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National Office for Child Safety  
Department of Prime Minister and Cabinet  
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Barton ACT 2600

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### **Submission on national child safety and wellbeing information sharing**

Thank you for providing non-government organisations with an opportunity to respond to the *Scoping Paper: national child safety and information sharing* in order to assist the interjurisdictional child safety working group.

This joint submission has been prepared by ACWA, on behalf of leading peak bodies in NSW working to support vulnerable children, young people and their families.

This submission is informed by our practical knowledge and experience of the critical importance of effective information sharing provisions that promote the safety, welfare and wellbeing of children and young people, and the persistent barriers that undermine information exchange between jurisdictions. In particular, it draws on our observations about the operation and benefits of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

In addition, as the former NSW Community and Disability Services Commissioner and Deputy Ombudsman, my role included overseeing the reportable conduct scheme, reviewing child deaths, and monitoring and reviewing the delivery of community services for 14 years, which gave me insights into the implementation of the information sharing provisions in NSW, which the NSW Ombudsman's Office successfully advocated for during the Wood Special Commission of Inquiry into Child Protection Services in NSW (2007-2009).

The working group would be aware that the Royal Commission into Institutional Responses to Child Sexual Abuse comprehensively drew on Chapter 16A in recommending the development of a child protection information exchange scheme across Australian jurisdictions. The Commission concluded that:

*'Of the existing information exchange schemes, the New South Wales scheme appears to offer the most promise as a model for a nationally consistent scheme for intra- and inter-jurisdictional information sharing to protect children.'*<sup>1</sup>

The *Scoping Paper: national child safety and information sharing* invites responses to a number of questions to inform 'potential approaches to national information sharing'.<sup>2</sup> Jurisdictions have been individually and collectively considering the need to address

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p167.

[https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_8\\_recordkeeping\\_and\\_information\\_sharing.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_8_recordkeeping_and_information_sharing.pdf)

<sup>2</sup> National Office for Child Safety, *Scoping paper: national child safety and wellbeing information sharing*, 2020, p8.

limitations to existing information exchange arrangements, and the various ways this could be done, for many years.<sup>3</sup>

Almost three years have elapsed since the Royal Commission issued its final report, which examined evidence from a range of stakeholders and sources in determining the considerations that governments should take into account in the design of a national scheme.<sup>4</sup> While other jurisdictions, such as Victoria, have in recent years introduced wider information sharing provisions, Chapter 16A has been in place for more than a decade in NSW – and in our view, this represents an ample period of time to ‘stress test’ its benefits and limitations. We also note that, in its comprehensive review of this issue during its inquiry, the Royal Commission has already examined the operation of the Chapter 16A provisions within NSW.

Since Chapter 16A commenced, it has been strengthened in a range of ways, including targeted work previously conducted by the NSW Ombudsman’s Office to promote the awareness and use of the legislation by prescribed bodies, and an expansion of the definition of prescribed bodies to include health workers and child protection authorities in other states and territories. In this regard, we note that the Royal Commission found that Chapter 16A has led to significantly more information being shared than was the case prior to its introduction, and that it has enabled information from a variety of sources to be easily gathered to better inform assessments of and responses to children at risk<sup>5</sup>

We acknowledge that multiple sectors across all jurisdictions are critical partners in the implementation of a national scheme for information sharing. However, we strongly believe that a successful legislative and practical template for such a scheme already exists, albeit with some legislative amendments needed to better clarify the coverage of certain bodies, and we would argue that implementation should be swiftly progressed. Against this background, we have not taken the approach of individually addressing the questions in the Scoping paper. Rather, our comments below emphasise the need for prompt and decisive action to be taken by governments across the nation, to introduce the necessary legislative amendments that are required to protect the safety of children and young people.

### ***The cross-jurisdiction information sharing gap that needs to be filled***

Given the ease with which alleged perpetrators can travel between jurisdictions, either physically or via social media, widely acknowledged gaps and weaknesses in the current regime for exchanging information between states and territories continue to exist – until these flaws in the system are addressed, this unacceptable situation will continue to pose significant risks to the safety of children.

The Interstate Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance is an inadequate mechanism for facilitating the exchange of child

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<sup>3</sup> In 2012, the NSW Ombudsman reported that “as part of the work plan to implement the National Framework for Protecting Australia’s Children, the Commonwealth, in partnership with the States ‘is investigating the need for changes to legislation, most likely Commonwealth legislation, to extend the national protocol for sharing information on children at risk’.” NSW Ombudsman, *Responding to child sexual assault in Aboriginal communities*, December 2012, p173. <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/child-protection/responding-to-child-sexual-assault-in-aboriginal-communities>

<sup>4</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017.

<sup>5</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p76. [https://www.royalcommission.gov.au/sites/default/files/2019-07/case\\_study\\_24\\_-\\_consultation\\_paper\\_-\\_out\\_of\\_home\\_care.pdf](https://www.royalcommission.gov.au/sites/default/files/2019-07/case_study_24_-_consultation_paper_-_out_of_home_care.pdf)

protection related information across borders, for the reasons well documented in reports prepared by the NSW Ombudsman's Office in 2012 (Responding to Aboriginal child sexual abuse) and in 2018 (Inquiry into the JIRT Program).<sup>6</sup> In brief, the major limitations of the Protocol are that the provisions specifically related to 'information sharing,' only refer to relevant child protection agencies providing to their interstate counterparts the information that they 'hold.'

The following case study, documented by the NSW Ombudsman, illustrates how and why this is a problem:

*Community Services requested that one of its interstate counterparts obtain critical information from a school within the counterpart's jurisdiction about unconfirmed allegations that a teacher had engaged in a sexual relationship with a student when they had taught at that school. (Under the reportable conduct scheme, the teacher's current employer – a NSW school – was under a legal obligation to investigate these historical allegations.)*

*In response to Community Services' request, its interstate child protection counterpart advised that it did not 'hold' any information about the teacher within its own records. Community Services then requested that its counterpart seek relevant information from the relevant school within that state. In response, Community Services' counterpart advised that it did not have the authority to request the critical information from the school because it did not have the power to seek information in circumstances where it was not acting pursuant to performing its child protection responsibilities in connection with a child from within its own state.*

*In correspondence between Community Services and its interstate counterpart, the latter noted: 'A more national approach in this area of information sharing would be useful and valuable but unfortunately we do not have it at present.'<sup>7</sup>*

The NSW Ombudsman's Office was advised back in 2012, that work was underway between the state and the Commonwealth to 'investigate the need for changes to legislation, most likely Commonwealth legislation, to extend the national protocol for sharing information on children at risk'. At the time, the Ombudsman's Office noted the urgent need for legislative change to guarantee that any future national protocol for interstate exchange of information is able to both facilitate and promote cross-border information exchange, particularly in circumstances where children's safety is at risk. The Ombudsman's Office also noted that there was potential for this issue to be considered by the then recently announced Royal Commission into institutional child sexual abuse, and for it to support prompt action on this issue.

The following case study was also included in the Ombudsman's 2012 report to illustrate what can be achieved when quality information is exchanged across borders.

*Consistent with our employment-related child protection role, an agency in NSW recently notified us of allegations of sexual misconduct by an employee in 2005 and 2009. The 2009 allegations resulted in a sustained finding of sexual misconduct and the employee was notified to the Commission for Children and Young People. In addition, the NSW Police Force and Community Services had also conducted related*

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<sup>6</sup> NSW Ombudsman, *Responding to child sexual abuse in Aboriginal communities*, December 2012, pp171-173; *The JIRT Partnership: 20 years on*, October 2018, Appendix 2, pp316-318.

[https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0013/60322/Annexure-2-The-JIRT-Partnership-20-years-on.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0013/60322/Annexure-2-The-JIRT-Partnership-20-years-on.pdf)

<sup>7</sup> NSW Ombudsman, *Responding to child sexual abuse in Aboriginal communities*, December 2012, Case study 23, p172.

*inquiries into the employee's conduct that confirmed he posed a significant risk to children.*

*In 2011, the former NSW employer received an information request from an interstate employer who was currently employing the man in child-related work and had become aware that there had been serious allegations made in NSW. The NSW employer was unclear as to whether it could legally provide the information requested. Following this case being brought to our office's attention, we coordinated a review of all relevant holdings relating to the man and requested Community Services provide a summary of these holdings to its interstate child protection counterpart. The provision of this information prompted a police investigation. This then led to police promptly laying a number of charges against him in relation to the sexual abuse of children from within that state. He recently pleaded guilty.*

While there have been some enhancements to interstate information sharing arrangements since the Royal Commission released its final report, these have been focused on child protection authorities -for example, progressing information sharing about foster carers -and they do not comprehensively capture the range of agencies or situations envisaged by the Commission that require information to be exchanged to protect the safety of children.

### **Key elements of an effective national information sharing scheme**

We endorse the Royal Commission's views that an effective national information exchange scheme should be based on nationally consistent arrangements that, at a minimum:

- enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing.<sup>8</sup>
- permit prescribed bodies to provide relevant information to other prescribed bodies without request
- require prescribed bodies to share relevant information on request from other prescribed bodies, subject to limited exceptions
- explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information
- provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme, and
- require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such a person, except where to do so could place another person at risk of harm.<sup>9</sup>

In addition, we make the following observations:

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<sup>8</sup> The Royal Commission recommended that "Australian governments should consider including, as prescribed bodies under our recommended information exchange scheme, government and non-government agencies responsible for the provision or supervision of the following services: accommodation and residential services for children; childcare services; child protection services and out-of-home care services; disability services and supports for children with disability; education services for children; health services for children; and justice and detention services for children." Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p180.

<sup>9</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p174.

- **Principles for the operation of the scheme**

Ultimately, information sharing by organisations with responsibilities for children's safety and wellbeing should not only be for the purpose of identifying risks, but to also facilitate informed and appropriate service responses to risks. The national information sharing scheme should be based on a common requirement and commitment across all jurisdictions, for prescribed bodies to take reasonable steps to coordinate decision making and the delivery of services relating to the safety and wellbeing of children and young people, and to work collaboratively with this common goal in mind. These requirements are enshrined as principles in Chapter 16A.

- **Threshold for triggering use of the information sharing provisions**

The threshold for using the information sharing provisions should be similar to the threshold that applies to Chapter 16A. The obligation to share information under Chapter 16A arises if the prescribed body from whom information is sought reasonably believes the information may assist in the exercise of a range of functions related to the safety, welfare and wellbeing. As noted by the Royal Commission, the inclusion of these terms means that Chapter 16A 'sets a threshold which can capture low level concerns relevant to all children, whether or not they are in care and whether or not a child protection risk has been reported or identified'<sup>10</sup> and 'may be more likely to assist earlier identification of risk based on a totality of relevant information.'<sup>11</sup>

- **Definition of prescribed bodies**

A national information sharing scheme must, like Chapter 16A, '*clearly and comprehensively capture relevant organisations regardless of contractual arrangements or funding source*'.<sup>12</sup>

In relation to the entities that should be 'prescribed bodies', we note that for the purposes of Chapter 16A, prescribed bodies include the NSW Police Force; NSW government departments; schools; health services and practitioners; out-of-home care providers; children's services; and 'any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children'.

The Royal Commission considered whether the definition of 'prescribed body' should specifically include religious and sporting bodies and concluded that while it may be beneficial, further consultation is needed.<sup>13</sup> On this matter, we refer the working group to the NSW Ombudsman's 2016 report, *Strengthening the oversight of workplace child abuse allegations*, which examined the Solicitor General's advice about the inclusion of these bodies in the reportable conduct scheme, and why it would be beneficial to align designated agencies under that scheme with prescribed bodies under Chapter 16A.<sup>14</sup>

The 2016 report to Parliament includes several case studies highlighting the value of agencies within the reportable conduct scheme, along with the oversight body, having 'prescribed body' status to enable information sharing – the case study below provides one such example.

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<sup>10</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p66.

<sup>11</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p71.

<sup>12</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p74-77.

<sup>13</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p192.

<sup>14</sup> NSW Ombudsman, *Strengthening the oversight of workplace child abuse allegations*, February 2016.

*A social organisation made a notification to our office that a man was engaging in grooming-type behaviours with children. At the time, the man was engaged to transport children to one of the organisation's programs, and was also informally involved in some of their other youth programs. The organisation suspended the man pending investigation of the allegations. We decided to monitor the investigation into the allegations. As a result of our review of records on the NSWPF database (COPS), we identified that the man had two completely separate, unlinked police profiles under slightly different names. One profile, created a number of years earlier, contained information relating to child sexual assault allegations against the man. The Joint Investigation Response Team (JIRT) had commenced an investigation at the time, but the victim's parents were not willing to pursue the matter and it was closed.*

*We obtained the details of the historical matter and identified some similarities to the current allegations. We also identified that a piece of evidence had been seized by Police and sent for forensic testing as part of its investigation into the earlier allegations, but that the case had been closed before the results were returned and the results were not recorded in COPS. We wrote to the NSWPF to advise them of the unlinked profiles; the current allegations against the man; the similarities with the earlier matter; and the existence of potentially relevant forensic evidence. We also noted that the alleged victim in the earlier matter was now an adult. In addition, as information on Community Services' database suggested that other agencies which work with children may have engaged the man's services, we contacted the relevant agencies.*

*In response, they confirmed that the man had previously been engaged as a volunteer. We provided this information to Police. The Police investigation of the most recent allegations determined that the man's conduct did not meet the criminal threshold. However, the Police reopened their investigation into the historical matter. The Child Abuse Squad (CAS) retrieved the results of the forensic testing and discovered that unknown male DNA had been detected. The CAS then contacted the alleged victim, who indicated a willingness to pursue the matter criminally and to assist the Police investigation. We continued to liaise with the CAS throughout its investigation. After becoming aware through other sources that the man may have been actively seeking other child-related employment and had applied for a new Working With Children Check, we ensured the Office of the Children's Guardian liaised with the NSWPF. As a result of the Police investigation, the man was charged with a number of child sexual offences relating to the historical matter, and as a result, he is currently disqualified from working with children.*

The NSW Ombudsman also submitted to the Royal Commission that consideration should be given to broadening the definition of 'prescribed body' to include organisations exercising management responsibilities in respect of prescribed bodies. This issue arises in the context of some religious organisations – for example, while Catholic schools or Catholic community services would fall within the definition of 'prescribed body', the Catholic Diocese responsible for those bodies might not. Management bodies of this kind possess, and should be able to readily receive and disclose, child protection-related information. In NSW, section 245B(2A) of the *Children and Young People (Care and Protection) Act 1998* states that a reference to a prescribed body is a reference to all the parts of that body (however described). However,

that may not be sufficient to extend the Chapter 16A framework to a related entity that has a separate legal identity.<sup>1516</sup>

The NSW reportable conduct scheme was recently amended (from 1 March 2020) to include religious entities and its reach will be broadened to include the sporting and recreation sector. Given the structured mentoring and leadership programs that a number of these entities deliver in the children's service and educational spheres, it can be argued that a number of these services would already meet the definition of prescribed body (see above) as a provider of 'children's services' or 'education services.' However, the meaning of these terms has been the subject of considerable debate within NSW. Against this background, any information exchange provisions that are introduced consistent with the Royal Commission's recommendations, should ensure that there is no ambiguity of this kind in the legislation.

As you would be aware, the ACT and Victoria introduced reportable conduct schemes several years ago, based on the NSW scheme which has been operating for 21 years, and other states are currently considering adopting schemes. Therefore, it is critical that these jurisdictions have the benefit of nationally consistent information sharing provisions within their own jurisdiction to facilitate the effective operation of future reportable conduct schemes, as well as access to cross-border information sharing provisions. Relevant to this issue, we are already aware of the enormous practical challenges faced by non-government bodies that have a national footprint, due to them having to navigate the different information exchange regimes that are in force across different jurisdictions across the country. Not only is this state of affairs inefficient, the practical challenges in navigating the maze of legislation in this area can inhibit the exchange of information and put children at risk.

### **Concluding remarks**

Finally, we would submit that while it is important to consult the various sectors representing child serving bodies about their experience of and views about information sharing practice, this work should take place alongside the need to urgently develop and introduce consistent enabling legislation in each jurisdiction and nationally.

We trust that our submission assists the interjurisdictional child safety working group.

We consent to the submission being provided to members of the working group and attributed to our organisations. If further information is required, please contact: Julianna Demetrius at [Julianna@acwa.asn.au](mailto:Julianna@acwa.asn.au) or 0418 671 402.

Yours sincerely,

### **Signatories:**

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<sup>15</sup> It is important to note that increasingly, the delivery of child safeguarding services is being viewed as children's services.

<sup>16</sup> NSW Ombudsman, *The JIRT Partnership: 20 years on*, October 2018, Appendix 2, p318.