel in non-government organisations are safe and they gain great benefit from engaging in such activities and services.

Given children's vulnerability and dependence on adults, however, there will always be a degree of risk of them being criminally abused by employees or others associated with non-government organisations. The community now acknowledges the incidence of criminal abuse over many years in some of society's most trusted and respected institutions and organisations.

The criminal abuse of children represents a departure of the gravest kind from the standards of decency fundamental to any civilised society. Although our society has understood this for a long time, we have not given enough attention to the need to take adequate protective measures to prevent it.

The experience of criminal child abuse has profound and lifelong consequences for the physical, psychological and emotional wellbeing of victims. For parents of children abused in the care of trusted organisations, it is a betrayal beyond comprehension.

Community outrage at the occurrence of criminal child abuse in organisations has led to the establishment of public inquiries internationally, nationally and in Victoria. Notably in Australia, religious organisations have generally been overlooked in these inquiries. In addition, religious organisations in Victoria have generally not initiated internal reviews to determine the extent of criminal child abuse and how their systems and processes may have contributed to its occurrence.

Religious organisations are among the most revered and trusted institutions in society. Internationally, the exposure of systemic child abuse in religious organisations has called into question this trust and the integrity of some of these organisations. The Catholic Church, in particular, has been at the centre of a worldwide scandal.

The 2012 Cummins Inquiry<sup>1</sup> identified concerns regarding the handling of criminal child abuse in religious organisations in Victoria, and recommended that:

A formal investigation should be conducted into the processes by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations.<sup>2</sup>

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1 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the protecting Victoria's vulnerable children inquiry*.

2 P. Cummins, D. Scott, OAM, & B. Scales, AO (2012) *Report of the protecting Victoria's vulnerable children inquiry*, p. lvii.

In response to this recommendation and through the Governor in Council, the Victorian Government requested that the joint investigatory Family and Community Development Committee undertake an inquiry into these processes. Members of Parliament from multiple political parties and both Houses of Parliament comprise the Committee.

In establishing this Inquiry, the Government requested the Committee inquire into responses to criminal child abuse by all non-government organisations that interact directly with children. In addition to its primary focus on religious organisations, the Committee has considered recreational, sporting, childcare, education, community and other child-related services and activities operated by non-government organisations.

## Confronting and exposing the truth

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In undertaking its Inquiry, the Committee asked some obvious but fundamental questions about the occurrence of criminal child abuse in religious and other non-government organisations:

- what is the extent of criminal child abuse in organisations and how has it been able to occur
- why was it not addressed long ago
- is the abuse to be properly viewed as the activity of a relatively few aberrant individuals for which they alone could be held responsible
- are there others (including the leadership of organisations involved) that contributed through organisational cultures, structures and policies, and that should be held accountable
- what should we do now to secure justice for those who have suffered and continue to do so
- how do we, as a community, protect children in the future?

Non-government organisations cooperated at every stage of the Inquiry, assisting the Committee to find answers to these questions by giving evidence, providing additional information and enabling access to relevant files.

Evidence and information provided to the Inquiry showed that even today, leaders of some non-government organisations are reluctant to fully acknowledge that they adopted policies that gave first priority to protecting the interests of their organisation. It is beyond dispute that some trusted organisations made a deliberate choice not to follow processes for reporting and responding to allegations of criminal child abuse.

There has been a substantial body of credible evidence presented to the Inquiry and ultimately concessions made by senior representatives of religious bodies, including the Catholic Church, that they had taken steps with the direct objective of concealing wrongdoing.

The Committee welcomed the commitment made by many organisations during the course of the Inquiry to actively cooperate with any new schemes that the Victorian Government establishes in response to the Inquiry's recommendations. The CEO of the Catholic Church's Truth, Justice and Healing Council, Mr Francis Sullivan, recently stated that the community should 'judge us on our actions'.<sup>3</sup> It is reasonable for the community to expect that organisations will honour their undertakings.

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3 ABC National Radio, *Doubts over sincerity of Catholic Church reform*, 3 October 2013.

## Victims of criminal child abuse

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Central to the Inquiry has been the experiences of victims who were subjected to physical, sexual and emotional abuse in their childhood. The task of the Committee has been to focus on systemic issues, not to report on what occurred in individual cases. In order to understand the overall situation, however, it has examined hundreds of individual accounts.

In addition to its systemic focus, an important responsibility of the Committee has been to provide a genuine opportunity for the personal experiences, insights and recommendations of individual victims and their families to be publicly acknowledged on behalf of the people of Victoria. The community has also been able to hear the views of the various groups that have supported victims and their families.

The majority of evidence received by the Inquiry related to the criminal abuse of children within the Catholic Church in Victoria—in their parishes, schools and homes—and also within the Salvation Army. Most accounts were provided by adult victims who disclosed their experience a long time after the abuse occurred. For many it was the first time they had been given the opportunity and support to disclose their abuse. The Committee valued the courage of the hundreds of victims who shared their experiences. They contributed significantly to its knowledge and understanding of the crime of child abuse in non-government organisations.

### Experiences and impacts

The Committee heard graphic accounts that detailed horrendous and traumatic experiences of victims abused as children in the care of non-government organisations that spanned a period of decades through to more recent times.

Victims provided confronting accounts of their feelings of fear and helplessness when subjected to physical, emotional and sexual abuse by personnel in organisations. In circumstances of sexual abuse, many explained that as children they lacked the intellectual framework to understand their abuse. They spoke of subsequent feelings of guilt and embarrassment, and a belief that they needed to conceal what they felt was a deeply shameful secret.

Children not in the care of their families told of their experiences of criminal abuse in institutions and the feeling of losing their identities. Many absconded only to be returned and subjected to further abuse.

Sexual and other criminal offences committed against children are not a new phenomenon. The Committee challenged the assertion by some non-government organisations that child abuse had been poorly understood in the past:

- When was the commission of a sexual offence upon a child not a matter of great seriousness under our criminal law, against the principles of all of our various religious faiths, and abhorrent to our community?
- When was it not understood that children are vulnerable to physical and sexual abuse and that they need protection?
- How many complaints or established incidents of abuse would be necessary before it was acknowledged that a systemic problem existed within some organisations, and that their structures, processes and cultures required full investigation?

Conduct of this kind has been condemned by society for centuries. It has attracted severe penalties under our criminal law for a long time. Up until 1949 buggery of a child under the age of 14 and rape were offences that carried the death penalty.<sup>4</sup>

Expert knowledge of the effects of child abuse has been in the public domain since the 1960s.<sup>5</sup> It is widely recognised that children subjected to criminal abuse in organisations and institutions often experience lifelong impacts that include mental health problems, addiction issues, relationship difficulties, issues with anger and difficulties with life skills, education and employment.

In addition, the consequences of criminal abuse suffered by children in organisations and institutions can be intensified due to the often high moral standing of the perpetrator. More specifically, children abused by a minister of religion or a spiritual leader have been found to develop a sense of alienation from the world.<sup>6</sup> Abuse by a trusted religious figure can destroy a child's belief that the world is a safe place and can make the world seem chaotic and unstructured.<sup>7</sup> Like most people, victims want the opportunity to feel safe and to belong to their community.

The effects of criminal child abuse in organisations also extend to families. Parents explained to the Inquiry their feelings of profound guilt that they had not protected their child and had been drawn in by the grooming tactics of the perpetrator. Some victims of child abuse blamed their parents for not protecting them. Inquiry participants told the Committee of their families being fragmented and damaged as a consequence of the abuse a family member has experienced.

Some local communities, particularly religious communities, have been ruptured by the responses of organisations to criminal child abuse by their employees and other personnel. Community members spoke of a loss of trust in organisations they had previously held in high regard.

These impacts of the criminal abuse of children in the care of organisations have implications for society more broadly, including significant costs to the community in expenditure on health and education, as well as productivity loss.

### **Pursuit of justice—‘unfinished business’**

Adult victims of criminal child abuse by personnel in trusted organisations told the Inquiry they were seeking justice for what they often felt to be the loss of their innocence as a child. They wanted to see consequences for perpetrators—to see them removed from their position in the organisation, reported to police and potentially punished through the criminal justice system.

Victims also had hopes and expectations that organisations they had trusted would acknowledge that they failed in their duty of care to protect them from the harm of criminal abuse. They hoped organisations would listen to their experiences

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4 See Appendix 3 for a list of penalties.

5 A. Lamont & L. Bromfield (2010) *History of child protection services NCPC Resource Sheet*. Melbourne, National Child Protection Clearinghouse, Australian Institute of Family Studies, p. 3.

6 D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) ‘Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding’. *Law Commission of Canada*, p. 14.

7 D.A. Wolfe, P.G. Jaffe, J.L. Jette et al. (2001) ‘Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding’, p. 14.

and validate them by providing an expression of remorse and a meaningful acknowledgement of wrongdoing.

The Committee heard, however, that many victims were not given the basic level of respect they expected and deserved. Organisations often did not assume responsibility for the harm victims had suffered, and sometimes even concealed the truth. Victims spoke of ‘unfinished business’ and resentment resulting from the inadequate response of the organisation to their disclosure of abuse.

Adding to victims’ sense of injustice was their feeling of betrayal by organisations, particularly the Catholic Church. This feeling resulted from the inconsistent approaches by organisations to victims versus offenders—that is, giving inadequate support to victims, while providing pastoral, legal and financial support to offenders. They spoke of unfulfilled promises by leaders in the organisation and the trivialising of their experiences.

In determining its recommendations, the Committee considered the suggestions for reform from victims and their families in addition to the evidence of other participants and experts. It identified the following important areas for reform:

- Stronger requirements for organisations to take responsibility to protect children in their care including taking reasonable steps to protect them from criminal abuse.
- Improved responses to allegations of criminal child abuse in non-government organisations, including oversight of these responses by an independent body and compulsory reporting to police.
- Reforms to the criminal law to improve the potential for perpetrators and those who conceal their crimes to be prosecuted and punished, and the introduction of grooming as separate offence.
- Reforms to civil laws to make it easier for victims to sue non-government organisations.
- An independent, alternative avenue of justice for those who cannot make a claim through the civil justice system.

These reforms are discussed in depth in this Report and briefly outlined here.

## **Context—criminal child abuse in organisations**

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In order to identify strategies to improve responses to the criminal abuse of children in non-government organisations, it is necessary to understand the scale of the problem, the nature of the organisations relevant to the Inquiry, and the risks of abuse occurring within them. To assist in improving processes into the future, it is equally important to understand how religious and non-government organisations have handled allegations of the criminal abuse of children in the past.

There is no way today that we can accurately count the total number of victims of criminal child abuse in non-government organisations. But based on what we do know, and recognising the reluctance of victims to report such offences, we can reasonably estimate that there have been several thousand victims criminally abused in non-government organisations in Victoria alone.

The internal structure and culture of organisations can influence the level of risk that personnel could criminally abuse children in their care, and organisations

must actively seek to address those risks. Notably, there is no ‘typical’ offender who criminally abuses children in organisations. Perpetrators of child sexual abuse, for example, range from those who are predatory, using grooming tactics to gain access to children, to those who are more opportunistic and take advantage of a situation or an opportunity to offend.

### **Non-government organisations—Inquiry focus**

The diversity of the non-government organisations that participated in the Inquiry reflected the broad range of activities and services these organisations engage in across Victoria. The purpose, size, available resources and structure of the organisations varied considerably.

The Committee identified that there are unique circumstances that victims of criminal child abuse experience in religious organisations. While the extent of abuse in these settings compared with other organisations is difficult to ascertain, the Committee heard that children subjected to criminal abuse have been less likely to be adequately protected in religious organisations than in any other group in society.<sup>8</sup> There are many reasons for this, including the policy of forgiveness, the self-protection of many religious organisations and their trusted, revered status in society.<sup>9</sup>

Non-government organisations and their interactions with children continually evolve and the nature of organisations 70 to 80 years ago is markedly different from organisations today. While the functions and activities of organisations may evolve over time, organisational culture is often more resistant to change. This has implications for the way in which organisations respond to the criminal abuse of children by personnel in their organisations.

### **Past handling of criminal child abuse by organisations**

The Committee noted that organisations have been handling criminal child abuse by people employed or associated with them for a long time, and the majority of the evidence from victims to the Inquiry indicated that between the 1950s and 1980s the response of specific organisations to such abuse was seriously inadequate and sometimes non-existent, particularly in religious organisations.

Reflecting on past responses to the criminal abuse of children can provide insights into how organisations have evolved in their systems and processes over time. It also assists in understanding the enduring nature of organisational culture and the extent to which organisations learn from past mistakes.

To better understand their past handling of this problem, the Committee focused particularly on the religious organisations that the majority of evidence and other information received concerned—that is, the Catholic Church in Victoria, the Salvation Army and the Anglican Diocese of Melbourne.

Evidence to the Inquiry revealed that historically these organisations were often motivated by self-interest and the protection of the organisation. This resulted in serious consequences for the safety and protection of children.

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8 *Transcript of evidence*, Professor Patrick Parkinson, University of Sydney, Melbourne, 19 October 2012, p. 3.

9 *Transcript of evidence*, Professor Patrick Parkinson, p. 3.

In regard to the Catholic Church specifically, the Committee found that rather than being instrumental in exposing the criminal abuse of children and the extent of the problem, senior leaders of the Church:

- trivialised the problem
- contributed to abuse not being disclosed or not being responded to at all prior to the 1990s
- ensured that the Victorian community remained uninformed of the abuse
- ensured that perpetrators were not held accountable, with the tragic result being that children continued to be abused by some religious personnel when it could have been avoided.

Analysis of the Catholic Church's past handling of this problem shows that as an organisation it had many of the internal features of an organisation at high risk of its personnel perpetrating criminal child abuse. These features include its:

- trusted role in caring for children
- culture and power
- complex hierarchy and structure
- teachings and beliefs
- processes for responding to allegations—including the failure to report abuse to the police
- response to alleged offenders—including the relocation and movement of offenders and failure to suspend them from their duties.

The Committee found that other organisations, particularly other religious organisations, share many of these features, which have continued to influence the responses of many organisations to allegations of criminal child abuse to the present day. The Committee considered that such features and consequent responses by organisations may help to explain why many victims remain aggrieved. Importantly, the way in which an organisation has handled reports of suspected criminal child abuse is inextricably linked to the desire of victims for justice.

### **Reforms—inquiries, policy and legislation**

In response to public inquiries, community outrage and media attention, governments have given greater attention to the protection of children from abuse over the past two decades.

The introduction of mandatory reporting in 1993 was a significant development for the protection of children from abuse in families. This made it mandatory for professionals in specific occupations that involve working with children to report suspected child abuse within families to child protection services in the Department of Human Services (DHS). It enabled the Victorian Government to more effectively identify children at risk in families and to intervene early to reduce the risk, and when necessary, remove children from the care of their parent/s or primary carer/s.

In Victoria, important policy and legislative developments relating to the protection of children in the context of organisations have been more recent and include the establishment of the Working with Children Check system in 2005 and the creation

of an independent Commission for Children and Young People in 2012, which is responsible for promoting child-safe organisations and for conducting inquiries into service provision relating to the safety and wellbeing of an individual or a group of vulnerable children. Yet the Inquiry revealed that there is still more to be done.

## **Prevention—organisations and their duty of care to protect children from criminal abuse**

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Victims of child abuse conveyed a strong message to the Inquiry that they should never have experienced abuse while in the care of personnel in a non-government organisation. The community also recognises that much of the offending committed against children could have been prevented if society in general had honoured its obligation to protect its vulnerable children and young people.

Non-government organisations have both a moral and legal responsibility to protect the children in their care. The Committee makes recommendations to strengthen the accountability of organisations and clarify their legal duty to take all necessary steps to prevent criminal child abuse.

### **Effectively selecting suitable personnel**

Non-government organisations need to actively ensure they appoint personnel who are suitable to work with children. This includes, but is not limited to, their staff, volunteers, contractors and ministers of religion. To do this, they need to use a combination of recruitment and selection strategies, and have rigorous screening tools and checking processes.

The Working with Children Check (WWCC) system in Victoria provides a useful screening tool, but the Committee identified some limitations with the system. These limits include a reliance on individuals to update their WWCC card, a lack of monitoring to ensure compliance and a lack of clarity regarding whether all ministers of religion need to undergo checks before their appointment.

The Committee recommends improvements to the operations of the *Working with Children Act 2005* (Vic) (WWC Act) to further strengthen the WWCC system by:

- requiring organisations to report any allegations of misconduct relating to children
- increasing monitoring of compliance
- clarifying the requirements for religious organisations to ensure all ministers of religion have a current WWCC.

The Committee found that the majority of organisations have WWCC processes in place, but do not always use them correctly and can unknowingly over-rely on them as a tool for preventing the appointment of unsuitable personnel.

### **Managing situational risk**

Managing the internal situational risks of children being exposed to criminal abuse by employees and others associated with organisations is just as important as preventing unsuitable people being appointed to positions. It involves assessing risks to the organisation, establishing behavioural expectations of their personnel,

providing ongoing support, supervision and training, and considering risks in the physical environment.

The Committee reviewed the systems and processes of non-government organisations and identified that there are considerable variations in the approaches adopted to manage the situational risks of personnel committing criminal offences against children. Organisations need leaders and managers with the ability to cultivate organisational cultures that protect children from criminal abuse. The Committee considered that there is scope for peak bodies to work more actively with their members to provide guidance for creating child-safe organisations.

The Committee recommends that an independent statutory authority assist peak organisations to provide their members with guidance for protecting children from criminal child abuse in their organisations and provide advice on the implementation of effective systems and processes.

### **Establishing child-safe policies**

A written child-safe policy demonstrates an organisation's commitment to its duty to reasonably protect children from criminal child abuse while in its care. It may be long or short depending on an organisation's purpose, size or the activities it undertakes. Ideally it should be simple and accessible, and contain:

- a statement of zero tolerance of criminal child abuse
- principles to guide decisions
- procedures on the employment of new personnel
- a risk management approach
- processes for reporting allegations of criminal child abuse.

In its review of the systems and processes used by organisations to prevent child abuse, the Committee identified that there is considerable variation in knowledge and the level of preventive action taken by organisations, ranging from proactive efforts by some organisations to others that are inactive and lacking in knowledge.

The Committee recommends that the Victorian Government review its contractual and funding arrangements with early education and community service organisations to require them to have a minimum standard for ensuring a child-safe environment and a zero tolerance approach to criminal child abuse. It also suggests that the Victorian Government explore which other organisations or sectors might benefit from the application of these minimum standards.

## **Responding to allegations of criminal child abuse in organisations**

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It is an unfortunate reality that despite preventive efforts there will be circumstances in which children in the care of non-government organisations are physically, emotionally or sexually abused. When an allegation of suspected criminal abuse of a child is made in an organisation, there need to be effective systems and processes in place to ensure the situation is handled immediately and appropriately, including reporting to the police and other relevant authorities. Organisations also need to

support the victim and ensure that all parties are treated fairly and consistently. They need to provide clarity regarding:

- what behaviour or conduct should trigger a notification
- who should make the notification of any concerns and the person in the organisation to be notified
- requirements for reporting to police and other authorities and the timing of reporting
- internal processes during and after an investigation
- internal reviews to assess and improve systems and processes.

In evidence provided to the Inquiry, very few organisations demonstrated that they have simple, transparent and easily accessible systems and processes for responding to an allegation or suspicion of criminal child abuse. In addition, many organisations do not appear to incorporate requirements to undertake internal systemic reviews to ensure ongoing learning and improvement.

The Committee determined that it is essential that following the notification of suspected child abuse to a person in authority, if that person reaches a reasonable belief that criminal conduct may have occurred, it should be immediately reported to police.

In its review of organisational processes, the Committee found that organisations and their personnel often find it challenging to determine how to appropriately assess an allegation of criminal child abuse and identify if there are reasonable grounds to believe criminal conduct has occurred. This difficulty has implications for the timely reporting of matters to police and other relevant authorities. Such decision making can be complex and it is usually the responsibility of personnel in authority, such as a CEO, senior manager or religious leader in the organisation, to make the decision to report.

The Committee identified that many of the organisations it heard from, and the personnel within them, did not appear to have the skills, knowledge or understanding required to confidently and appropriately respond to an allegation of suspected child abuse. In most situations, organisations want to do the right thing, but lack the knowledge to act decisively.

To improve responses by organisations to allegations of child abuse, there needs to be a coordinated system for monitoring existing processes. Such a system would include:

- independent scrutiny of organisations when concerns arise regarding the handling of reported child abuse
- building the knowledge, skills and ability of personnel in organisations to assess allegations and respond appropriately
- identification of patterns and trends of child abuse within organisations and sectors.

The Committee recommends that the Victorian Government authorises an independent statutory body with relevant powers and resources to oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations.

## Current responses to allegations of past criminal child abuse

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It is well established that victims of child abuse often delay disclosing their abuse for years or decades and, in some cases, never tell anyone. The Committee heard that many victims of past child abuse by personnel in organisations disclosed their abuse to an organisation and were then directed into an internal process to ‘settle’ their matter.

In the mid-1990s, the Catholic Church created two systems for responding to allegations of criminal child abuse, both of which are still currently operating—the Melbourne Response (applicable only to the Catholic Archdiocese of Melbourne) and Towards Healing. In addition, some other religious and non-government organisations have processes in place to respond to similar allegations of past criminal child abuse by their personnel. The Committee acknowledges that some approaches were designed by organisations to be an independent, alternative form of justice for victims, but victims told the Inquiry that they did not view them this way.

The Committee accessed many files relevant to the Anglican Diocese of Melbourne, the Salvation Army and the two systems used by the Catholic Church.<sup>10</sup> It also accessed internal complaint files regarding individuals within some orders and dioceses that form part of the Catholic Church in Victoria.<sup>11</sup>

In its review of the existing internal systems and processes adopted by these religious organisations, the Committee identified the following features:

- They are not truly independent of the organisations.
- They contain no existing recognition of or support for secondary victims of criminal child abuse.
- Their approach to financial compensation often does not provide a clear explanation of the basis on which an organisation makes a financial payment, how the amount awarded is determined and obligations regarding confidentiality.
- They rarely encourage participants in the process to seek independent legal advice before reaching an agreement that might affect their subsequent legal rights.
- They tend to provide generic apologies that do not focus on the specific circumstances of the individual and the role played by both the perpetrator and the organisation in regard to the damage suffered by the victim.
- Only some provide counselling support, and some of those that do tend to provide inadequate counselling for a number of reasons, including limited sessions offered, counselling services not tailored to individual needs or counselling services operated internally by the organisation responsible for the abuse.
- Some demonstrated a reluctance to implement effective disciplinary processes for offenders in their organisation, such as suspending them from their duties, removing their title or their membership with the organisation.

Whether considered individually or in combination, these features of the internal processes have contributed to the ongoing and increased dissatisfaction of victims and their families with the response of non-government organisations to allegations of criminal child abuse.

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<sup>10</sup> See Appendix 9.

<sup>11</sup> See Appendix 10.

While the Committee received evidence, largely from organisations, that some victims found the approaches satisfactory, the overwhelming message in both oral and written submissions to the Inquiry was that most organisational responses do not adequately meet the needs of victims in achieving justice and that an alternative system of justice, absolutely independent of the organisation, is needed.

## **Police investigations of child sexual abuse**

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In the past, police investigators had a limited understanding of the complexities of child sex offending and treated sexual offences like any other crime. Victoria Police acknowledged to the Inquiry that its past approach to investigating allegations of criminal child abuse had shortcomings. In 2009, a dedicated unit was established within Victoria Police to carry out investigation of sexual offences. The unit included investigators with specialised training about sexual offending and child abuse, and it adopted the ‘whole story’ approach.

Previously, victims were often required to repeat their account numerous times, with the risk of re-traumatisation. With the whole story approach, police investigators are now expected to understand more about the way people remember trauma and focus on eliciting a full, free and uninterrupted account.

In the past the priorities for police were to get a statement, obtain forensic evidence and gather corroborating evidence. But now police investigators are expected to focus on the entire relationship between a perpetrator and the victim to look at how the crime was crafted over a period of time.

The Committee found that the approach adopted by police in dealing with victims of child sexual abuse is of vital importance. A respectful and targeted investigation can increase the rate of reporting of sexual assault, increase the conviction rate, and also reduce the attrition rate throughout the prosecution process. The Committee determined that the Victoria Police approach to investigating sexual offences, particularly historical offences, has improved over the last decade. Despite this, the Committee considers that Victoria Police needs to ensure it adopts an approach of continual improvement.

## **Criminal law reform—responding to allegations of criminal child abuse**

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The law provides a critical avenue for protecting children from harm and appropriately responding to individuals who criminally abuse children or put them in danger.

The Committee identified a need to strengthen criminal laws to create greater responsibility for personnel in authority to report criminal child abuse and to deal appropriately with alleged and proven offenders. The legislative reforms it proposes also aim to ensure that a broader range of behaviour employed by child sex offenders is classified as criminal conduct.

If the Victorian Government implements the Committee’s recommendations for criminal law reform, it will be critical for organisations to ensure they have appropriate systems and processes in place. Relevant personnel in positions of authority will need to clearly understand their responsibilities.

### **Grooming—child sex offending**

The term ‘grooming’ refers to actions deliberately undertaken with the aim of befriending and influencing a child, and in some circumstances members of the child’s family, for the purpose of sexual activity with the child. These actions are designed to establish an emotional connection in order to lower the child’s inhibitions and gain access to the intended victim. In this respect grooming involves psychological manipulation that is usually very subtle, drawn out, calculated, controlling and premeditated.

The Committee identified that the conduct of grooming a child or a child’s parents or others with criminal intent to engage in sexual activity with a child is currently not a criminal offence. The existing law in Victoria and nationally relates to a course of action specific to various forms of communication between the perpetrator and the victim. The Committee is conscious that grooming can occur in many other contexts other than via telecommunications which are currently covered by legislation. It determined that the criminality of grooming behaviour through personal contact should be recognised in legislation.

Traditionally, the courts have treated conduct recognised as ‘grooming’ as an aggravating feature of the sexual offence committed against a child. The Committee found that treating grooming as an aggravating feature of a sexual offence does not sufficiently recognise the damage such conduct causes to those subject to grooming who are categorised as ‘secondary’ or ‘passive’ victims. It identified that these victims experience significant damage through the deliberate betrayal and manipulation of their trust often alongside a feeling that they ultimately and unknowingly contributed to the abuse occurring. The Committee determined that the grooming of a child victim and secondary victims should be classified as a separate criminal offence, not merely an aggravating feature.

The Committee recommends that the Victorian Government review the *Crimes Act 1958* (Vic) to create a criminal offence of grooming that would not require a substantive offence of child sexual abuse to have been committed and that would be available in response to the grooming of people other than the primary child victim, or intended child victim, of the sexual abuse.

### **Reporting to police**

Given that criminal child abuse involves extremely serious breaches of the laws of our community, the Committee considered the failure to report or the concealment of such offences is more appropriately dealt with under the criminal law than under the current welfare or child protection regime of mandatory reporting in Victoria. A number of witnesses to the Inquiry highlighted the importance of differentiating between:

- mandatory ‘welfare’ reporting—that is, reporting the risk of child abuse or neglect within a home or family setting to child protection services in DHS (and determining whether to intervene or remove the child from the care of their parent/s or primary carer/s), and
- compulsory ‘criminal’ reporting—that is, reporting a reasonable belief of criminal child abuse by personnel in an organisation to police.

The Committee determined that personnel in positions of authority in non-government organisations need to be responsible for reporting a reasonable belief

that criminal child abuse has occurred in their organisation. Children are often unable to disclose what is happening to them and the responsibility to protect them rests with adults who become aware of what may be happening.

Currently liability for the concealment of a crime only arises if the person receives a benefit from the concealment. The Committee considered whether there is a need to reform criminal laws to strengthen the potential for personnel in organisations who conceal such crimes or who are aware of the risks to children, to be prosecuted and punished. It determined that there is a need to introduce a criminal offence for a situation where a person fails to report to police material information about the criminal abuse of a child. The offence would be irrespective of whether the person receives any benefit for concealing or failing to report the information

The Committee recommends that the Victorian Government amends s.326 of the *Crimes Act 1958* (Vic) to remove the element of ‘gain’. If this element is removed, then a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence.

### **Child endangerment**

The Committee found that there are no criminal charges that can be brought against personnel in organisations in positions of authority, such as a CEO or religious leader, who relocates an alleged offender of criminal child abuse. It considered this is unacceptable both in terms of meeting community expectations of what standards should be imposed as well as identifying clear sanctions for those who do not uphold their obligations as members of society.

In order to provide an additional impetus for people to report a belief of criminal child abuse to police, the Committee found that consideration must be given to the introduction of a new criminal offence of child endangerment.

A child endangerment provision would make a significant contribution to Victoria’s legal framework to protect children at risk. The provision would ensure that where a person in authority intentionally or recklessly fails to take steps to protect a child from harm or abuse, that person can be found guilty of a criminal offence. People who know that a child is being abused and are in a position to do something about it would have a direct legal duty to intervene to protect the child.

The creation of the offence of child endangerment would impose criminal responsibility on those who act or fail to act, understanding that their conduct may pose a substantial and unjustifiable risk of harm to children. This would cover the situation where a person gives responsibility to another for the care of children aware that there is a risk of harm to children and who fails to take reasonable steps to protect children from that risk.

The Committee recommends that the Victorian Government introduces a criminal offence relating to child endangerment where:

- relevant wanton or reckless behaviour would occur when a person in authority is aware of and consciously disregards a substantial and unjustifiable risk that his or her acts or omissions place a child in a situation that might endanger the child’s life, health, welfare, morals, or emotional wellbeing.

- the risk is of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

## **Civil law reform—accessing the civil litigation system**

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For many victims of criminal child abuse, the option of pursuing a claim through civil litigation is central to their desire for justice. Many told the Inquiry that civil litigation is not only an avenue to seek compensation, but also a form of acknowledgement and accountability for the harm they have suffered.

The Committee is firmly of the view that victims have a fundamental right to sue non-government organisations for damage they have suffered at the hands of representatives of that organisation. Court judgements provide a valuable and practically available form of public condemnation for criminal child abuse, and create a powerful incentive for organisations to change their practices to prevent such abuse.

No civil claims of criminal child abuse made against religious organisations have been decided by the Victorian courts. Civil litigation in these cases is generally resolved through private settlements.

There are significant legal barriers that can prevent victims from successfully pursuing civil litigation against organisations. The Committee makes recommendations to improve the path to civil litigation for victims.

### **Addressing the legal identity of non-government organisations**

Victims of child abuse can find it difficult to find an entity to sue because of legal structures of some non-government organisations. In addition, the assets of some organisations can be difficult to access due to the use of complex structures, such as property trusts. In order to successfully establish a civil claim, a victim needs to identify a legal entity to sue for failing to take reasonable care to prevent their abuse. The Committee heard that for many victims the organisation they sought to sue was not a legal entity.

The Committee heard that some non-government organisations whose personnel had perpetrated criminal child abuse are not incorporated entities, and cannot be sued in their own name. This is more frequently the case with religious organisations. As a consequence (particularly when the abuse occurred many years ago and office bearers in the organisation have changed), a victim is left with no defendant to sue.

In view of these findings, the Committee recommends that the Victorian Government consider requiring organisations it funds or provides with tax exemptions and other entitlements to be incorporated and adequately insured. It also suggests that the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures.

### **Removing limitations—claims arising from criminal child abuse**

Many victims of child abuse do not disclose their experiences or act on them until decades after the abuse occurred. This fact has implications for victims who wish to seek compensation or pursue common-law actions. These implications relate specifically to the statute of limitations.

The Committee identified that the application of Victoria's statute of limitations is currently at the discretion of the defence and judges. There is also evidence that non-government organisations have aggressively pursued the limitation defence in civil trials. The Committee heard that the limitation defence adversely affects the bargaining position of victims in settlement negotiations.

Statutes of limitations disadvantage victims of child sexual abuse because they typically take decades to act on the understanding of the harm arising from their abuse and to issue proceedings. The Committee therefore determined that it is necessary to amend the *Limitation of Actions Act 1958* (Vic) to allow victims sufficient time to initiate civil legal action. It recommends that the Victorian Government consider amending the Act to exclude criminal child abuse from the operation of the limitations periods contained within it.

### **Vicarious liability and duty of care**

Non-government organisations have a duty of care to take reasonable steps to prevent child abuse by members of their organisation through screening and monitoring systems.

The Committee identified that in the past non-government organisations have tended to take the approach that the responsibility for criminal child abuse in their organisation lies solely with the perpetrator of that abuse. While it accepts the attribution of responsibility to the perpetrator, the Committee nevertheless considers that organisations should also bear responsibility in these cases.

Non-government organisations are responsible for creating special relationships of trust between their personnel and individuals in the broader community. Organisations are aware of the vulnerability of children in their care and the fact that parents and others rely on the organisation and its personnel to look after the wellbeing of those children. The civil law in Victoria has not yet developed to recognise the liability of non-government organisations for the criminal abuse of children perpetrated by their personnel notwithstanding this development in international jurisdictions.

The Committee determined that these organisations should have a clear legal duty to take appropriate measures to minimise the risk of abuse that can arise because of the creation of relationships of trust for which they are responsible. They should be held vicariously liable for the acts of their personnel in the course of relationships they develop with individuals in the broader community.

The Committee recommends that the Victorian Government undertake a review of the *Wrongs Act 1958* (Vic) to identify amendments that would ensure organisations are held accountable for their legal duty to protect children from criminal abuse.

## Retrospectivity

There are difficulties in creating rights or obligations under the civil law retrospectively.<sup>12</sup> It is only in very rare circumstances that Parliament would retrospectively create enforceable rights and obligations. This approach is based on the fundamental proposition that in a democratic society behaviour that was lawful under the criminal law at the time at which it occurred should not be retrospectively declared criminal. Similarly, if there were no rights or obligations under the civil law at a point in time, if these rights or obligations were introduced today, they should not retrospectively become the subject of civil liability.

The Committee accepts the legal foundation that, apart from the most exceptional circumstances, citizens should not be held liable under the criminal or civil law for conduct which was not prohibited at an earlier time. In the case of criminal child abuse, undertakings were provided by organisational representatives in the Inquiry hearings that they would reconsider past compensation payments to victims of child abuse. The Committee has made recommendations for alternative forms of justice to be made available to victims who are not able to benefit from new legislative provisions recommended in this Report. It trusts that the legislative changes proposed will assist future victims of criminal child abuse in achieving justice.

## Creating an independent, alternative avenue for justice

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There are a number of evidentiary, legal and practical barriers to challenging an organisation in court on matters of past criminal child abuse. Some of the practical barriers to litigation for victims include the lack of financial means and emotional resources to manage the typically lengthy delay in bringing cases to court. The emotional impact of an adversarial battle often acts as a deterrent to litigation for already suffering victims and their families.

Victims and their advocates requested that the Inquiry consider alternative forms of achieving justice. There is currently no alternative justice avenue for victims of child abuse in organisational settings that is paid for by non-government organisations and independently administered by the Victorian Government.

The Committee considers that it is important to develop such an approach alongside existing traditional civil justice avenues. It identified that Victoria needs an independent, alternative avenue of justice that is operated by the State and that can facilitate the resolution of child abuse claims relating to organisations.

Based on its evidence and additional research, the Committee determined that an effective alternative justice avenue for victims of criminal child abuse in organisations must have the following features:

- It needs to be independent and have sufficient authority to ensure that the right parties come to the table to resolve claims.
- It needs to respect and properly engage victims in the process and support them throughout by ensuring access to counselling support and legal assistance.
- It needs to have a strong focus on the needs of victims, families and communities, and not be bound by legal parameters in determining outcomes that respond to the multiple needs of victims.

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<sup>12</sup> See Chapter 1 for a full explanation.

- As part of the process, relevant organisations need to take responsibility for delivering outcomes, including the funding of compensation and services.
- It should be able to continue regardless of a parallel investigation by police.
- There needs to be a clear avenue to appeal decisions.

The Committee recommends that the Victorian Government should review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse in non-government organisations that:

- enables victims and families to obtain resolution of claims arising from criminal child abuse in organisations
- is established through consultation with relevant stakeholders, in particular victims
- encourages non-government organisations to contribute a fee to administer the scheme
- ensures non-government organisations are responsible for the funding of compensation, needs and other supports agreed through the process.

The Committee understands that many victims are likely to face a number of barriers in having their claims addressed through the new avenue, not least of which is the fact that many of those who have reached a settlement with a non-government organisation would have signed release papers as a condition, stating they had no further claim against the organisation. Nevertheless, the Committee is strongly of the view that, in light of evidence provided to this Inquiry, these victims should have an opportunity to have their claims revisited through the proposed new avenue.

The Committee considers the willingness of organisations to review these existing settlements will be a measure of how genuine their undertakings are to comply with the Inquiry recommendations and their implementation.

## **Beyond the Inquiry—responsibilities**

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Throughout its deliberations and in the pages of this Report, the Committee has endeavoured to accurately and faithfully reflect the voices of those people who were criminally abused as children (and their families) and who had the courage to come forward to help the Committee with its Inquiry.

While mindful of the limitations in trying to repair the sometimes irreparable, having confronted and exposed the truth of these experiences, the community cannot ignore its obligations to assist the victims of criminal child abuse in non-government organisations and to provide greater protection for children in the future.

The Committee's recommendations are directed to the achievement of these objectives as far as reasonably possible.

The organisations and individuals who were at least morally complicit in the crimes with which the Inquiry has been concerned, cannot be permitted to make superficial and professionally constructed gestures of regret and effectively walk away.

Failure in either of these respects would constitute another reprehensible betrayal.

# Inquiry recommendations

The criminal abuse of children involves extremely serious breaches of the laws of our community. Those who engage in it, or are in positions of authority and conceal such offences, should be dealt with under the criminal law. Non-government organisations must be expected to adequately protect children in their care and respond to any allegations of criminal offences by reporting to the police and relevant authorities. Victims of criminal child abuse should have access to appropriate avenues to pursue justice for the harm they have suffered.

These principles informed the Committee's recommendations, which relate to the following five broad areas:

- reforming criminal law
- accessing civil litigation
- creating an independent, alternative avenue for justice
- monitoring responses by organisations to criminal child abuse
- preventing criminal child abuse in organisations.

The Committee considers that it is reasonable for the community to expect that non-government organisations will honour the undertakings they made during the course of the Inquiry and comply with the requirements of any new schemes established by the Victorian Government.

## Reforming the criminal law

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The Committee makes recommendations to reform criminal laws to strengthen the potential for perpetrators of criminal child abuse and personnel in organisations who conceal such crimes to be prosecuted and punished. It requests that the Victorian Government is mindful that while the recommendations have been considered in their application to the criminal abuse of children within non-government organisations, if implemented they may become of general application. In consequence, in drafting any legislation there needs to be consideration of any unintended implications for other groups and individuals.

### **Crime to conceal criminal child abuse offences and compulsory reporting to police—no requirement for benefit**

Section 326 of the *Crimes Act 1958* (Vic) currently requires proof that the person who concealed a serious indictable offence received a benefit. The Committee determined that failure to report knowledge of the commission of a serious indictable offence to police (including those relating to child abuse) and thereby concealing the offence should be punishable as a crime, regardless of whether any benefit is received.

**Rec** That the Victorian Government consider amending Section 326 *Crimes Act 1958* (Vic) to remove the element of 'gain', to ensure that a person who fails to report a serious indictable offence involving the abuse of a child will be guilty of an offence. (Recommendation 23.1, Part G)

### **A new child endangerment offence—criminal responsibility for placing children at risk**

The creation of this offence will impose criminal responsibility on those individuals in positions of authority in organisations who act or fail to act understanding that their action or inaction may pose a substantial and unjustifiable risk of harm to children, but they disregarded that risk and acted or did not act accordingly. This would cover the situation where a person gives responsibility to another for the care of children and is aware there is a risk of harm to those children and who fails to take reasonable steps to protect them from that risk.

**Rec** That the Victorian Government consider the introduction of a criminal offence relating to child endangerment in organisations that covers relevant wanton or reckless behaviour in situations:

- ♦ when a person in authority is aware of and consciously disregards a substantial and unjustifiable risk that their acts or omissions placed a child in a situation that might endanger the child’s life, health, welfare, morals, or emotional well-being
- ♦ where the risk is of such a nature and degree that disregarding the risk would constitute a gross deviation from the standard of conduct that a reasonable person would observe in the situation. (Recommendation 23.2, Part G)

### **A new grooming offence**

The current Commonwealth and Victorian laws of grooming relate to grooming activity by way of various forms of telecommunication. New South Wales has extended its grooming legislation to cover a broader range of grooming activities. The Committee considers that Victoria should go further by recognising that grooming can occur in all manner of ways, including through conduct directed at family members of an intended victim of child sexual activity. A new offence of grooming should recognise that there are other victims, beyond those that are the subject of the substantive offence.

**Rec** That the Victorian Government give consideration to an amendment to the *Crimes Act 1958* (Vic) to create a criminal offence of grooming.

The grooming offence should:

- ♦ not require a substantive offence of sexual abuse to have been committed
- ♦ recognise that in addition to the primary or intended child victim of sexual abuse, parents and others can be victims of this criminal conduct. (Recommendation 22.1, Part G)

## **Improving access to civil avenues of justice**

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In recognition of the importance of civil litigation as an avenue for victims seeking justice, the Committee makes several recommendations to reduce the legal barriers to pursue claims through this avenue.

### **Addressing the legal identity of non-government organisations**

- Rec** That the Victorian Government consider requiring non-government organisations to be incorporated and adequately insured where it funds them or provides them with tax exemptions and/or other entitlements. (Recommendation 26.1, Part H)
- Rec** That the Victorian Government work with the Australian Government to require religious and other non-government organisations that engage with children to adopt incorporated legal structures. (Recommendation 26.2, Part H)

### **Removing limitations—claims arising from criminal child abuse**

- Rec** That the Victorian Government consider amending the *Limitation of Actions Act 1958* (Vic) to exclude criminal child abuse from the operation of the limitations period under that Act. (Recommendation 26.3, Part H)
- Rec** That the Victorian Government consider amending the *Victims of Crime Assistance Act 1996* (Vic) to specify that no time limits apply to applications for assistance by victims of criminal child abuse in organisational settings. (Recommendation 27.1, Part H)

### **Vicarious liability and duty of care**

It should be recognised that non-government organisations are directly liable for harm suffered by children in their care given that the perpetrator has relied on the reputation and community's trust in the organisation to offend against the child. This duty of the organisation to the child includes the responsibility to monitor and screen employees and other personnel and to take reasonable steps to ensure the safety of the child in their care. Additionally, an organisation should be held vicariously liable (on the basis of the existence of a deemed employment relationship with its agents, representatives or volunteers who it has permitted to act on its behalf) for acts committed in the course of that relationship.

- Rec** The Committee recommends that the Victorian Government undertake a review of the *Wrongs Act 1958* (Vic) and identify whether legislative amendment could be made to ensure organisations are held accountable and have a legal duty to take reasonable care to prevent criminal child abuse. (Recommendation 26.4, Part H)

## **Creating an independent, alternative avenue for justice**

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In making its recommendations, the Committee is aware that there are limitations in the civil justice system that the recommendations will not overcome. These include:

- the practical barriers that arise from the financial and psychological position of victims of child abuse and evidentiary issues relating to historical events
- the non-retrospective nature of law reform and the sometimes limited outcomes that the civil litigation system offers (see Chapter 1).

In recognition of these limitations, and in preference to internal organisational systems for resolving claims, the Committee has recommended an independent, alternative avenue for justice for those victims who are not in a position to pursue civil claims in the courts for practical, evidentiary and legal reasons.

**Rec** The Committee recommends that the Victorian Government review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse that:

- ♦ enables victims and families to obtain resolution of claims arising from criminal child abuse in non-government organisations
- ♦ is established through consultation with relevant stakeholders, in particular victims
- ♦ encourages non-government organisations to contribute a fee to administer the scheme
- ♦ ensures non-government organisations are responsible for the funding of compensation, needs and other supports agreed through the process. (Recommendation 28.1, Part H)

## **Improving organisation responses to allegations of criminal child abuse**

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The Committee determined that there needs to be improved responses to allegations of criminal child abuse in organisations and greater scrutiny and monitoring of how organisations respond to such allegations. It also determined that it is appropriate for the Victorian Government to identify the most relevant statutory authority to assume responsibility for overseeing such responses when it is in the public interest, when there are systemic problems and when complaints are raised about an organisation's handling of a matter of criminal child abuse.

**Rec** That the Victorian Government authorise an independent statutory body with relevant powers and legal and operational resources to:

- ♦ oversee and monitor the handling of allegations of child abuse by relevant government departments, religious and non-government organisations
- ♦ undertake independent investigations into systems and processes in the context of allegations of reportable conduct and/or reportable convictions
- ♦ scrutinise and audit the systems and processes in non-government organisations for handling allegations of child abuse
- ♦ monitor and report on trends associated with allegations by collecting relevant data and report to the Parliament on an annual basis
- ♦ build the skills and knowledge of personnel in relevant government departments, religious and non-government organisations to ensure they have the capacity to competently handle allegations of suspected child abuse. (Recommendation 18.1, Part E)

**Rec** That the Victorian Government review the current Department of Education and Early Childhood Development (DEECD) procedures for responding to allegations of all forms of criminal child abuse within all Victorian schools and

identifies a benchmark that could be applied more broadly to non-government schools. (Recommendation 16.1, Part E)

## **Improving the prevention of criminal child abuse—organisation and their duty of care to children**

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The Committee determined that the prevention of criminal child abuse is critical and that organisations need support, guidance and greater accountability to exercise their duty of care.

### **Effective selection of suitable personnel (paid, voluntary, religious)**

- Rec** In regard to the operations of the *Working with Children Act 2005* (Vic) (WWC Act), that the Victorian Government:
- ♦ clarify the requirements for religious organisations to ensure ministers of religion have a current Working with Children check (WWCC)
  - ♦ institute a system of compliance monitoring and investigation of the operation of the WWC Act similar to the equivalent system in New South Wales
  - ♦ ensure that all relevant non-government organisations are required to report any allegations of misconduct relating to children to the Victorian Department of Justice WWC Unit
  - ♦ raise the awareness of organisations about the importance of regularly reviewing the status of WWCC by personnel, the need to adopt a range of screening tools, and to not over rely on the WWCC. (Recommendation 10.1, Part D)

### **Managing situational risk**

- Rec** That the Victorian Government review its contractual and funding arrangements with education and community service organisations that work with children and young people to ensure they have a minimum standard for ensuring a child-safe environment, including the following principles:
- ♦ a statement of zero tolerance of criminal child abuse
  - ♦ principles to guide decisions
  - ♦ procedures on the employment of new personnel
  - ♦ a risk management approach
  - ♦ processes for reporting and responding to allegations of criminal child abuse.
- That the Victorian Government consider the potential for extending a standard for child-safe environments to other organisations or sectors that have direct and regular contact with children. (Recommendation 12.1, Part D)

**Support, guidance and oversight—prevention systems and processes**

- Rec That through the relevant statutory body or department the Victorian Government should:
- ♦ identify an effective approach or model for supporting peak bodies to build preventative capacity in sectors that interact with children
  - ♦ identify ways to encourage smaller organisations or activities to be affiliated with peak bodies to enable access to capacity building opportunities. (Recommendation 13.1, Part D)

**Raising awareness of criminal child abuse in non-government organisations**

- Rec That the Victorian Government expand on its response to Recommendation 10 in the Cummins Inquiry report to ensure that non-government organisations are equipped with high quality information and advice about the prevention of criminal child abuse in organisations. (Recommendation 13.2, Part D)