

Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse



Final Report
7 June 2021



We acknowledge the Aboriginal people of *lutruwita/trowunna* as the traditional owners and custodians of the land on which we have undertaken our Inquiry. Our day to day work was on *muwinina* Country in Hobart but we also had the privilege of traversing Country in many parts of our island home as we visited schools in the west, the north-west, the north, the east and the south. We acknowledge that Aboriginal people exercised sovereignty over all these lands for millennia and never ceded that sovereignty. We are grateful that through profound resilience Aboriginal ancestors survived invasion and dispossession and faithfully taught their knowledge to subsequent generations. As a legacy of their faithful commitment to education, Aboriginal culture is thriving today evidenced by Aboriginal Education Support staff in every school we visited. We offer our deep respects to elders past, present and future.

Content Warning

This report contains information about child sexual abuse that may be confronting, distressing and upsetting for some people.

Front cover image created by A-Digit.

Purchased and used under license from iStock by Getty Images.

Notes on the Authors

Professor Stephen Smallbone

Stephen Smallbone worked as a prison psychologist and consulting forensic psychologist before joining the School of Criminology and Criminal Justice at Griffith University in 1998. From 2010 to 2014 he was an Australian Research Council Fellow. In 2016 he retired from the University, and is now Professor Emeritus at the Griffith Criminology Institute. His research and practice has been primarily concerned with understanding and preventing sexual violence and abuse. His publications include the books *Situational prevention of child sexual abuse* (2006), *Preventing child sexual abuse: Evidence, policy and practice* (2008), and *Internet child pornography: Causes, investigation and prevention* (2012). In recent years he has been working directly with child-serving organisations to assist in their efforts to develop effective safeguarding cultures, policies and practices. Stephen has been a resident of Tasmania since 2018.

Professor Tim McCormack

Tim McCormack is a Professor of International Law at the University of Tasmania and a Professorial Fellow at Melbourne Law School. He is also the Special Adviser on War Crimes to the Prosecutor of the International Criminal Court in The Hague. Tim has specialised in the Law of Armed Conflict and in International Criminal Law. He was an international observer of the Government of Israel's Commission of Inquiry into the Mechanisms and Processes for the Investigation of Alleged Violations of the Law of Armed Conflict (Jerusalem, 2011-2013); James Barr Ames Visiting Professor at Harvard Law School (2016 and 2020); and Charles H Stockton Distinguished Scholar-in-Residence at the US Naval War College (Newport, Rhode Island 2015-16). Tim is a Fellow of the Australian Academy of Law. He grew up in Burnie and attended Burnie Primary School, Parklands High School and Hellyer College.

11. Main Findings and Recommendations

Recommendation 1: Safeguarding Records

Problems with the reliability, validity, accessibility and completeness of Department of Education (DoE) records, some dating from the 1960s, have precluded us from determining whether the incidence of sexual abuse in Tasmanian Government schools has declined, increased, or remained stable over the last five or six decades. Particularly for more recent years, this makes it difficult to assess the effects of various safeguarding policies and other relevant developments – we cannot systematically link the introduction of any specific safeguarding initiative with possible changes in the incidence or impacts of abuse.

There is an urgent need for complete and analysable records of all sexual abuse concerns, including substantiated and unsubstantiated incidents and episodes, and all types of abuse (e.g. teacher-student; student-student; online abuse). A database established to capture this information should be able to produce quantitative (averages; ranges etc) and qualitative data on, for example: types of abuse; when and where incidents occurred; how incidents first came to light; the time between incidents occurring and complaints being made; ages of complainants and respondents; outcomes for complainants and alleged abusers; and the outcomes of any system reviews following the resolution of complaints. We have attached at Appendix D a list of variables we believe should be included in a new database. We understand that these kinds of details have not been systematically recorded until now, however we would urge that available details of historical incidents and episodes be included in the new records system.

We were encouraged to find that DoE is developing a new digital case management system that aims to consolidate numerous separate systems, including SSS, into a single digital records system that allows the tracking of information about individual students as well as the production of aggregated data on a broad range of variables, including abuse concerns. We expect work will continue to be needed to resolve existing problems concerning the input of relevant information. We think that instructions, guidelines and monitoring systems will still need to be developed to ensure consistency of recorded information relevant to preventing and responding to sexual abuse.

Even when the new digital records system becomes operational, we think it is important that a separate record specifically on sexual abuse, concerns, complaints and outcomes is maintained and periodically analysed for various strategic purposes.

- 1. We recommend that all sexual abuse concerns, complaints, responses and outcomes be systematically recorded by the Department of Education, and that these records are periodically analysed to monitor patterns and trends.**

Recommendation 2: Best Interests of Students

We found that, particularly in the 1970s, 1980s and 1990s, the predominant response of DoE to sexual abuse concerns and complaints was to protect itself from what it apparently saw as the legal, financial, and reputational risks attached to those concerns and complaints. This is clear

from our consultations with government and non-government personnel, from the submissions to our Inquiry, from our conversations with people directly affected by sexual abuse in schools, and from the detail in our case studies. We have found it deeply disturbing that, as concerns, complaints and ineffectual responses literally piled up in DoE's records, serial abusers like Harington and LeClerc were not just allowed to keep teaching for decades, but that DoE leaders and others so wilfully disregarded the obvious risks and harms to students.

DoE responses over this period routinely involved deflecting or ignoring concerns and complaints, often by disbelieving or blaming students, and by shielding alleged or known sexual abusers. We cannot explain this by assuming that 'that's just the way things were back then', because the evidence in DoE's own records shows that DoE officials very often acted in ways that were completely at odds with community expectations at the time. We saw many examples of parents and others, including teachers and principals, actively but ultimately unsuccessfully opposing the decisions of DoE to transfer known abusers to a new school.

The evidence has persuaded us that the culture and leadership of DoE have changed for the better, particularly over the last decade. Nevertheless, even now we can see residual cultural problems. We have seen very recent examples where students' concerns and complaints have been assumed to be untrue, and where rules and expectations about staff conduct are assumed to serve the purpose of protecting adults from misunderstandings and even from false and malicious allegations by students. We believe that an effective safeguarding system must account for what appears to be a common, and in many cases even non-conscious (or at least unthinking), tendency for adults to first and foremost protect their own and other adults' interests.

- 2. We recommend that the Department of Education's *Learners First* philosophy be extended to all aspects of student safeguarding, so that the principle of 'acting in the best interests of students' is embedded in all considerations, decisions and actions concerning student safeguarding.**

Recommendation 3: Embedding Prevention

We found that DoE's existing safeguarding policies and procedures are almost always focused on responding to known concerns or allegations. We stated at the outset of the report that, as a matter of principle, children's (and in the present case, students') interests are best served by systems designed to prevent abuse from occurring in the first place. We think this principle should be firmly embedded in DoE's safeguarding systems - expressed clearly in its safeguarding policies, reflected in its procedures, and communicated to staff, students, their parents and guardians, and the general public. Accordingly:

- 3. We recommend that DoE's student safeguarding systems are designed to prevent student sexual abuse from first occurring, as well as to respond promptly, sensitively, and effectively to known concerns or allegations.**

Recommendation 4: Student Safeguarding Policy

We found that there have been important positive developments, particularly in the last decade, in the introduction and implementation of DoE student safeguarding policies. In particular, the *Professional Standards for Staff* policy and associated guidelines, introduced in 2015, are well conceived, well-articulated, and broadly consistent with best practice standards for student safeguarding. We heard examples of situations where these documents have been used by school leaders to remind their teaching staff of the importance of maintaining professional boundaries with students, for example.

DoE policies and procedures for preventing and responding to peer sexual abuse are much less well developed. The recent introduction of protocols for responding to concerns about peer abuse are a welcome development, though we think more work needs to be done to ensure that such protocols account for the inherently difficult and complex challenges presented by peer abuse in schools. Policy decisions are needed about how to help staff to understand, prevent, and respond to peer sexual abuse in Tasmanian government schools.

The most obvious, and perhaps most important, problem in DoE's current safeguarding systems is the absence of a single, comprehensive, integrated student safeguarding policy. We think this should be the foundation document for DoE to articulate its policy positions on all aspects of student safeguarding. We have attached at Appendix E a list of suggested content areas for this policy document. Although it needs to cover many important areas, we think the policy document itself should be concise, with links to additional, more detailed information, guidelines, protocols and so on.

- 4. We recommend that, as a priority, the Department of Education develop and implement a comprehensive, integrated Student Safeguarding Policy.**

Recommendation 5: Director of Safeguarding

We found that an important weak point in DoE's current safeguarding systems is the lack of integration, co-ordination, and executive oversight of all safeguarding activities. We have noted that all four DoE Deputy Secretary portfolios include responsibilities for various important aspects of safeguarding, and that this division of responsibilities may inadvertently contribute to the structural fragmentation of safeguarding efforts. We have noted that this may present difficulties for DoE in establishing a single, integrated student safeguarding system, and to maintain an unwavering focus on the interests of students in all safeguarding activities and decisions. We believe there is a strong justification to establish a new senior position to lead DoE's safeguarding efforts in a coherent and integrated way, and we think this could be done without the need for other major structural reforms. Accordingly:

- 5. We recommend that the Department of Education establish a new permanent full time position of Director of Safeguarding, to report directly to the Secretary, Department of Education.**

Recommendation 6: Local Safeguarding Assessments

We think among the first tasks of a Director of Safeguarding should be leading the development of the Student Safeguarding policy (Recommendation 4, above). As we have noted, this process is itself likely to highlight additional areas in need of further development.

One such area, we believe, is the need for local, school-level safeguarding risk assessments and management plans. We found that some of this work is already being undertaken in some schools, but that this is not formalised and is not being undertaken under the instruction, guidance and oversight of DoE. We have observed that some school principals have a strong sense of where and how different kinds of relevant problems may arise in their particular school, often according to specific features of the school environment and its activities. We have also observed that school leaders are often aware of those students who may be more vulnerable to sexual abuse victimisation or ‘offending’. For effective safeguarding across all Government schools we believe it is unwise to rely solely on the initiative of individual school leaders. Rather, local school-level risk assessments should be embedded as required practice.

- 6. We recommend that every government school principal be required to undertake a safeguarding risk assessment and to develop a risk management plan. We recommend that the Department of Education develop guidelines and resources to assist schools for this purpose.**

Recommendation 7: School Safeguarding Officers

We have argued that a Director of Student Safeguarding is needed to lead and co-ordinate DoE’s student safeguarding systems. We think effective student safeguarding also requires co-ordination and integration of efforts within and across all schools. We think the appointment at every school of an appropriate school staff member as the Student Safeguarding Officer would provide a complete safeguarding network across the whole Government school system. This would give the Student Safeguarding Director a direct point of contact at each school, and vice versa – each school would be connected via its Student Safeguarding Officer to the Student Safeguarding Director.

We envisage that among the responsibilities of school Student Safeguarding Officers would be to

- 1) ensure that relevant safeguarding information is reported and recorded,
- 2) contribute to school safeguarding risk assessments and management plans,
- 3) serve as a point of contact for students and school staff about safeguarding concerns, and
- 4) ensure the principle of ‘best interests of students’ is applied in relevant considerations, decisions and actions at the school.

- 7. We recommend that every government school principal be required to appoint a school staff person as the school Student Safeguarding Officer. We recommend that induction and training for persons appointed to these roles be overseen by the Director of Safeguarding.**

Recommendations 8 and 9: Teacher Training

We found that a substantial majority of teachers in Tasmanian Government schools are graduates of the University of Tasmania Faculty of Education. We found that in both the Bachelor of Education and Master of Teaching programs students learn about mandatory reporting obligations for teachers, but that there is otherwise little or no content in these courses on how sexual abuse in schools might be understood and prevented. We believe the capacity of teachers in Tasmanian Government schools to understand, identify, prevent, and respond to sexual abuse concerns is likely to be significantly enhanced by including substantial, high quality content on student safeguarding, both in their University education and in their in-service training.

- 8. We recommend that the Department of Education enter into negotiations with the School of Education, University of Tasmania, to introduce into the Bachelor of Education and Masters of Teaching programs substantive content and assessment on understanding, preventing, and responding to sexual abuse in schools.**
- 9. We recommend that information about understanding, preventing, identifying, and responding to sexual abuse be included in inductions, and in annual training, for all principals, teachers and teacher aides.**

Recommendations 10 and 11: Early Intervention

In Recommendation 3 (above) we highlighted the need to embed prevention principles in all DoE safeguarding systems and activities. One practical way to do this in schools is for staff to be alert to, and respond effectively to, signs of potential problems, and not wait until more serious concerns emerge. We have noted that mandatory reporting relies on a relatively high threshold of concern, and that according to DoE's *Mandatory Reporting Procedures* intervention and reporting of relevant concerns may therefore miss opportunities to intervene early, and thus potentially prevent abuse from occurring in the first place

We have heard many examples of good prevention practice where teachers and school leaders have intervened informally with other teachers when they observe situations or conduct that concern them, but that would not be of sufficient gravity to trigger a mandatory report.

As with other examples of good prevention practice we heard of, the practice of intervening early and carefully when small concerns arise is not a formalised requirement and is not being undertaken under the instruction and guidance of DoE.

- 10. We recommend that the Department of Education develop instructions, guidelines and training for teachers and student support staff for the purposes of responding to, reporting and recording concerns about staff and**

student behaviour that may be relevant to preventing sexual abuse, but that fall below the threshold required by DoE's Mandatory Reporting Procedures.

- 11. We recommend that DoE's *Mandatory Reporting Procedures*, and particularly its annual training in these procedures, should situate mandatory reporting within the wider context of a comprehensive safeguarding system – one that aims to prevent, and not just respond to, sexual and other abuse.**

Recommendation 12: Code of Conduct

We found that DoE has never had, and still does not have, a schools-specific code of conduct, and that internal investigations and disciplinary procedures rely instead on standards set out in the generic *State Service Code of Conduct*. We found that the *State Service Code of Conduct* is ill-suited to the particular contexts of schools.

- 12. We recommend that a formal Code of Conduct for DoE personnel be introduced to elevate the status of safeguarding obligations for DoE employees and volunteers and so create schools-specific disciplinary measures**

Recommendations 13, 14 and 15: Integrating Safeguarding Policies

We found a number of DoE's existing policies that are of direct relevance to student safeguarding do not in their current form specifically address the problem of sexual abuse. We also found that these policies are not linked with one another in ways that make clear their place in DoE's suite of student safeguarding policies.

- 13. We recommended that the Duty of Care policy be reviewed so as to more explicitly include safeguarding as a central duty of care consideration, and to better integrate this policy with DoE's other safeguarding policies and procedures.**
- 14. We recommend that the Conditions of Use Policy for all Users of Information and Communications Technology be reviewed so as to more explicitly include student safeguarding as a key consideration, and to better integrate this policy with DoE's other safeguarding policies and procedures.**
- 15. We recommend that the Mandatory Reporting Procedures, and particularly the annual staff training in these procedures, should situate mandatory reporting within the wider context of a comprehensive safeguarding system – one that aims primarily to prevent, and not just respond to, sexual and other abuse.**

Recommendation 16: Response Protocols

We found that significant uncertainties continue to exist for staff when faced with particular safeguarding concerns. One area of special concern has been how to respond appropriately to suspected or alleged peer sexual abuse. Student Support staff have developed protocols for responding to peer abuse, but these are not always of clear assistance to first responders or senior staff to whom a matter may be referred. As we understand it, there are no similar protocols for managing less common sexual abuse concerns. We believe that, rather than responding in reactive ways to policy and procedure gaps, an effective safeguarding system should where aim to be pre-emptive. Accordingly:

16. We recommend that the Department of Education develop and implement a suite of protocols for responding to concerns or complaints about a) teacher-student abuse; b) student-student abuse; c) staff involved in non-school abuse; d) students involved in non-school abuse; e) abuse involving the Internet and related technologies; and f) abuse incidents involving visitors or strangers.

Recommendation 17: Partnership with Tasmania Police

We found that there is significant uncertainty amongst DoE principals and professional student support staff about notifying TasPol in response to allegations or incidents of sexual abuse – particularly significant uncertainty about who is responsible to notify, in precisely what circumstances and when in the process of responding.

We found that there is significant inconsistency in the response of TasPol when they are notified of a particular incident. We found that in some towns or regions where a positive and constructive working relationship exists with local TasPol officers, school leaders express confidence in effective collaboration with TasPol in response to possible future sexual abuse concerns. In other situations where there is no similar positive and constructive working relationship, we found that school leaders have little or no confidence that involving TasPol will be beneficial in their attempts to manage response procedures in the event of sexual abuse concerns. One key facet of confidence or lack of it in relationships with TasPol personnel revolves around open and transparent communication or lack of it. Lack of confidence was most starkly exposed for us in the example of TasPol laying criminal charges against a student for alleged sexual abuse of another student without informing the school (see p. 71).

We also found that there is significant uncertainty amongst school leaders about the impact on school response processes when a TasPol investigation has been initiated. Some principals and other senior staff were of the view that once TasPol has initiated an investigation the school is required to cease and desist any measures in relation to the incident. Others expressed their understanding that while it is important not to undermine or interfere with TasPol investigative processes, it is necessary to persist with parallel processes to ensure, for example, the safety of students involved or impacted.

- 17. We recommend that the Department of Education enter into negotiations with Tasmania Police (TasPol) to develop a Memorandum of Understanding (MoU) for preventing and responding to sexual abuse in government schools. We recommend that the MoU include agreements on respective roles and responsibilities; information gathering, exchange, and recording; and how outcomes for child complainants and their guardians are to be monitored.**

Recommendation 18: Partnership with Department of Communities Tasmania

We found a significant level of frustration among DoE staff with the mandatory reporting system imposed under the provisions of the *Children, Young People and Their Families Act 1997*. Much of this frustration centred around the lack of feedback to original reporters from Child Safety Services in the Department of Communities Tasmania (DCT) about outcomes for children the subject of specific reports. We were even told that some DoE staff no longer report suspected abuse because of disillusionment with the efficacy of the follow-up from Child Safety Services (see p.12). Both expressions of frustration are cause for concern.

- 18. We recommend that the Department of Education enter into negotiations with the Department of Communities Tasmania (DCT) to develop a Memorandum of Understanding (MoU) for preventing and responding to sexual abuse in government schools. We recommend that the MoU include agreements on respective roles and responsibilities; information gathering, exchange, and recording; and how outcomes for child complainants and their guardians are to be monitored.**

Recommendations 19 and 20: Accessibility of Policies

We found that the main access for parents and guardians, prospective students, the wider school communities and the general public to information about DoE's safeguarding commitments, policies, and related matters is via DoE's website. We have noted that relevant materials are difficult to find, even when searching with relevant key words. The obfuscated and labyrinthine process a seeker must undertake to identify DoE's policy position on student safeguarding engenders little confidence in the priority accorded this fundamentally important issue and is inconsistent with the unambiguous and laudable commitment of DoE to 'Learners First'. Rectification to render DoE's student safeguarding information more readily accessible to the public will have the added benefit of demonstrating DoE's commitment to the importance of the issue.

A related obfuscated discovery process involves locating the form and understanding the procedure for the making of complaints and/or expression of grievances on the DoE website. The present reality can only dissuade students, parents or other concerned people from reporting concerns that may well involve significant issues of substance for DoE's consideration. It is vital that this situation be remedied.

- 19. We recommend that the Department of Education review and re-organise its official website so as to improve public accessibility to relevant information about student safeguarding.**
- 20. We recommend that the Department of Education review its complaints and grievances procedures and processes so as to improve access by students, their parents, or other concerned persons.**

Recommendation 21: Systems Reviews

In one way, an incident or episode of sexual abuse in a school can be seen as a failure of its primary safeguarding systems. Unfortunately, even the most well-designed and diligently-implemented safeguarding systems may fail from time to time. While the first concern following sexual abuse should always be the care and support of the student/s and others affected, it is important that at an appropriate time school and Departmental leaders reflect on how, when, where and why the incident occurred. The practical purpose is to identify and where possible strengthen any relevant weak points in the safeguarding systems.

We saw an example of a systems review in Case Study 4 (pp.39-43). After former junior teacher Casey Sullivan was convicted of sexual abuse offences in 2016, DoE [REDACTED] arranged for an independent investigator to look into the circumstances of her transfer from one school (where there had been concerns about her conduct) to a new school where she sexually abused several students. Other questions were whether DoE policies had been breached, and whether there were significant shortcomings in the policies themselves. Although we are not convinced that this particular investigation was successful in identifying or remedying critical weaknesses in DoE policies or procedures, it does still stand as an example of DoE attempting to improve relevant systems following a significant episode of sexual abuse. We believe that systems reviews should be routinely conducted following significant incidents or episodes of sexual abuse. Accordingly:

- 21. We recommend that systems reviews be conducted at the earliest appropriate opportunity following all significant sexual abuse incidents or episodes. The aim should be to identify strengths and weaknesses in abuse prevention and response systems at school level and at Department level, and where appropriate to revise and improve these systems.**