

Oversight and regulatory mechanisms aimed at protecting children from sexual abuse: Understanding current evidence of efficacy

Prepared for the Royal Commission into Institutional Responses
to Child Sexual Abuse

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The views and findings expressed in this report are those of the author and do not necessarily reflect those of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Currency

The literature reviews and other searches for relevant sources were conducted in accordance with the time frames of the research contract. Searches relevant to parts 1–4 were conducted by March 2015 and searches relevant to parts 5–6 were conducted by April 2016. The law as stated is current to 30 April 2015.

Developments in law, policy and other bodies of knowledge after these time frames are not covered in this report.

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Preface

On Friday 11 January 2013, the Governor-General appointed a six-member Royal Commission to inquire into how institutions with responsibility for children have managed and responded to allegations and instances of child sexual abuse.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) is tasked with investigating where systems have failed to protect children, and making recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions.

The Royal Commission has developed a comprehensive research program to support its work and to inform its findings and recommendations. The program focuses on eight themes:

- (1) Why does child sexual abuse occur in institutions?
- (2) How can child sexual abuse in institutions be prevented?
- (3) How can child sexual abuse be better identified?
- (4) How should institutions respond where child sexual abuse has occurred?
- (5) How should government and statutory authorities respond?
- (6) What are the treatment and support needs of victim/survivors and their families?
- (7) What is the history of particular institutions of interest?
- (8) How do we ensure the Royal Commission has a positive impact?

This research report falls within themes two and five.

The research program means the Royal Commission can:

- obtain relevant background information
- fill key evidence gaps
- explore what is known and what works
- develop recommendations that are informed by evidence, can be implemented and respond to contemporary issues.

For more on this program, please visit www.childabuseroyalcommission.gov.au/research.

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PART 1 – EXECUTIVE SUMMARY

Part 1.1 – Scope and purpose of this report

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) is required to inquire into, among other things, ‘what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts’.¹

Across Australia, *oversight bodies* enable monitoring of aspects of child welfare, particularly for children in the care and protection system. For this report, the Royal Commission examined oversight bodies including ombudsmen offices (including children’s ombudsmen); reportable conduct schemes; children’s commissions; community visitors schemes; child advocates and children’s guardians; and crime and misconduct commissions. In some instances, these agencies facilitate oversight and responses to child sexual abuse; in other instances, this facility is an implicit or consequential aspect of their authority. These bodies differ across jurisdictions in their form, scope and power. In addition, various *regulatory mechanisms* exist in Australia. For this report, the Royal Commission has examined regulatory bodies including non-government schools’ accreditation boards; early childhood and care regulators; and medical sector regulators. In some instances, agencies’ express purpose is to prevent or minimise the likelihood of child sexual abuse; in other instances, this function is an implicit or consequential aspect of their authority. These bodies also have different features across jurisdictions.

To assist the Royal Commission in addressing its terms of reference, the report initially focuses on understanding the nature of these oversight and regulatory bodies. This is presented in Part 2.

The report then assesses the *efficacy* of these bodies in protecting children from sexual abuse, focusing on institutional contexts. To fulfil the aims of the study as stated by the Royal Commission, this report covers *narrow efficacy* and *broad efficacy*. The report has been informed by regulatory theory, and has used legal analysis, policy analysis and public health research methods, to review and analyse literature for its evaluative purpose. Appendix 2 explains in more detail the concepts of narrow efficacy and broad efficacy, and how they are measured. In sum, the evaluation of narrow efficacy explores the *presence and nature* of key requirements enabling the protection of children from child sexual abuse in institutional contexts; it does so through synthesis and doctrinal analysis. Broad efficacy is conceptualised as the *effect in practice* of the oversight or regulatory mechanism in protecting children from sexual abuse in institutional contexts. The evaluation of broad efficacy asks whether the oversight or regulatory body achieves the policy goal of improving protection of children from sexual abuse in institutional contexts. This is depicted in Table 1.1 (also see Appendix 2).

¹ *Letters Patent (Cth)*, s 12 of 2013, 11 January 2013, (b).

Table 1.1 – Dimensions of narrow and broad efficacy, and evaluation methods

Efficacy	Oversight body example: ombudsman	Type of evidence that may evaluate and demonstrate efficacy	Regulatory body example: non-state schools' accreditation board	Type of evidence that may evaluate and demonstrate efficacy
Narrow sense of efficacy	<p>Does the <i>oversight body</i> (for example, the office of an ombudsman or children's ombudsman (O/CO)) <i>include face/nominal requirements</i> enabling the protection of children from institutional sexual abuse? For example, does the legislation establishing the O/CO:</p> <ul style="list-style-type: none"> enable complaints to be made about child sexual abuse? enable it to institute an investigation of child sexual abuse on its own motion? <p>Additional questions include whether:</p> <ul style="list-style-type: none"> investigations are limited to certain types of institution? recommendations are binding or only persuasive? 	<p>At the simplest level, synthesis of the nature of the body and its regulatory mechanism will show whether these <i>face/nominal requirements</i> exist, and their nature and limitations.</p> <p>At a higher level, there may be evidence (either scholarly literature or other sources; for example, grey literature) about whether key features meet optimal required dimensions of narrow efficacy, as measured against orthodox regulatory theory requirements; for example:</p> <ul style="list-style-type: none"> accessibility clarity accuracy implementation 	<p>At the institutional level, does the <i>regulatory mechanism</i> (for example, legislation setting standards for accreditation of a non-state school) <i>include face/nominal requirements</i> for the protection of children from sexual abuse in an institutional context? For example, to qualify for accreditation (or registration or a licence), is the school required by the regulatory mechanism to:</p> <ul style="list-style-type: none"> have a policy about reporting suspected child sexual abuse? conduct training on child sexual abuse? conduct criminal history checks? otherwise ensure employees are fit and proper persons for the profession? 	<p>At the simplest level, synthesis of the nature of the body and its regulatory mechanism will show whether these <i>face/nominal requirements</i> exist, and their nature and limitations.</p> <p>At a higher level, there may be evidence (either scholarly literature or other sources; for example, grey literature) of the <i>presence</i> or <i>absence</i> of the required components at either cross-sector levels or individual schools.</p> <p>At a higher level, there may be evidence (scholarly literature or other sources; for example, grey literature) about whether key features meet optimal required dimensions of narrow efficacy, as measured against orthodox regulatory theory requirements; for example:</p> <ul style="list-style-type: none"> accessibility clarity accuracy implementation
Broad sense of efficacy	<p>To what extent does the oversight body achieve the policy goal of better protecting children from sexual abuse in institutional contexts?</p>	<p>Evidence of the nature and consequences of agency practice (could be empirical studies and other scholarly analysis, but could also be grey literature – including annual reports, such as data/analysis of agency practice regarding numbers of investigations or inquiries – and outcomes at the individual case level and the broader systemic level)</p>	<p>At the institutional level, to what extent does the regulatory mechanism achieve the policy goal of better protecting children from sexual abuse in institutional contexts?</p>	<p>Evidence (typically empirical studies) – whether at the institutional sector or school level, or at the individual practitioner level – of the effects of the presence or absence of these components, exploring issues such as:</p> <ul style="list-style-type: none"> policy awareness and correlation with reporting practices and outcomes knowledge of child sexual abuse and the correlation with reporting practice and outcomes impact on employment of individuals with criminal histories; impact on actual infliction of child sexual abuse

Accordingly, the report first analyses *narrow efficacy* using selected significant features and parameters of the relevant legislative and regulatory frameworks. This analysis is presented in Part 2, alongside the synthesis of the nature of these bodies. The report then analyses *broad efficacy* using a systematic review of literature, according to the normal conventions of social science and public health scholarship. This is presented in Part 3.

A third, less central, aspect of the report is a summary of evidence about the efficacy of other innovative regulatory models for protecting children from sexual abuse in institutional contexts. This is presented in Part 4. A fourth, again less central, aspect of the report is a summary of models of regulation from other fields or industries that may be applicable or adaptable for protecting children from sexual abuse in institutional contexts. This is also presented in Part 4.

Two additional substantial components of the project were added after parts 1–4 were completed. To assist the Royal Commission in addressing its terms of reference, Part 5 explores how components, structures and mechanisms from occupational health and safety regulatory models in Australia could be used to inform a regulatory approach to protecting children from sexual abuse in institutional contexts. Accordingly, Part 5 presents a synthesis of these occupational health and safety regulatory models. It also analyses whether and

how their central concepts and mechanisms may inform a regulatory approach to protecting children from sexual abuse in institutional contexts.

Finally, to assist the Royal Commission in addressing its terms of reference, and with special reference to different kinds of organisations that serve children and youths, Part 6 explores the regulatory models and approaches that could be used to ensure that smaller organisations with limited resources (namely, sporting, cultural and arts, and recreational groups) are not overburdened with regulation, while still keeping children safe from sexual abuse. As with Part 5, the completion of Part 6 involved research, synthesis and analysis, and the development of reform proposals informed by the relevant principles, theory and evidence.

Part 1.2 – Methodology and approach

Parts 1–4 of this project used a combination of methods to explore the research questions. Doctrinal research was conducted into legislative and regulatory frameworks, both in Australia and overseas, to identify the general nature and significant elements of the respective oversight and regulatory bodies. Regulatory theory was analysed to create a conceptual model of ‘efficacy’, in both narrow and broad senses. Legislative and policy analysis evaluated narrow efficacy of key dimensions of these frameworks. A systematic literature review informed an evaluation of broad efficacy. This review was conducted in accordance with rigorous standards of social science and public health methods, and in compliance with the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) Statement. Further details of the methodology used for parts 1–4 are described in Appendices 1, 3 and 4.

Part 5 involved doctrinal legal research and analysis to identify the nature of occupational health and safety regulatory models in Australia, and their key concepts, mechanisms and application. Analysis of legislation and secondary sources explored how these models ensure both continuous improvement and compliance with legislative obligations. The analysis in Part 5 of the efficacy, strengths and weaknesses of the occupational health and safety regulatory models was informed by a literature review of secondary source materials. Further details of the methodology used for Part 5 are described in Appendix 5.

Part 6 first involved social science research and analysis to identify the nature of sporting, cultural, arts and recreational organisations in Australia, and children’s engagement with them. Social science research was then used to discuss the nature of child sexual abuse in youth-serving institutions generally, and in sporting organisations in particular. Next, Part 6 explored the regulatory models and approaches currently used in these types of child-serving and youth-serving organisations, whether they are large or small, centralised or diffuse. Part 6 then identified dimensions of these organisations that can be the subject of optimal regulation to protect children from sexual abuse. It required a review and analysis of social science literature to identify models and approaches that could be adopted in these types of organisations to protect children from sexual abuse in institutional contexts while still being practical and achievable, given the likelihood of resource constraints. Part 6 presents proposals based on this work, and other components of this report, about what regulatory models and approaches could be used to ensure smaller organisations with limited resources are not overburdened with regulation, while still keeping children safe from sexual abuse. Further details of the methodology for Part 6 are described in Appendix 5.

Part 1.3 – Major findings

The major findings regarding the key components of the report are as follows.

Nature and narrow efficacy of oversight bodies

Ombudsman offices (including special children’s ombudsmen)

Australian ombudsman offices are very similar. Their key function is to receive and resolve complaints about the actions of government agencies and public authorities. Each office has the power to initiate own-motion investigations. There is no dedicated children’s ombudsman, although New South Wales has special jurisdiction over reportable child abuse conduct by government employees (and non-government agency employees; see the Reportable Conduct Scheme summarised next). Some overseas jurisdictions have created special children’s ombudsmen, and, especially where based on a children’s rights model, these have broader power and jurisdiction.

An evaluation of narrow efficacy, based on the legislative framework and regulatory theory principles, indicates that of all frameworks analysed, the model in Greece has the broadest nominal scope. Ireland’s model has notable accessibility mechanisms and consultative processes with children. In Australia, the New South Wales jurisdiction over selected child protection matters is notable, although this functions as part of its Reportable Conduct Scheme.

Annual reports and other inquiries published by ombudsman agencies indicate occasional use of their powers to engage with issues relating to child sexual abuse in institutional contexts, particularly in out-of-home care and especially in Victoria. However, in general in Australia, there is no evidence that ombudsman offices have investigated major system-wide issues relating to child sexual abuse and government agencies and public authorities, with subsequent reform and monitoring.

Reportable conduct schemes

New South Wales is the only jurisdiction to have a reportable conduct scheme of this precise nature. The scheme requires heads of all government agencies, and some non-government agencies (including non-government schools), to notify the NSW Ombudsman when their employees are the subject of ‘reportable allegations’ involving sexual offences and sexual misconduct.

The scheme is a notable additional oversight mechanism because it endows the NSW Ombudsman as an independent oversight body with the power to monitor agencies’ investigations into alleged sexual abuse by their employees and volunteers in both government and non-government organisations. In some cases, it also empowers the Ombudsman to undertake these investigations. An evaluation of narrow efficacy based on the legislative framework and regulatory theory principles indicates this is a nominally robust scheme, although the Ombudsman’s recommendations lack binding force. Recent data indicates promising implementation capacity, with a substantial number of reports made to the Ombudsman in the last year (see Table 2.2). However, without further research it is not possible to know if all reports that should be made have been made. The Ombudsman has noted concerns about some departments not consistently meeting the technical requirements of the scheme.

Children’s commissions

Each Australian state and territory has a different approach to children’s commissions. Not every jurisdiction has a commission, although other agencies may perform some of their normal functions. Five states and territories have dedicated children’s commissions or commissioners (Australian Capital Territory, Northern Territory, Tasmania, Victoria and Western Australia); Queensland has a Family and Child Commission but

no designated children's commissioner; and a Bill to introduce a children's commissioner is pending in South Australia.

Children's commissions normally oversee child protection systems and the children within them generally. But in the Australian Capital Territory, South Australia and Tasmania, their jurisdiction nominally extends to matters affecting all children. Key features generally include monitoring the child protection system; receiving and investigating complaints about matters concerning the child protection system (including service provision); initiating inquiries of their own motion; and consulting with children to inform their activity.

An evaluation of narrow efficacy based on the legislative framework, regulatory theory principles and available data indicate that the scheme in the Australian Capital Territory appears to be the most extensive in its scope, power and accessibility. More evidence of performance and activity would be needed to better evaluate the extent to which these functions are fulfilled in practice. However, annual reports published by the commissions indicate that they use their powers infrequently in relation to child sexual abuse in institutional contexts, and such use does not occur on a system-wide basis.

Community visitors schemes

These schemes normally involve individuals independent from government agencies visiting children in out-of-home care or another child protection system to ensure they are safe and receiving adequate care.

Theoretically, they provide an important and independent point of contact for children in care, and enable problems to be made known. An evaluation of narrow efficacy based on the legislative framework, regulatory theory principles and recent data indicate that few jurisdictions implement a broad scheme. Queensland's scheme appears to be the most extensive in scope, accessibility and breadth of implementation. However, in general, these schemes appear to be substantially under-resourced, with compromised implementation capacity. Further, there is no evidence that children can effectively access and communicate with community visitors about sexual abuse complaints, or that community visitors can effectively protect children for sexual abuse.

Child advocates and children's guardians

Jurisdictions have different models and nomenclature for advocacy and guardianship agencies. The key function of advocacy schemes is to represent and support the interests of children in care, especially in legal proceedings. Four jurisdictions have a 'child advocate' (Australian Capital Territory, New South Wales, South Australia and Western Australia). In Queensland, the public guardian also has an advocacy role for children in some, but not all, types of care (official community visitors having an advocacy role for children in foster and kinship care).

New South Wales and South Australia have an Office of the Children's Guardian, which has a broader remit similar to that of children's commissions in other jurisdictions, overseeing the child protection system generally. The New South Wales Guardian also has regulatory powers relating to the safety of agencies providing out-of-home care. Guardians may also have advocacy functions, comparable to those of the public guardians in South Australia and Queensland.

An evaluation of narrow efficacy based on the legislative framework, regulatory theory principles and recent developments indicate promising principles. However, more data is needed to better evaluate actual implementation practices and the interaction of advocacy with access to children through agencies such as community visitors. In South Australia, notable features include ensuring access and youth participation. Western Australia has recently introduced innovative models of engagement.

Crime and misconduct/corruption commissions

The key function of crime and misconduct/corruption commissions is to investigate corrupt conduct by public officials. These agencies exist in all six states. The Northern Territory and the Australian Capital Territory have different models relating to 'public interest disclosures', akin to whistleblowing schemes. The Australian Capital Territory does not have an independent commissioner responsible for investigating complaints or disclosures. Commissions in Queensland and Western Australia have an additional function, investigating major crime or organised crime by people other than public officials.

Searches of secondary materials did not reveal significant activity investigating child sexual abuse in institutional contexts. An evaluation of narrow efficacy based on the legislative framework, regulatory theory principles and recent data indicate very infrequent use of these schemes in the context of child sexual abuse in institutional contexts.

Overall summary of key findings regarding oversight bodies

There is substantial variation across jurisdictions in the presence, nature, scope and power of each of the six types of oversight bodies, except for the largely similar ombudsman offices. Several of these bodies or mechanisms do not exist in every jurisdiction. Unlike overseas jurisdictions, no Australian state or territory has a dedicated children's ombudsman. The differences in these bodies arise due to their different parameters under state and territory legislation. In addition, state and territory governments inevitably invest more heavily in some agencies than in others. This means that some of these bodies have features and resourcing that at least nominally enable greater oversight of institutions in the context of child sexual abuse. For example, New South Wales is alone in having a reportable conduct scheme; Queensland appears to possess the most extensive community visitors' scheme; and the Australian Capital Territory's Children's Commission appears to have the broadest power. Other localised factors and resource constraints also likely influence the choice of priority areas of oversight, and actual capacity to implement oversight powers. In addition, the capacity of oversight bodies that operate more on the individual level of child interaction may be limited by impediments such as the difficulty children have with disclosing sexual abuse. Overall, there is no clear picture of these oversight bodies having frequent or wide-ranging engagement with matters concerning child sexual abuse in institutional contexts.

Non-government schools

As summarised below, in this multifaceted domain, there are four broad categories of regulation at national, state or territory level regarding the regulation of non-government schools and their teachers. An evaluation of narrow efficacy on multiple dimensions across these categories, based on legislative and regulatory frameworks, and regulatory theory principles, indicates diffuse approaches of greater and lesser narrow efficacy and potential avenues for substantial development. A key finding of general applicability is that even where important measures and requirements exist (for example, regarding training), evidence of implementation and quality is sparse.

Nationwide regulation of non-government schools: Registration and policy

At the nationwide level, there are no legal or policy requirements for non-state school registrations in relation to managing child sexual abuse. The Australian Government facilitates the financing of school education under the *Australian Education Act 2013*. This funding can be conditional on compliance with national policy initiatives, meaning there is potential to use this national regulatory mechanism to centralise a child sexual abuse initiative. This could be supported by existing national educational representative councils and policymaking bodies.

Nationwide regulation of individual teachers in non-government schools

National non-government school representative bodies exist, but generally do not make sector-wide policies that apply nationally. This task is more commonly the domain of state and territory bodies. In this context, the following applies at the national level of regulation of individual teachers in non-state schools:

- (1) There are no conditions for individual eligibility for admission to the profession, such as criminal history checks; other assessment of fitness to teach; employee training regarding child protection, especially against child sexual abuse, through continuing professional development.
- (2) There are no other regulatory measures regarding child sexual abuse (for example, reporting, training and provision of resources) through means such as codes of ethics, codes of conduct and professional standards.

However, in some instances, national bodies have developed policies to support national government initiatives, indicating that the capacity exists to play a nationwide role.

State and territory regulation of non-government schools by legislation: Requirements for school registration

Each state and territory has legislation requiring conditions be met for the registration of non-government schools. These legislative conditions are supported by regulatory standards, which are created either by the relevant minister for education, or the jurisdiction's non-government schools' registration authority. There is some variance in the legislative frameworks, and considerable diffusion in the standards adopted across jurisdictions relating to aspects of these regulatory frameworks for child protection and child sexual abuse. This evaluation of narrow efficacy reveals the following:

- (1) Legislation in three jurisdictions expressly requires criminal history checks (although in the other jurisdictions they may be required by other statutes).
- (2) Legislation in seven jurisdictions requires the school to have policies and procedures for student safety (Tasmania is the exception).
- (3) Legislation in all jurisdictions does not require schools to have processes for teacher training in child protection generally or child sexual abuse specifically.
- (4) Legislation in only one jurisdiction (Queensland) requires the school to have processes for teacher training that covers a duty to report child sexual abuse.
- (5) Standards supporting the legislative framework exist in six jurisdictions; of these, two (Victoria and Western Australia) contain very detailed and specific standards regarding child sexual abuse.
- (6) Standards do not require teachers to be trained in child protection generally or child sexual abuse specifically, although New South Wales, Victoria and Western Australia have partial requirements.
- (7) Standards do not require teachers to be trained in their duty to report child sexual abuse; Western Australia is a notable exception, and New South Wales and Victoria have partial requirements.
- (8) Standards are generally not particularly detailed, but Victoria and Western Australia have detailed and specific documentation.

There was no clear evidence of implementation of the standards; this would need further research.

State and territory regulation of individual non-government school teachers: Registration, law and policy

Each state and territory has regulatory frameworks for legislation, codes of ethics and key policies that are relevant to the initial conditions individual teachers must meet for registration to practise in non-government schools, and to their conduct while registered. As might be expected, since multiple different legislatures and regulatory authorities create these frameworks, there is substantial variation in regulations relating to child protection and child sexual abuse, and different outcomes when evaluating their narrow efficacy.

This evaluation of narrow efficacy reveals the following:

- (1) Legislation in all jurisdictions requires criminal history checks are conducted before a teacher can be registered to teach in a non-government school.
- (2) Legislation in six jurisdictions requires an assessment of fitness to practise before a teacher can be registered to teach in a non-government school.
- (3) Legislation in only one jurisdiction (South Australia) expressly requires applicant teachers to have completed a training course in mandatory notification before being registered; and no other jurisdiction requires continuing professional development in matters relating to child sexual abuse.
- (4) Legislation in each jurisdiction requires suspected cases of child sexual abuse to be reported, although some differences apply.
- (5) Statewide codes of ethics do not require teachers to undertake training in child protection, including child sexual abuse, except in Victoria.
- (6) Statewide codes of ethics do not require teachers to report child sexual abuse, except in Victoria and the Northern Territory.
- (7) Catholic schools have a sector-wide policy in every jurisdiction that requires all teachers to report suspected child sexual abuse. For other independent schools, this sector-wide policy only exists in South Australia.
- (8) Catholic schools have a sector-wide policy in only two jurisdictions (South Australia and Western Australia) that requires all teachers to undertake training in child protection. For other independent schools, this sector-wide policy only exists in South Australia.
- (9) Catholic schools have sector-wide clear, detailed and accessible resources on child sexual abuse in one jurisdiction (South Australia), but other jurisdictions have fewer resources. For other independent schools, only South Australia has this sector-wide approach, with Victoria making available a lower level of information.

Early childhood education and care regulation

An evaluation of narrow efficacy based on legislative and regulatory frameworks, and regulatory theory principles indicate that, overall, aspects of the national framework, as applied in states and territories, appear to provide consistent and positive strategies for regulating the early childhood care and education sector. These include the approach to criminal history checks for providers and employees, and fitness and propriety checks for providers. The national approach appears to meet its aim of providing a more harmonious approach to regulating the sector, although the legislative context is complicated.

However, there are notable variations between jurisdictions:

- (1) Only two jurisdictions (New South Wales and Western Australia) appear to directly require service providers to ensure staff are aware of their duties under child protection laws to report suspected child sexual abuse (Western Australia's child protection laws do not require reporting, but enables it).
- (2) Only two jurisdictions (New South Wales (in part) and Queensland) appear to directly require service providers to ensure staff are trained in child protection generally. Queensland's legislative framework for training appears to be the most developed, at least nominally.
- (3) Five jurisdictions (Australian Capital Territory, New South Wales, Northern Territory, South Australia and Tasmania) have legislation requiring childcare employees to report suspected child sexual abuse; the other three (Queensland, Victoria and Western Australia) do not, although they enable reports to be made.

In addition, a key finding with general applicability is the potential to implement key regulatory measures and capacities to enhance the protection of children from sexual abuse in institutional contexts. For example:

- (1) National and state governments have functions for funding and supporting implementation of the national framework, which could be used to further develop staff training initiatives.
- (2) The functions of the national Australian Children’s Education and Care Quality Authority (ACECQA) include promoting consistent implementation of its National Quality Framework, and educating and informing early childhood education and care (ECEC) services.
- (3) The ACECQA’s National Quality Framework and National Quality Standard has a single national structure, which could be economically developed to promote high-quality training and professionalisation of the ECEC workforce. Training could cover key elements of child protection, including optimal methods of responding to and preventing child sexual abuse in institutional contexts.
- (4) State and territory regulatory authorities have strong enforcement mechanisms, including the power to suspend a service if it is rated as not meeting a standard.

Medical sector regulation

An evaluation of narrow efficacy based on legislative and regulatory frameworks, and regulatory theory principles indicate that, overall, aspects of these frameworks – such as the approach to criminal history checks – provide consistent and positive strategies for regulating the health professions. However, there are areas that vary between jurisdictions and professions, such as in legislative and policy-based reporting duties. In addition, there appear to be common areas where there may be opportunities for development, including:

- (1) The national scheme: (a) does not appear to engage in any other fitness to practise assessment; and (b) all national boards have a CPD requirement but none includes a component on child sexual abuse or child protection.
- (2) The key policies of the boards for medical practitioners and nurses: (a) are not as direct as they might be in reinforcing legislative reporting duties; (b) do not both require or deliver training in child protection; and (c) do not appear to contain helpful resources on child sexual abuse.
- (3) The regulatory frameworks of state and territory health departments: (a) are generally, but not always, comprehensive in extending a reporting duty even to non-mandated health professionals; (b) generally, but not always, require training to be delivered or attended, although whether this occurs in practice is difficult to evaluate; (c) generally, but not always, have readily accessible policy documents; (d) generally are not supported by policy documents with extensive and helpful detail; and (e) would generally benefit by having further, well-developed child sexual abuse resources available to assist health professionals.
- (4) The regulatory context for private hospitals appears less robust and is likely to be more fragmented than that of the public sector. This means that, while health professionals in private hospitals would be covered by the same national regulatory frameworks and state-based obligations, they may not receive the same regulatory support (such as training and access to resources), or have the same level of state-based policy responsibilities as colleagues in public institutions.

Overall summary of key findings regarding regulatory bodies

The regulatory frameworks for each of the three major regulated fields – non-government schools, early childhood education and care, and the medical sector – are characterised by some common positive elements, such as criminal history checks. However, because of the fragmentation made possible by the largely non-centralised regulatory environment, the frameworks are marked by diffusion in multiple significant areas of principle and practice, such as staff training about child sexual abuse. Some jurisdictions and sectors have far

more developed and sophisticated approaches than others, for both their regulated organisations and individuals. However, more robust evidence about whether and how well these approaches are implemented is desirable. Each of these fields is regulated by the national, and state or territory governments and/or other bodies, which appear to have the capacity to assist in coordinating, supporting and delivering high-quality, centralised initiatives.

Evaluation of broad efficacy of oversight and regulatory bodies

Overall, the systematic review of oversight and regulatory bodies in Australia identified no rigorous studies of their broad efficacy in protecting children from sexual abuse in institutional contexts.

Oversight bodies

There were no rigorous studies of the oversight bodies' broad efficacy, such as the actual reduction of child sexual abuse in institutional contexts; fewer instances of child sexual abuse by employees or other people within the oversight body's jurisdiction; detection of more cases of child sexual abuse in institutional contexts; or fewer instances of employing people who clearly pose a risk to children.

Regulatory bodies

There was also a lack of research into similar key dimensions of the regulatory bodies' broad efficacy, such as the actual reduction of child sexual abuse in institutional contexts; fewer instances of child sexual abuse by employees or other people within the regulatory body's jurisdiction; detection of more cases of child sexual abuse in institutional contexts; and fewer instances of employing people who clearly pose a risk to children. There was also a lack of rigorous research into other aspects of broad efficacy, such as the extent and quality of implementation of professional training in child protection, and the consequences of such training on professionals' knowledge, reporting practice and ability to manage child sexual abuse matters generally. For some key professions, such as doctors and police, the review identified no research into any dimension of efficacy.

Training

Several studies of regulatory bodies identified a finer aspect of broad efficacy; namely, the extent to which members of various professional groups, such as nurses, teachers (both in-service and pre-service) and school counsellors, receive training about their policy requirements relating to child sexual abuse and child protection generally. In addition, there were partial assessments of the self-reported adequacy of training, and of the effect of training on reporting generally. Notably, all these studies concluded that training was inadequate. These studies generally covered one jurisdiction, did not always involve large samples, and were limited to self-reported adequacy of training, rather than objective assessment.

Need for research

At the macro level of broader efficacy, carefully designed research is needed into the efficacy of oversight and regulatory bodies, and their contribution to protecting children from sexual abuse in institutional contexts. At the micro level of broad efficacy, research is needed into key issues such as the nature, extent and adequacy of professionals' training in relation to child sexual abuse, and the adequacy of resources to assist them.

Other methods of regulation

There is little evidence about the efficacy of other innovative regulatory models for protecting children from sexual abuse in institutional contexts. This is partly due to child sexual abuse in institutional contexts only recently being recognised and the difficulty of implementing and evaluating responsive and preventive

measures. However, evidence does exist to demonstrate the efficacy of some measures, including school-based sexual abuse prevention programs.

Leading scholar Sandy Wurtele recently described a multi-layered approach to preventing child sexual abuse in institutional contexts that was informed by an ecological perspective. Wurtele's model is a comprehensive strategic approach to preventing child sexual abuse in institutional contexts, which includes responsive measures at the macro and micro levels.² Currently, there is no evidence that the entire model has been trialled and rigorously evaluated. However, Wurtele provides a practical model, which is informed by the literature and an ecological framework. The model offers concrete operational guidance on multiple dimensions of law, policy, education and organisational practice. Detailed strategies are provided to improve organisational contexts, and reduce institutional and individual risk by:

- securing situational factors (such as features of the physical environment)
- creating a healthy agency culture to promote children's safety (including sound decision-making processes, organisational openness and healthy interpersonal relationships)
- implementing risk management strategies through robust policy (on child protection generally, staff interaction with students – including through social media and electronic communications – professional staff supervision and employee screening), education (for staff, children and parents) and practice.

Overseas legislative models for regulating comparable sectors were consulted. Some of these contained notable legislatively embedded features relating to children's rights and safety in non-government schools, which may be relevant for developing new principles or approaches to aspects of Australian regulatory models. These features also align with some of the recommendations in Wurtele's model. These models, from Quebec and Norway, are described in Part 4.2.

Current regulatory approaches to protecting children from sexual abuse in institutional contexts comprise a combination of hard law or direct government regulation (exemplified by criminal history screening processes for employees); co-regulation (exemplified by instances where organisations are required by legislation to have a policy for reporting child sexual abuse, or to train employees about child sexual abuse, but the industry itself creates the policy or designs and delivers the training); and self-regulation (absence of government involvement, exemplified by disparate approaches to educational requirements and activities across and within sectors).

Regulatory theory, supported by studies of regulation in other fields, suggests that a strong, centralised form of direct regulation and program delivery is required in situations such as those that exist for child sexual abuse in institutional contexts, namely when factors include:

- (1) the presence of high risk
- (2) the involvement of a major public health issue
- (3) the involvement of multiple industries (for example, schools, early childhood education and care settings, and medical institutions)
- (4) further fragmentation within those industries (different school types/sectors; different early childhood education and care settings; and different medical professions and settings)
- (5) the wide geographical spread of these industries
- (6) the need for highly specialised subject matter and skills (for example, in professional educational efforts)

² Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations', *Children and Youth Services Review*, no. 34, pp 2442–2453.

- (7) the desirability of policy that has universal application
- (8) the desirability of certainty
- (9) economic pressure on the regulated industries
- (10) conflicting organisational interests and cultural values, which may not align with the ideal form and content of regulation
- (11) insufficient industry capacity and/or commitment to respond to the problem
- (12) the risk of noncompliance or active subversion.

However, while stronger than a conventional co-regulatory approach, such direct regulation will still require substantial cooperation between the relevant authorities and individuals. This cooperation will be required to not only heighten the likelihood of organisational and individual compliance, but to foster long-term cultural change, organisational adaptation and growth, and achievement of regulatory goals. Genuine compliance, sustained over time that creates an improved culture and a self-perpetuating cycle of desired behaviour and attitudes, is contingent upon:

- receiving cooperative and coordinated support by major government and non-government actors for major regulatory initiatives
- building genuine organisational and individual commitment to the policy measures and practices through the development of attitudinal factors that underpin an internalised normative duty
- having a small number of actors in an organised and homogenous environment
- having simple, streamlined procedural structures
- having a robust enforcement regime.

Occupational health and safety schemes

Several components, structures and mechanisms for implementation from occupational health and safety (OHS) regulatory models in Australia may inform a regulatory approach to protecting children from sexual abuse in an institutional context.

Strengths of current approaches and instructive experience

In particular, the creation of a comprehensive model of regulatory principles that are embedded in a centralised national legislative framework (albeit without universal adoption) with centralised regulators, demonstrates the potential for widespread agreement on unified approaches to promoting the safety of workers and other people in workplaces, including protecting people from personal violence.

The core duty the legislation promotes is that a person conducting a business or undertaking (PCBU) must ensure the protection of workers and other people against harm to their health, safety or welfare. This is done by eliminating or minimising risks arising from work, as is reasonably practicable, including the risk of personal violence.

Due diligence duties are imposed on officers of organisations to ensure the PCBU complies with the core duty to ensure a safe workplace. The imposition of these duties embodies an approach which emphasises the organisation's leaders are responsible for the creation of an appropriate workplace culture.

The legislative requirement for PCBUs to provide information, training and instruction to workers about the nature of their work, its risks and control measures, is also a strong positive duty. This complements the duty imposed on workers to comply with reasonable instructions from the person conducting the business or undertaking, creating a mutual obligation in the domain of training.

Strict licensing requirements and high safety standards are enforced for high-risk organisations and activities. In addition, accredited Registered Training Organisations deliver centralised and high-quality training prior to licensing for high-risk work, providing an important quality assurance standard.

Regulators such as Safe Work Australia use centralised, innovative and flexible approaches to training, and guidance and support. These include delivering virtual seminars and hosting a YouTube channel, as well as providing model codes of practice and guidance materials. This shows that cost-effective and harmonised programs can be delivered across a diverse range of organisations, responding to challenges of geographical diffusion and industrial fragmentation.

Finally, at least in theory, broad powers conferred on inspectors and diverse measures indicate the ability to develop a range of measures that respond to industry practices and problems. Some measures may include a proactive element.

Applying a conventional approach to statutory interpretation, it may not be possible to use OHS schemes to create a general duty on PCBUs to protect children from sexual abuse in the workplace.

Weaknesses

The current approach has weaknesses that are instructive, although perhaps not insurmountable in new contexts. One notable aspect is the lack of nationwide harmony, with two jurisdictions still retaining their own legislative models.

Perhaps the most prominent deficiency is that independent monitoring and evaluation mechanisms are weak. This means, for example, there is no independent check on the quality of training delivered. In addition, PCBUs are not required to systematically identify, assess, control and monitor risks, or to report on their activity. There is no legislative requirement for systematic evaluation or auditing.

In practice, a catalyst for interaction with an OHS regulatory body is typically due to a 'notifiable incident' triggering an inspection, suggesting there is too much emphasis on reactive rather than proactive regulation.³

Strong theoretical knowledge

There appears to be strong theoretical knowledge about optimal approaches to regulation. Examples include knowledge about:

- the requirements for effective codes of practice and guidelines⁴
- the importance of training, its optimal design and nature, and best-practice strategies for implementation⁵
- the requirements for auditing to ensure continuous improvement.⁶

Lack of empirical evidence

Scarce empirical evidence exists about the effectiveness of work health and safety interventions in Australia generally, or for specific regulatory measures. Safe Work Australia's extensive literature review in 2013 concluded, 'Almost no information is currently available' about the 'effectiveness of work health and

³ Johnstone, R. & Tooma, M. (2012). *Work Health & Safety Regulation in Australia*. Federation Press: Sydney.

⁴ Gunningham, N. & Bluff, E. (2008). *A Review of Key Characteristics that Determine the Efficacy of OHS Instruments*. Australian Safety and Compensation Council: Canberra.

⁵ Dyck, D. (2007). *Occupational Health & Safety: Theory, Strategy & Industry Practice*. LexisNexis Canada: Ontario.

⁶ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney.

safety interventions in Australia'.⁷ The review, conducted by the author of this report, identified little additional evidence.

Bluff and Gunningham's model

Bluff and Gunningham have suggested a 10-factor model to strengthen the harmonisation enforcement approach.⁸ This model may be instructive for exploring the regulation of smaller organisations to prevent and respond to child sexual abuse (see parts 6.3.4–6.3.5). Bluff and Gunningham propose that government regulatory authorities 'cooperatively develop and implement programs for administration and enforcement of WHS legislation' in a consistent manner with regard to 10 elements.⁹

Seven overarching proposals

The analysis in Part 5 concludes that there are seven overarching proposals for how components from OHS schemes could inform a regulatory approach to protecting children from sexual abuse in institutional contexts:

- (1) A single, centralised national regulatory body could be made responsible for as many of the regulated dimensions as possible.
- (2) National, state and territory governments (and possibly government-run child protection bodies such as children's commissions) could provide financial and logistical support for this body.
- (3) This body could have considerable strength in its regulatory actions, and it could be supported by a legislative scheme (or could at least have the power to compel certain acts via organisations' accreditation or registration requirements).
- (4) In developing harmonised, common approaches to as many of the relevant aspects of the regulated subject matter as possible, this body could consult and cooperate with major child-serving institutions, while retaining ultimate decision-making power.
- (5) Mechanisms for providing key components of the regulated subject matter could be simple, streamlined, cost-efficient and easily accessible (for example, online education, training and resources; online distribution of codes of conduct, policies and forms; online administration of accreditation; and centralised data collection and analysis).
- (6) Quality assurance and periodic reviews could be conducted by either one body or a small number of auditing bodies, which are overseen by the central agency to ensure quality.
- (7) The strength of the centralised regulatory body is necessary but could be balanced with strategies to (a) enhance stakeholder adoption of the ideals underlying the regulated context, and (b) develop intrinsic organisational and individual attitudes to heighten the likelihood of compliance and sustained cultural change and commitment. Therefore, several key dimensions of the subject matter of regulation could receive special attention, with education and training as the cornerstone.

Note that as outlined in Part 5.5.2 at p 181, and reaffirmed in Part 6.3.3 at p 203, for political, practical or other reasons, it may not be possible to develop a single centralised body. An alternative approach may be needed that is still consistent with the five key requirements for implementing the subject matter of regulation, including the need for a small number of actors in an organised and homogenous environment, and cooperative and coordinated support by major government and non-government actors. One example of such

⁷ Safe Work Australia. (2013). *Effectiveness of work health and safety interventions by regulators: A literature review*. Safe Work Australia: Canberra, p 9.

⁸ Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes'. *Australian Journal of Labour Law*, vol 25, pp 85–106.

⁹ Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes'. *Australian Journal of Labour Law*, vol 25, pp 85–106.

an alternative approach is the implementation of a nationally consistent regulatory approach by state and territory agencies with specific responsibility for protecting children from sexual abuse in institutional contexts, ideally under the umbrella of a national coordinating agency. This type of hub-and-spoke approach is similar to the OHS framework (see Part 5.2). The group of coordinated agencies operating under this kind of approach would need to meet the requirements outlined in the seven overarching proposals. However, it should be noted that avoiding unnecessary duplication and diffusion, and creating a high-quality, homogenous regulatory environment are paramount.

Further detailed proposals for high-risk environments

The above proposals could be expanded to include more detailed approaches, accommodating organisations with higher levels of risk. For example:

- (1) Institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities undertaken, could be subject to:
 - (l) more stringent accreditation conditions
 - (m) more frequent and/or more rigorous auditing (including auditing of the organisation's policy and code of conduct)
 - (n) more frequent inspection, conducted independently of incident notification
 - (o) heightened requirements for education and training of organisational officers
 - (p) heightened requirements for education and training of staff
 - (q) more rigorous requirements to demonstrate compliance
 - (r) more rigorous requirements to demonstrate continuous improvement.
- (2) Officers of institutions, and especially those where there is greater risk of child sexual abuse, could be made subject to due diligence duties similar to those imposed on officers of organisations covered by the OHS scheme.

Models for regulating sporting, cultural, arts and recreational groups to protect children from sexual abuse

There is substantial child involvement in sporting, cultural, arts and recreational groups, with some activities – including swimming, soccer, music, dancing, YMCA and scouts – attracting particularly high participation.

Organised sporting, cultural, arts and recreational groups for children and youth are heterogeneous in nature, size, clientele, staffing and governance. This has significance for any consideration of appropriate regulatory models, and for optimal methods of implementation. Yet, it is possible to discern two broad kinds of organisations, which are sometimes referred to in this report as Type 1 and Type 2 organisations. First are large national organisations with state and territory associations, and regional and local administrative bodies. Many have individual clubs or local organisations that may be small and geographically diffuse. These organisations tend to have centralised child protection policies and management structures. These are Type 1 organisations. Second are other organisations that are not as large or centralised. They are more diffuse and lack centralised child protection policies and management structures at the national, state or territory level, and sometimes even locally. They may have very few staff members and low budgets, and may rely more heavily on volunteers. These are Type 2 organisations.

However, a unifying characteristic is that all these organisations are currently self-regulated. There is a small degree of external accreditation, but even this amounts to self-regulation.

Child-serving and youth-serving institutions and organisations have a range of characteristics that create opportunities for sexual abuse. The nature of the activities of some of these organisations means they present a higher level of risk. Some sporting groups fall into this category.

Situational crime prevention theory offers insights into methods of regulation to prevent and respond appropriately to child sexual abuse in institutional contexts. Situational crime prevention aims to regulate the environment within which abuse may occur, and includes measures such as screening; developing policies and regulations about staff conduct to prevent offending; and altering the environmental design of the institution to eliminate or reduce hazards and risks.

Recommendations from academic experts, and existing policy initiatives, are consistent with and embody these situational crime prevention proposals, as well as adding other key details to a regulatory model.

Seven key prevention dimensions

Wurtele's model and the *CSA Prevention Evaluation Tool for Organizations: Child Protection Policy & Procedures* sets out a matrix of seven key prevention dimensions, with each having multiple subcomponents. Wurtele's model is consistent with others in this field, but appears the most detailed. The seven dimensions are:

- the organisational policy
- safe screening and hiring
- code of conduct
- implementation and monitoring
- ensuring safe environments
- reporting and responding to concerns, disclosures and allegations
- training and education.

Arguably, it is possible to incorporate each of these seven dimensions into a regulatory model for smaller organisations of the kinds considered in this study, at least to a considerable extent. Analysis of the subcomponents of each of the seven dimensions indicates important substantive aspects of each dimension that can be expertly designed, harmonised for use across the different kinds of organisations, and delivered efficiently. Some aspects of consultation and implementation may need to be modified for the different kinds of organisations.

The proposals are consistent with the regulatory theory principles covered in this project, and with principles from OHS schemes. Because of the presence of almost all of the 12 features of child sexual abuse in institutional contexts, which generally merit a centralised and direct regulatory model, direct regulation is necessary and preferable. The proposed model of regulation and implementation should prioritise this method wherever possible.

Five key requirements

Consistent with the findings of the regulatory theory analysis, the five key requirements for implementing the subject matter of regulation are:

- major government and non-government actors provide cooperative and coordinated support
- genuine organisational and individual commitment to the policy measures and practices is developed, through inculcation of attitudinal factors that underpin an internalised sense of normative duty
- a small number of actors are involved in an organised and homogenous environment
- procedural structures are simple and streamlined
- a robust enforcement regime.

Main finding about optimal model and approach

The overarching findings relating to the best regulatory model and approach for these organisations is as follows:

- (1) A single, centralised national regulatory body could be made responsible for as many dimensions as possible.
- (2) National, state and territory governments (and if desirable, relevant government child protection bodies such as children's commissions) could provide financial and logistics support to this body, but duplication and fragmentation must be avoided.
- (3) This body could have considerable strength in its regulatory actions; it could be supported by a legislative scheme (if this is not possible, it should at least have the power to compel certain acts via organisations' accreditation or registration requirements. Where an existing organised sporting, cultural, arts or recreational group does not have an accreditation or registration process, such a process could be developed in a streamlined, cost-effective and practicable way for the purpose of child protection).
- (4) In developing harmonised, common approaches to as many of the relevant aspects of the regulated subject matter as possible, this body could consult and cooperate with representatives of major child-serving institutions (and where peak organisations do not exist, it could consult with the relevant bodies), but ultimate decision-making power would rest with the regulatory body.
- (5) Mechanisms for providing the regulated subject matter could be simple and streamlined, and use easily accessible methods (for example, using online resources for training and other dimensions of the regulated subject matter).
- (6) Quality assurance and periodic review could occur at intervals, conducted by either one body or a small number of auditing bodies, which are overseen by a central agency to ensure quality.
- (7) The centralised regulatory body must have considerable power, but this must be balanced with strategies to (a) enhance stakeholder adoption of the ideals underlying the regulated context; and (b) it must develop intrinsic organisational and individual attitudes to heighten the likelihood of compliance and sustained cultural change and commitment. Several key dimensions of the subject matter of regulation could, therefore, receive special attention, with education and training being the cornerstone. Cooperation between government regulators and support provided by regulators to the organisations (in policy materials, training programs and other aspects of the model) should assist this. In addition, under this recommended approach, the central regulator will relieve pressure on existing organisations, allowing them to develop initiatives, protect children, and protect themselves.

Note that as outlined in Part 5.5.2 at p 181, and reaffirmed in Part 6.3.3 at p 203, political, practical and other reasons may mean it is not possible to develop a single centralised body. An alternative approach may be needed that is still consistent with the five key requirements for implementing the subject matter for regulation, including the need for a small number of actors in an organised and homogenous environment, and cooperative and coordinated support by major government and non-government actors. One example of such an alternative approach is the implementation of a nationally consistent regulatory approach by state and territory agencies with specific responsibility for protecting children from sexual abuse in institutional contexts, ideally under the umbrella of a national coordinating agency. This type of hub-and-spoke approach is similar to the OHS framework (see Part 5.2). The group of coordinated agencies operating under this kind of approach would need to meet the requirements outlined in the seven overarching proposals. However, it should be

noted that avoiding unnecessary duplication and diffusion, and creating a high-quality homogenous environment of regulation, are paramount.

Optimal approach

The subject matter of the context of child sexual abuse, and the challenges and requirements of this context are common for all types of child-serving organisations. The experience of child sexual abuse in both Type 1 and Type 2 organisations, the analyses in this Report, the insights from regulatory theory about optimal approaches, and the current regulatory practise in sporting, cultural, arts and recreational organisations, all inform a conclusion that the optimal approach to implementing many of the required dimensions of regulation is a unified, centralised approach implemented by a central authority having extensive powers to develop, communicate, administer and enforce the regulated subject matter. This offers the greatest likelihood of promoting quality of design and best practise, avoiding poor design and practise, avoiding fragmentation and diffusion, achieving efficient use of resources and avoiding duplication of effort, and enhancing child protection.

Because of the different features of large and small organisations, slightly different implementation approaches may be needed to regulate some aspects of the subject matter. In addition, different approaches may be needed for compliance and continuous improvement. Some organisations present higher risks, and may require more stringent approaches to implementation and enforcement, and to requirements for continuous improvement. Type 2 organisations may require further support for capacity-building and an approach to implementation that is not as stringent as some Type 1 organisations (see Table 6.6).

Common approach to core content

However, across all these organisations, a common approach to the core content of several key aspects of the subject matter of regulation is desirable and arguably could be implemented. These key aspects include: *the design of a code of conduct, the design of the organisational policy, and the design of education and training*. In addition, in all cases, as observed above, a direct regulatory model must attract substantial cooperation between relevant authorities and individuals, to heighten the likelihood of compliance, to sustain it over time and to foster long-term cultural change and ongoing continuous improvement by self-monitoring and external checks.

Ensuring compliance

Several dimensions of the subject matter of regulation are particularly important for both Type 1 and Type 2 organisations. These dimensions, arguably, are organisational policy; code of conduct; implementation and monitoring; reporting and responding; and training and education. Given that these dimensions constitute preconditions for creating child safe organisations, compliance with these dimensions by both Type 1 and Type 2 organisations could be made a condition of organisational registration or accreditation (and/or financial support by the state), without which the organisation would not possess lawful status to operate. These dimensions could also be a focus of organisational auditing and review, and efforts at continuous improvement.

Continuous improvement of organisational efforts to prevent and respond appropriately to child sexual abuse could be a focus of auditing procedures

Type 1 organisations in particular, and other organisations where risk is high, should be required to demonstrate their efforts to continuously improve the nature and implementation of their practise – especially of the central dimensions of the regulated subject matter – as a condition of receiving audit approval and registration or accreditation, and/or of receiving ongoing funding. This could apply to the dimensions of organisational policy; code of conduct; reporting and responding; and training and education.

Directors and managers

In addition, in Type 1 organisations, in institutions where child sexual abuse is more common, and in organisations where the risk is heightened because of the activities undertaken, directors or managers could be required or encouraged to demonstrate: (a) completion and achievement of advanced education and training; (b) how improvements have been made after previous audit recommendations; (c) audit procedures that are more stringent; and (d) that inspections are conducted independently of incident notification and outside audit periods.

Minimising burden

Smaller organisations, especially those identified as Type 2 organisations, should not be overburdened with regulation. Current self-regulation imposes far greater burdens on multiple Type 1 and Type 2 organisations than the model proposed by this report. Methods of implementation of key dimensions of the relevant subject matter could be adopted to minimise resource burden for all organisations. The most significant ways to minimise resource burden, while achieving quality of design, and eliminating duplication and fragmentation, are to:

- hand responsibility for design of the key dimensions of the subject matter (organisational policy; code of conduct; education and training; and screening) to the central regulatory agency at a national level
- adopt simple, streamlined, readily accessible measures and formats, including through central online websites, to deliver and implement key dimensions of the subject matter (education and training; and implementation and monitoring)
- depending on the type of organisation and its level of risk, conduct audits with greater or lesser levels of frequency, and with differing levels of focus.

PART 2 – THE NATURE OF REGULATORY AND OVERSIGHT SYSTEMS AND AN EVALUATION OF NARROW EFFICACY

Part 2.1 – Oversight systems: Ombudsmen and children’s ombudsmen

2.1.1 Ombudsman offices generally

Numerous countries have adopted the ombudsman concept, which originated in Sweden in 1809 as a ‘representative of the people’. Ombudsman offices exist in every Australian state and territory. The ombudsman’s core purpose is to provide a complaints mechanism for individuals about their dealings with government agencies and employees. However, the ombudsman is not simply an advocate for those who make a complaint.

Australian ombudsman offices

Ombudsman offices in Australia are very similar in their functions, powers and jurisdiction. A summary of their features is provided here, and tabulated in Table 2.1.

Each office has the clearly defined function of receiving complaints about administrative actions of public agencies, with associated powers to investigate where necessary. This jurisdiction normally extends to agencies that receive some level of public funding, even if the agency is not completely publicly funded. Administrative actions also include failures to act, and proposals to act in a certain way. In addition to taking action after receiving a complaint, ombudsmen are also able to instigate investigations on their own behalf.

After conducting an investigation, ombudsmen can make recommendations to an agency, including taking a certain action. However, these recommendations do not have determinative power; therefore, they cannot compel a course of conduct. Recommendations rely on persuasive force and, in some instances, the ability of the ombudsman to inform the responsible minister of the agency’s failure to respond in the recommended way. Different jurisdictions confer a narrower or broader range of powers on the ombudsman in this regard and the legitimate scope of power remains debated.

A specialised New South Wales Ombudsman

Some jurisdictions have created specialised ombudsman offices for designated activities, with jurisdiction extending to some non-government agencies and the private sphere. Relevant to this report, some have advocated for the establishment of special children’s ombudsman offices.¹⁰ In Australia, New South Wales is the only jurisdiction to expressly confer a specific responsibility on an

¹⁰ McMillan, J. (2005), ‘The Ombudsman and the Rule of Law’, Australian Institute of Administrative Law Forum, no 44, p 1.

ombudsman concerning child abuse, as a component of its general ombudsman legislation (the reportable conduct scheme).

2.1.2 Overseas ombudsmen offices, including children’s ombudsmen

This study also reviewed selected overseas children’s ombudsman offices, including those in Greece, Norway, Ireland and the United States. Some of these models are more expressly premised on children’s rights, and apply to both public- and private-sector bodies. This clearly broadens the scope of power held by an ombudsman, extending beyond the original concept of oversight of public administrative bodies.

In the United States, there are three models in more than 20 states, which are similar but have different remits and powers.¹¹ At the broadest level, a children’s ombudsman in the United States, sometimes called an ‘Office of the Child Advocate’, provides oversight of children’s services.

Generally, these offices:

- protect the interests and rights of children and families individually and systemically
- investigate complaints related to government services for children and families, which may include child protection services, foster care, adoption and juvenile justice
- recommend systemic improvements to benefit children and families
- monitor programs and departments that provide children’s services, which may include inspecting state facilities and institutions.

These are independent and autonomous agencies with oversight specific to child welfare, and exist in 11 states to deal with issues relating to children (Colorado, Connecticut, Georgia, Indiana, Maine, Massachusetts, Michigan, Missouri, Rhode Island, Tennessee and Washington). These offices may exist independently within either the legislative or executive branch, and are not part of the state’s division of child and family services.¹² Statutory duties typically include receiving and investigating complaints, usually including the power to subpoena.¹³

A note on implementation

Without further data and exploration, which is beyond the scope of this project, it is difficult to indicate the precise extent to which ombudsman offices are readily accessible to children or their representatives, and the extent to which they implement their powers specifically relating to child sexual abuse in institutional contexts (Table 2.1). However, it can be noted that annual reports from some ombudsman offices indicate engagement with issues relating to child sexual abuse in institutional contexts, particularly in out-of-home care, and especially in Victoria¹⁴, South Australia¹⁵

¹¹ See the summary at the United States Ombudsman Association. Retrieved 5 February 2016 from <http://www.usombudsman.org/>.

¹² O’Neill, M. (2011). *Pulling Back the Curtain: State Children’s Ombudsmen at Work*. Retrieved 5 February 2016 from http://www.americanbar.org/content/dam/aba/administrative/child_law/moira_oneill_dissertation_2011.authcheckdam.pdf, p 107.

¹³ A second model exists in five states – Alaska, Arizona, Hawaii, Iowa and Nebraska – where general jurisdiction ombudsmen provide oversight to all governmental agencies or departments, including child welfare. A third model operates in California, Texas and Utah, where ombudsmen have a more limited remit (for example, for foster care only, or juvenile justice only).

¹⁴ See Victorian Ombudsman. (2009). *Own motion investigation into child protection – out-of-home care*. Retrieved 5 February 2016 from <https://www.ombudsman.vic.gov.au/Publications?page=10>, 44ff. See also Victorian Ombudsman. (2009). *Own motion investigation into the Department of Human Services – Child Protection Program*. Retrieved 5 February 2016 from <https://www.ombudsman.vic.gov.au/Publications?page=11>; and Victorian Ombudsman. (2006). *Improving responses to allegations involving sexual assault*. Retrieved 5 February 2016 from

and New South Wales, among others.¹⁶ Yet, in general in Australian jurisdictions, it is not evident that ombudsman offices have investigated major system-wide issues relating to child sexual abuse and government agencies and public authorities, with subsequent reform and monitoring.

2.1.3 Synthesis and summary of efficacy

Of all the frameworks analysed, the Greek model has the broadest nominal scope. Ireland's model has notable accessibility mechanisms and consultative processes with children. In Australia, the New South Wales jurisdiction over selected child protection matters is notable. Table 2.1 sets out the key features of Australian and overseas ombudsmen, informed by analysis of the legislation establishing each office. For this report, key dimensions of the ombudsman's capacity and activity have been analysed to fulfil the synthesis aspect of the project and to evaluate narrow efficacy. Accordingly, Table 2.1 synthesises key features and narrow efficacy dimensions regarding:

- whether the ombudsman has specific jurisdiction over children, and child sexual abuse in institutional contexts in particular
- the extent of jurisdiction (whether it extends to private institutions as well as public agencies)
- accessibility to children
- implementation capacity (own-motion investigation capacity and whether recommendations are determinative or only persuasive).

<https://www.ombudsman.vic.gov.au/getattachment/dbaafde8-38d3-40bf-bdc6-cab3a59ba918//reports-publications/parliamentary-reports/improving-responses-to-allegations-involving-sexua.aspx>.

¹⁵ Ombudsman South Australia. (2014). *Report: Department for Education and Child Development*. Retrieved 5 February 2016 from <http://www.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Education-and-Child-Development-Alleged-inadequate-management-of-child-sexual-abuse-incidenthttp://ww.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Education-and-Child-Development-Alleged-inadequate-management-of-child-sexual-abuse-incidents.pdf>; Ombudsman South Australia. (2013). *Report: Department for Education and Child Development*. Retrieved 5 February 2016 from <http://www.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Education-and-Childrens-Services-handling-of-a-child-sex-offence.http://ww.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Education-and-Childrens-Services-handling-of-a-child-sex-offence.pdf>.

¹⁶ For example, the New South Wales Ombudsman reports engaging with the Department of Community Services about matters such as (1) historic cases of sexual abuse where the alleged offender may be involved in child-related work; (2) failure to notify the Ombudsman about a foster carer who had failed to protect her daughter from sexual abuse by her partner. For example, see NSW Ombudsman. (2014). *NSW Ombudsman Annual Report 2013–14*. Retrieved 5 February 2016 from [http://www.ombo.nsw.gov.au/news-and-publications/publications/annual-reports/nsw-ombudsman](http://www.ombo.nsw.gov.au/news-and-publications/publications/annual-reports/nsw-ombudsmanhttp://ww.ombo.nsw.gov.au/news-and-publications/publications/annual-reports/nsw-ombudsman), 84ff; NSW Ombudsman. (2013). *NSW Ombudsman Annual Report 2012–13*. Retrieved 5 February 2016 from http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0007/6829/NSWOmbo_AR_11_12_Web.pdfhttp://ww.ombo.nsw.gov.au/_data/assets/pdf_file/0007/6829/NSWOmbo_AR_11_12_Web.pdf, 81ff; NSW Ombudsman. (2012). *NSW Ombudsman Annual Report 2011–12*, vol 2. Retrieved 5 February 2016 from http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0017/5174/NSWOmbo_AR_10_11_Web_Pt2.pdfhttp://ww.ombo.nsw.gov.au/_data/assets/pdf_file/0017/5174/NSWOmbo_AR_10_11_Web_Pt2.pdf, p 68.

Table 2.1 – Oversight systems: Ombudsmen and children’s ombudsmen – Australia and selected overseas jurisdictions

Australian jurisdictions	Key features	Narrow efficacy on key dimensions					
		Is there a specialised children’s ombudsman or a general ombudsman’s office?	Does jurisdiction extend specifically to children and child sexual abuse in institutional contexts?	Does jurisdiction apply to public and private sectors?	Is the ombudsman accessible to children, specifically relating to child sexual abuse in institutional contexts?	Can the ombudsman instigate investigations on its own motion, or only after receiving a complaint?	Are recommendations and findings binding and determinative, or are they merely persuasive?
<p>ACT</p> <p><i>Ombudsman Act 1989</i></p> <p>http://www.ombudsman.act.gov.au</p>	<p>General complaint and investigation purpose set out in ss 5, 9</p>	General Ombudsman	Does not extend to children and child sexual abuse in institutional contexts	Public only	Not possible to conclude without further data	Complaint plus own motion (under s 5)	Not binding (under s 18); but may ask the agency to report on action it proposes to take
<p>NSW</p> <p><i>Ombudsman Act 1974</i></p> <p>http://www.ombonsw.gov.au</p>	<p>General complaint and investigation purpose set out in ss 12, 13</p> <p><i>Ombudsman Act</i> pt 3A is devoted to matters specific to child protection</p> <p>Under s 25B(1), the Ombudsman has an express requirement to ‘keep under scrutiny the systems for preventing reportable conduct by employees of designated government or non-government agencies or of other public authorities, and for handling and responding to allegations of reportable conduct (sexual misconduct or offences) or convictions’; under ss (2), the Ombudsman may require the head of any such agency to provide information about those systems</p>	General Ombudsman, but with special responsibility for child protection under pt 3A	Yes	Yes, partly. In pt 3A, ‘designated <i>government</i> agencies’ include the Department of Education and Ministry of Health, and other public service agencies; ‘designated <i>non-government</i> agencies’ include non-government schools, out-of-home care, and approved education and care services under the Children (Education and Care Services) National Law	Not possible to conclude without further data	Under s 13, the Ombudsman can instigate an investigation; under s 12, the Ombudsman can respond to complaints	Not binding, but the Ombudsman may require information about its response to the recommendation. It may also report to the responsible minister (under s 26), including when serious misconduct is suspected (under s 28)

Australian jurisdictions	Key features	Narrow efficacy on key dimensions					
		Is there a specialised children's ombudsman or a general ombudsman's office?	Does jurisdiction extend specifically to children and child sexual abuse in institutional contexts?	Does jurisdiction apply to public and private sectors?	Is the ombudsman accessible to children, specifically relating to child sexual abuse in institutional contexts?	Can the ombudsman instigate investigations on its own motion, or only after receiving a complaint?	Are recommendations and findings binding and determinative, or are they merely persuasive?
NSW cont.	Under s 25C, agency heads must notify the Ombudsman of any reportable allegation against, or conviction of, an employee. Under s 25G, the Ombudsman may investigate these or other reportable allegations						
NT <i>Ombudsman Act</i> http://www.omb-hcsc.nt.gov.au	General complaint and investigation purpose set out in s 10(1)(a) After conducting investigation, may make recommendations to principal officer of a public agency (under s 62)	General Ombudsman	Does not extend to children and child sexual abuse in an institutional context	Public only	Not possible to conclude without further data	Complaint plus own motion (under s 14)	Not binding, but may ask agency to report on action it has taken and may report failure to take recommended steps to minister (under s 63)
Qld <i>Ombudsman Act 2001</i> http://www.ombudsman.qld.gov.au	General complaint and investigation purpose set out in ss 12, 14, 20	General Ombudsman	Does not extend to children and child sexual abuse in institutional contexts	Public only	Not possible to conclude without further data	Complaint plus own motion (under s 18)	Not binding, but may ask agency to report on action it has taken and may report failure to take recommended steps to the Premier (under s 51)
SA <i>Ombudsman Act 1972</i>	General complaint and investigation purpose set out in ss 13, 15	General Ombudsman	Does not extend to children and child sexual abuse in	Public only	Not possible to conclude without further data	Complaint plus own motion (under s 13(2))	Not binding (under s 25), but may ask agency to report on action it has taken (under s 25(4)) and if not satisfied may report to Premier (under s 25(5))

Australian jurisdictions	Key features	Narrow efficacy on key dimensions					
		Is there a specialised children's ombudsman or a general ombudsman's office?	Does jurisdiction extend specifically to children and child sexual abuse in institutional contexts?	Does jurisdiction apply to public and private sectors?	Is the ombudsman accessible to children, specifically relating to child sexual abuse in institutional contexts?	Can the ombudsman instigate investigations on its own motion, or only after receiving a complaint?	Are recommendations and findings binding and determinative, or are they merely persuasive?
http://www.ombudsman.sa.gov.au			institutional contexts				
Tas <i>Ombudsman Act 1978</i> http://www.ombudsman.tas.gov.au	General complaint and investigation purpose set out in ss 12–14	General Ombudsman	Does not extend to children and child sexual abuse in institutional contexts	Public only	Not possible to conclude without further data	Complaint plus own motion (under s 13)	Not binding (under s 28), but may ask agency to report on action it has taken (under s 28(4)) and if not satisfied may report to Premier and responsible minister (under s 28(5))
Vic <i>Ombudsman Act 1973</i> http://www.ombudsman.vic.gov.au	General complaint and investigation purpose set out in ss 13 and 14	General Ombudsman	Does not extend to children and child sexual abuse in institutional contexts	Public only	Not possible to conclude without further data	Complaint (under s 14) plus own motion (under s 16A)	Not binding (under s 23), but may ask agency to report on action it has taken (under s 23(4)) and if not satisfied may report to the Governor in Council.
WA <i>Parliamentary Commissioner Act 1971</i> http://www.ombudsman.wa.gov.au	General complaint and investigation purpose set out in ss 14, 17	General Parliamentary Commissioner	Does not extend to children and child sexual abuse in institutional contexts	Public only	Not possible to conclude without further data	Complaint plus own motion (under s 16)	Not binding (under s 25), but may ask the agency to report on action it has taken (under s 25(4)) and if not satisfied may report to Premier (under s 25(5))

Overseas jurisdictions	Key features	Narrow efficacy on key dimensions					
		Is there a specialised children's ombudsman, or a general ombudsman's office?	Does jurisdiction extend specifically to children and child sexual abuse in institutional contexts?	Does jurisdiction apply to public and private sectors?	Is the ombudsman readily accessible to children, specifically in relation to child sexual abuse in institutional contexts?	Can the Ombudsman instigate investigations on its own motion, or only after receiving a complaint?	Are findings determinative?
Norway Act No 5 of March 6, 1981 relating to the Ombudsman for Children 3	Key duty to promote the interests of children in relation to public and private authorities	Children's ombudsman	Yes, applies to children; therefore, it applies to child sexual abuse in institutional contexts	Yes	Not possible to conclude without further data	Complaint plus own motion (under s 3)	This power was not evident from the legislation but probably does not exist; however, may propose improved measures to strengthen children's safety and to solve or prevent conflicts between children and society (under s 3)
Ireland Ombudsman for Children Act 2002	Key duty to promote the rights and welfare of children, including to encourage public bodies, schools and hospitals to develop policies, practices and procedures to promote the rights and welfare of children (under s 7(1))	Children's ombudsman	Yes, applies to children; therefore, it applies to child sexual abuse in institutional contexts	Public only	Under s 7(2), ombudsman must establish structures to consult regularly with representative groups of children	Complaint plus own motion (under s 10P)	Cannot compel compliance with findings and recommendations, but can request information about response and can report to Parliament about the adequacy of the response (under s 13)
Greece Law n.3094/2003	The Ombudsman's mission is to defend and promote children's rights. The Ombudsman also has jurisdiction over matters involving private individuals, and physical or legal persons, who violate children's rights. Art 1: The Ombudsman is assisted by five deputies, one of whom is Deputy Ombudsman for children.	Yes, as a component of the general office	Yes, applies to children; therefore, it applies to child sexual abuse in institutional contexts	Yes (but not over 'religious public law bodies': (under art 1(2))	Not possible to conclude without further data	Complaint plus own motion (under art 4(2))	Cannot compel compliance with findings and recommendations, but can publicise refusal to comply in cases involving public and private bodies or individuals (under arts 4(6), (7))

Overseas jurisdictions	Key features	Narrow efficacy on key dimensions					
		Is there a specialised children’s ombudsman, or a general ombudsman’s office?	Does jurisdiction extend specifically to children and child sexual abuse in institutional contexts?	Does jurisdiction apply to public and private sectors?	Is the ombudsman readily accessible to children, specifically in relation to child sexual abuse in institutional contexts?	Can the Ombudsman instigate investigations on its own motion, or only after receiving a complaint?	Are findings determinative?
Greece cont.	Art 3(1): The Ombudsman has jurisdiction over issues involving services provided by: (a) the public sector; (b) local and regional authorities; and (c) other public bodies, state private law entities, public corporations and local government enterprises. For the protection of children’s rights, the Ombudsman also has jurisdiction over matters involving private individuals, and physical or legal persons, who violate children’s rights						
United States Model 1 Office of Colorado’s Child Protection Ombudsman Colo. Rev. Stat. § 19-3.3-101 to 109	Independent and autonomous agency with oversight specific to child welfare Child Protection Ombudsman receives and investigates complaints about matters regarding the child protection system, and makes recommendations to the appropriate agency. The Ombudsman must act independently of divisions responsible for child welfare, youth corrections or childcare	Children’s ombudsman	Yes, but not to all forms of child sexual abuse in institutional contexts	Publicly funded agencies only	Not possible to conclude without further data	Complaint only	No

Part 2.2 – Oversight systems: Reportable conduct schemes

2.2.1 Reportable conduct schemes generally

The technical term ‘reportable conduct scheme’ denotes a particular type of oversight system in a particular set of circumstances. In Australia, New South Wales is the only jurisdiction to have a reportable conduct scheme in this sense. The scheme was developed in 1998 after the Wood Royal Commission identified problems and possible conflicts of interest in circumstances where agencies investigate child abuse allegations made against their own staff.¹⁷ To overcome potential conflicts of interest, Justice Wood recommended that the Ombudsman have oversight regarding the investigation of such allegations within agencies that provide services to children.¹⁸

The reportable conduct scheme is embedded in the New South Wales *Ombudsman Act 1974* (NSW) pt 3A. As well as applying to government agencies, the scheme empowers the Ombudsman to oversee selected non-government organisations that provide care services to children, such as schools, childcare services and residential substitute care services. The ‘reportable conduct’ aspect of the scheme is that heads of all government agencies, and of some non-government agencies (non-government schools, children’s services providing substitute residential care and out-of-school-hours services) are compelled to notify the Ombudsman of any reportable allegations or convictions involving their employees within 30 days of becoming aware of them. Reportable allegations include a range of alleged child maltreatment, and, most relevant for this report, alleged sexual offences and sexual misconduct.¹⁹ The Ombudsman is also given investigative powers, so that in certain circumstances the Ombudsman, and not the relevant agency, can investigate alleged misconduct.

¹⁷ Ombudsman Amendment (Child Protection and Community Services) Bill (No 3), introduced by Mrs Faye Lo Po’ (Penrith – Minister for Community Services, Minister for Ageing, Minister for Disability Services and Minister for Women), Hansard, Legislative Assembly, 21 October 1998, p 8742. The Ombudsman was also to assist agencies to develop standard procedures for responding to allegations of child abuse. This would align with another function of keeping records for a new employment screening system.

¹⁸ A fundamental question arises as to whether these agencies should have any power to investigate such cases, or whether it should be solely within the remit of an external independent agency.

¹⁹ Under the *Ombudsman Act 1974* (NSW) s 25A(1), a ‘designated government agency’ means any of the following:

- (a) the Department of Education and Training (including a government school) or the Department of Health,
- (a1) a Public Service agency (or a part of such an agency) prescribed by the regulations for the purposes of this definition,
- (b) a local health district within the meaning of the *Health Services Act 1997*.

A ‘designated non-government agency’ means any of the following:

- (a) a non-government school within the meaning of the *Education Act 1990*.
- (b) a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*. (not being a department referred to in paragraph (a) of the definition of designated government agency in this subsection)
- (b1) an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*.
- (c) an agency providing substitute residential care for children.

‘Reportable allegation’ means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

‘Reportable conduct’ means any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material (within div 15A pt 3 of the *Crimes Act 1900*)).

‘Reportable conviction’ means a conviction (including a finding of guilt without conviction) of an offence involving reportable conduct.

Reportable conduct

Under section 25C, the head of a designated government or non-government agency is required to notify the Ombudsman of:

- any reportable allegation against, or reportable conviction of, an agency employee of which the head of the agency becomes aware
- whether the agency proposes to take any disciplinary or other action in relation to the employee and its reasons for taking, or not taking, action
- written submissions made to the head of the agency concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the employee.²⁰

Oversight

Under section 25F, results of an investigation and the action taken or proposed must also be reported to the New South Wales Ombudsman. Under section 25F(3), the Ombudsman may require the head of the agency or any officer involved in the investigation to provide additional information to enable the Ombudsman to determine whether the reportable allegation or conviction was properly investigated and whether appropriate action was taken as a result of the investigation.

Investigative power

The key investigative power the New South Wales Ombudsman possesses in this scheme is sourced in section 25G. This empowers the Ombudsman to investigate any reportable allegation, or reportable conviction, against an employee of a designated government or non-government agency of which the Ombudsman has been notified or otherwise becomes aware. In addition, the Ombudsman may investigate any inappropriate handling of, or response to, any such reportable allegation or reportable conviction, whether on the Ombudsman's own initiative or in response to a complaint. In these cases, the Ombudsman is to provide the agency with any recommendations for action to be taken.

Overall, under this reportable conduct scheme, the New South Wales Ombudsman has several roles, which are to:

- keep under scrutiny the systems for preventing reportable conduct by employees of designated government or non-government agencies or other public authorities, and the systems for handling and responding to such allegations or convictions²¹
- receive and assess notifications concerning reportable allegations or convictions against an employee²²
- monitor the progress of an investigation by a designated government or non-government agency concerning a reportable allegation against, or reportable conviction of, an employee of the agency if the Ombudsman considers it is in the public interest to do so.²³ This includes the power to be present during interviews and to confer with investigators about the progress of the investigation.²⁴

²⁰ Under the *Ombudsman Act 1974* (NSW) s 25D, the head or other employee of a designated government or non-government agency may disclose to the Ombudsman or an officer of the Ombudsman any information that gives the head or other employee reason to believe that reportable conduct by an employee of the agency has occurred.

²¹ *Ombudsman Act 1974* (NSW) s 25B.

²² *Ombudsman Act 1974* (NSW) s 25C.

²³ *Ombudsman Act 1974* (NSW) s 25E(1).

²⁴ *Ombudsman Act 1974* (NSW) s 25E(2).

Under section 25E(3), the Ombudsman can request that the head of the agency provide the Ombudsman with documentary records regarding the investigation²⁵

- investigate reportable allegations or convictions, or allegations about any inappropriate handling of, or response to, a reportable notification or conviction²⁶
- conduct audits, and education and training activities to improve understanding of, and responses to, reportable allegations.

A note on implementation

As shown in Table 2.2, the *NSW Ombudsman Annual Report 2013–14* shows 409 notifications were made in that year under the reportable conduct scheme, indicating promising implementation.²⁷ However, the *Annual Report 2013-14* also indicates some lack of efficacy of departmental conduct over a considerable period of time.²⁸

2.2.2 Synthesis and summary of efficacy

The New South Wales scheme is a notable additional oversight mechanism because it endows an independent oversight body with power to monitor agencies' investigations into alleged sexual abuse by employees and volunteers in both government and non-government organisations, and in some cases to undertake these investigations. This specific oversight mechanism does not exist elsewhere in Australia.

Table 2.2 sets out the key features of Australian reportable conduct schemes, informed by an analysis of the legislation and relevant secondary sources. For this report, key dimensions of the Ombudsman's capacity and activity have been analysed to fulfil the synthesis aspect of the project and to evaluate narrow efficacy. Accordingly, Table 2.2 synthesises key features and narrow efficacy dimensions relating to:

- the existence of the scheme
- whether the scheme extends to private agencies as well as public agencies
- the scope for accessing or engaging the key powers in the scheme
- the frequency with which the scheme is engaged
- the presence of mechanisms to protect independence and ensure compliance
- implementation capacity (via the analysis of whether the Ombudsman's recommendations are determinative or only persuasive).

²⁵ Under the *Ombudsman Act 1974* (NSW) s 25DA, the Ombudsman may disclose to the Children's Guardian, for the purposes of functions under the *Child Protection (Working with Children) Act 2012*, information about an employee of a designated government or non-government agency that the Ombudsman believes may cause that employee to be a disqualified person under the *Child Protection (Working with Children) Act 2012*, or to be subject to an assessment requirement under that Act.

²⁶ *Ombudsman Act 1974* (NSW) s 25F.

²⁷ NSW Ombudsman. (2014). *NSW Ombudsman Annual Report 2013–14*. Retrieved 5 February 2016 from <http://www.ombo.nsw.gov.au/news-and-publications/publications/annual-reports/nsw-ombudsman>

²⁸ NSW Ombudsman. (2014). *NSW Ombudsman Annual Report 2013–14*. Retrieved 5 February 2016 from <http://www.ombo.nsw.gov.au/news-and-publications/publications/annual-reports/nsw-ombudsman>, p 85. The report stated that concerns had been raised about matters where Community Services had not reported criminal child abuse allegations to police; that after a further complaint by the Ombudsman about teacher misconduct, Community Services had acknowledged its policies for reporting allegations to police were inadequate and that improved policies and procedures were being developed to guide staff on when and how to refer matters to police. The Ombudsman reported that it was satisfied with this demonstration of commitment and urged improvement as soon as possible.

Table 2.2 – Oversight systems: Reportable conduct schemes

Australian jurisdictions	Legislation and website	Key features of reportable conduct scheme	Narrow efficacy on key dimensions					
			Is there a reportable conduct scheme for child sexual abuse in institutional contexts?	Does the scheme apply to public and private agencies?	What is the scope for accessing or engaging the scheme?	How often is the scheme engaged?	Are there mechanisms to protect the ombudsman's independence and to ensure compliance?	Can the ombudsman make binding recommendations?
ACT	http://www.ombudsman.act.gov.au <i>Ombudsman Act 1989</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
NSW	http://www.ombo.nsw.gov.au <i>Ombudsman Act 1974</i> <i>Annual Report 2013-14</i>	<i>Ombudsman Act</i> pt 3A is devoted to matters specific to child protection Under s 25B(1), the Ombudsman has an express requirement to 'keep under scrutiny the systems for preventing reportable conduct by employees of designated government or non-government agencies or of other public authorities, and for handling and responding to allegations of reportable conduct (sexual misconduct or offences) or convictions regarding those employees; and under s (2), the Ombudsman may require the head of any such agency to provide information about those systems' Under s 25C, heads of these agencies must notify the Ombudsman of any reportable allegation or conviction against an agency employee Under s 25G, the Ombudsman may investigate these or other reportable	Yes	Yes Data from the <i>Ombudsman Annual Report 2013-14</i> shows there were 330 notifications linked to education and communities; 63 for Catholic non-government schools; and 97 for independent non-government schools	The general oversight mechanism applies universally to designated agencies In addition, while the investigatory power is specified, a question can be raised about whether agencies should have the power to conduct their own investigations	Data from the <i>Ombudsman Annual Report 2013-14</i> shows there were 326 notifications about sexual misconduct (27 per cent of all notifications) and 83 notifications for a sexual offence (7 per cent of all notifications)	Under s 37(1), it is an offence to: (a) wilfully obstruct, hinder or resist the Ombudsman in the exercise of its functions (b) fail to comply with a request (c) give a misleading statement Under s 37, it is also an offence to inflict violence or other damage or loss on a person in reprisal for assisting the Ombudsman	It appears that the recommendations made by the Ombudsman, even under its investigatory power under s 25G, are not binding and rely on persuasive force

Australian jurisdictions	Legislation and website	Key features of reportable conduct scheme	Narrow efficacy on key dimensions					
			Is there a reportable conduct scheme for child sexual abuse in institutional contexts?	Does the scheme apply to public and private agencies?	What is the scope for accessing or engaging the scheme?	How often is the scheme engaged?	Are there mechanisms to protect the ombudsman's independence and to ensure compliance?	Can the ombudsman make binding recommendations?
		allegations						
NT	http://www.omb-hcsc.nt.gov.au <i>Ombudsman Act</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Qld	http://www.ombudsman.qld.gov.au <i>Ombudsman Act 2001</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
SA	http://www.ombudsman.sa.gov.au <i>Ombudsman Act 1972</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Tas	http://www.ombudsman.tas.gov.au <i>Ombudsman Act 1978</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Vic	http://www.ombudsman.vic.gov.au <i>Ombudsman Act 1973</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
WA	http://www.ombudsman.wa.gov.au <i>Parliamentary Commissioner Act 1971</i>	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

Part 2.3 – Oversight systems: Children’s commissions

2.3.1 Children’s commissions generally

There are different approaches to children’s commissions in Australian states and territories. Not every jurisdiction has a commission, although some of their normal functions may be performed by other agencies. In Australia, five states and territories have dedicated children’s commissions or commissioners (Australian Capital Territory, Northern Territory, Tasmania, Victoria and Western Australia); Queensland has a Family and Child Commission but not a designated children’s commissioner; and a Bill to introduce a children’s commissioner is pending in South Australia. Some jurisdictions have had children’s commissioners but have then restructured their approach to such agencies and their functions, which has occurred in New South Wales.²⁹

2.3.2 Primary functions and powers of children’s commissions

In Australia, these commissions normally oversee child protection systems and the children within them, but the jurisdiction of three commissions extends to matters affecting all children. Key features generally, but not always, include monitoring the child protection system; receiving and investigating complaints about matters concerning the child protection system (including service provision); initiating inquiries on its own motion; and consulting with children to inform its activity. Below is a summary of the key functions of each state and territory commission, and the powers conferred by legislation to enable the discharge of these functions. This synthesis is tabulated in Table 2.3.

Australian Capital Territory

Under the *Human Rights Commission Act 2005* (ACT), the Australian Capital Territory has a Human Rights Commission with five members, one of whom is a Children and Young People Commissioner.³⁰ Under section 6(2), the commission’s key functions include (e) promoting improvements in the provision of disability services, health services, and services for children and young people; and (f) promoting the rights of users of these services. The commission is concerned with all children.

Under section 8A, a ‘service for children and young people’ is broadly defined to include:

- a service that provides care, respite care, education, training and skill development, recreation, advocacy, community access, accommodation support, rehabilitation or employment services
- a service provided in relation to a detention place, therapeutic protection place or place of care under the *Children and Young People Act 2008*.³¹

²⁹ In 1998, NSW introduced an independent Commission for Children and Young People outside of government and an Office of Children and Young People within government. According to the second reading speech (Commission for Children and Young People Bill 1998, Mrs Faye Lo Po’ (Penrith – Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Women), Hansard, Legislative Assembly, 21 October 1998, p 8739ff), the Bill responded to a recommendation from the Wood Inquiry and created ‘an independent body to promote respect and understanding for the interests and needs of children and young people ... Importantly too, the commission will be able to tell the Government and the community when children and young people are not getting a fair go and how things could be improved for them’. The commission had the capacity to conduct special inquiries into issues affecting children. Another key function was to participate in and monitor background checking for working with children.

³⁰ *Human Rights Commission Act 2005* (ACT) s 12 pt 3 div 3.3.

³¹ *Human Rights Commission Act 2005* (ACT) s 8A.

The functions of the Children and Young People Commissioner include:

- (a) encouraging the resolution of complaints made under this Act, and assisting in their resolution, by providing an independent, fair and accessible process for resolving the complaints
- (b) encouraging and assisting users and providers of disability services, health services, and services for children and young people to make improvements in the provision of services
- (c) encouraging and assisting people providing disability services, health services, services for children and young people and services for older people, and people engaging in conduct that may be complained about under this Act, to develop and improve procedures for dealing with complaints
- (d) identifying, inquiring into and reviewing issues relating to the matters that may be complained about under this Act
- (e) reporting to the minister, and other appropriate entities, about each inquiry and review mentioned in paragraph (e) or advising the minister and other appropriate entities about the inquiry and review
- (f) referring to the public advocate under section 51A advocacy matters about individual children or young people for whom the director-general under the Children and Young People Act 2008 has parental responsibility.³²

Additionally:

- The Commissioner is independent in performing their functions.³³
- The Commissioner must endeavour to consult with and consider the views of children and ensure the commission is accessible to children.³⁴
- While the Commission's primary role is receiving and resolving complaints, it may institute a 'commission-initiated consideration' of an act or service that appears to be something that could have been the subject of a complaint, or of any other matter related to its functions.³⁵
- There is no broad express provision giving the Commission all necessary powers to fulfil its functions, but it has the power to compel information and documents.³⁶

Northern Territory

The Northern Territory Children's Commissioner is an independent statutory officer established by the *Children's Commissioner Act 2013*. Core functions focus on the wellbeing of 'vulnerable' children as defined in section 7 (that is, children in care or detention, or who have received another service), rather than all children. Under section 10(1), the Commissioner has eight core functions, which include:

- (a) dealing with complaints about services provided to vulnerable children (including monitoring how service providers respond to reports)
- (b) investigating matters on the Commissioner's own initiative that may form the grounds for making a complaint (irrespective of whether a complaint was made)
- (c) conducting inquiries relating to the care and protection of vulnerable children

³² *Human Rights Commission Act 2005* (ACT) s 14(1).

³³ *Human Rights Commission Act 2005* (ACT) s 16.

³⁴ *Human Rights Commission Act 2005* (ACT) s 19B(3).

³⁵ *Human Rights Commission Act 2005* (ACT) s 48.

³⁶ *Human Rights Commission Act 2005* (ACT) s 73.

- (d) monitoring implementation of government decisions relating to any inquiries into the care and protection of vulnerable children
- (e) monitoring administration of the *Care and Protection of Children Act*, where relevant to vulnerable children
- (f) reporting to the minister on matters relating to the Commissioner's functions
- (g) promoting awareness about the rights, interests and wellbeing of vulnerable children
- (h) monitoring how the child protection department deals with abuse in care allegations.

Under Parts 4 and 5, the Commissioner receives and investigates complaints about failures to provide adequate services. As well, under the *Care and Protection of Children Act 2007* div 4A s 83B, there are powers (but not obligations) to monitor the wellbeing of children in the CEO's care.

Additionally:

- The Commissioner must act independently in performing their functions.³⁷
- The Commissioner has the power to do all things necessary in performing their functions.³⁸
- The Commissioner may undertake an inquiry on their own initiative.³⁹
- There is no express requirement to consult with children.

Queensland

The *Family and Child Commission Act 2014* (Qld) expressly states the functions of the Commission.⁴⁰ There is no separate children's commissioner. The Commission represents the state and is not independent.⁴¹

South Australia

In South Australia, a Bill is before Parliament to establish a Children's Commission. This follows a recommendation by the DeBelle Report, which found mishandling of child sexual abuse in public schools, and came more than a decade after the Layton Review made a similar recommendation.

Under section 16(1) of the Child Development and Wellbeing Bill 2014, the Commissioner's functions will include:

- (a) promoting and advocating for the rights and interests of children and young people in South Australia
- (b) promoting the participation of children and young people in decision-making that affect their lives
- (c) guiding, cooperating with and monitoring state authorities in areas relating to the rights, development and wellbeing of children and young people
- (d) inquiring into and reviewing matters relating to the rights, development and wellbeing of children and young people at a systemic level
- (e) preparing and publishing reports on matters relating to the rights, development and wellbeing of children and young people at a systemic level
- (f) monitoring the way in which state authorities investigate or otherwise deal with complaints made by, or in relation to, children and young people and the outcome of such complaints

³⁷ *Children's Commissioner Act 2013* (NT) s 11.

³⁸ *Children's Commissioner Act 2013* (NT) s 10(2) pt; 7.

³⁹ *Children's Commissioner Act 2013* (NT) pt 6 s 30.

⁴⁰ *Family and Child Commission Act 2014* (Qld) s 9(1).

⁴¹ *Family and Child Commission Act 2014* (Qld) s 7.

- (g) monitoring trends in complaints made by, or in relation to, children and young people to state authorities
- (h) advising and making recommendations to ministers, state authorities and other bodies on matters relating to the rights, development and wellbeing of children and young people at a systemic level
- (i) assisting in ensuring that the state, as part of the Commonwealth, satisfies its international obligations in respect of children and young people.

Section 16(2) states the Commissioner should engage children in the performance of his or her functions, and must develop and keep under review a strategy for ensuring this occurs.

Additionally, under section 19 of the Bill, the Commissioner may require a state authority to provide information it possesses that the Commissioner requires to perform functions under this Act.

However, there is no broad provision giving the Commissioner all necessary powers to fulfil their functions.

Tasmania

The Commissioner for Children and Young People in Tasmania is concerned with all children. The Commissioner was established under the *Children, Young Persons and Their Families Act 1997* (Tas) Part 9. Under the Act, the Commissioner's functions include:

- (a) investigating a decision, recommendation, act or omission in respect of a child, at the request of the minister
- (b) encouraging the development, within the department, of policies and services to promote the health, welfare, care, protection and development of children
- (c) inquiring generally into and reporting on any matter relating to the health, welfare, care, protection and development of children, at the request of the minister
- (d) increasing public awareness of matters relating to the health, welfare, care, protection and development of children
- (e) advising the minister on any matters relating to the administration of this Act and the policies and practices of the department, another government department or any other person, which affect the health, welfare, care, protection and development of children, on the Commissioner's own initiative or at the request of the minister
- (f) advising the minister on any matter relating to the health, welfare, education, care, protection and development of children placed in the custody, or under the guardianship, of the secretary under this or any other Act, on the Commissioner's own initiative or at the request of the minister
- (fa) acting as an advocate for a detainee under the *Youth Justice Act 1997*, on the Commissioner's own initiative or at the request of the minister
- (fb) advising the minister on any matter relating to the health, welfare, education, care, protection and development of detainees under the *Youth Justice Act 1997*.⁴²

Additionally:

- The Commissioner must act independently in performing their functions.⁴³
- The Commissioner has the power to do all things necessary in performing their functions, including requiring any person to answer question or produce documents.⁴⁴

⁴² *Children, Young Persons and Their Families Act 1997* (Tas) s 79(1).

⁴³ *Children, Young Persons and Their Families Act 1997* (Tas) s 79(3).

- The Commissioner must establish the Children and Young Persons Consultative Council (which under Schedule 2 must represent children of diverse backgrounds) and the Children and Young Persons Advisory Council.⁴⁵

Victoria

The primary focus of Victoria's Commission for Children and Young People, which was established in 2013 to replace the Office of the Child Safety Commissioner, is with children in care and children receiving services, who are defined as 'vulnerable' children. 'Vulnerable children and young persons' are defined as children who were or are 'child protection clients', or who were or are receiving services from a 'registered community service' (which includes registered community-based child and family services and out-of-home care under the *Children, Youth and Families Act 2005* (Vic) sections 46 and 47).⁴⁶ Section 4 defines a 'child protection client' as one who is the subject of a child protection report.⁴⁷

Under section 8 of the *Commission for Children and Young People Act 2012* (Vic), the functions of the Commission include:

- (a) providing advice to ministers, government departments, and health and human services about policies, practices and provision of services relating to the safety or wellbeing of 'vulnerable children' and young people
- (b) promoting the interests of vulnerable children and young people in the Victorian community
- (c) monitoring and reporting to ministers on the implementation and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young people
- (d) providing advice and recommendations to the minister about child safety issues, at the request of the minister; and promoting child friendly and child safe practices in the Victorian community
- (e) those relating to working with children conferred by Part 3
- (f) those relating to out-of-home care conferred by Part 4
- (g) those functions relating to inquiries conferred by Part 5.

Additionally:

- The Commission must act independently and impartially in performing its functions.⁴⁸
- The Commissioner has the power to do all things necessary to fulfil their functions.⁴⁹
- The Commission must annually review and report on the administration of the *Working with Children Act 2005* (Vic).⁵⁰
- The Commission's functions relating to children in out-of-home care include:
 - promoting the provision of out-of-home care services that encourage the active participation of children in decision-making that affects them
 - advising the minister and the secretary on the performance of out-of-home care services
 - investigating and reporting on an out-of-home care service, at the request of the minister.⁵¹

⁴⁴ *Children, Young Persons and Their Families Act 1997* (Tas) s 80.

⁴⁵ *Children, Young Persons and Their Families Act 1997* (Tas) s 81.

⁴⁶ *Commission for Children and Young People Act 2012* (Vic) s 5.

⁴⁷ *Commission for Children and Young People Act 2012* (Vic).

⁴⁸ *Commission for Children and Young People Act 2012* (Vic) s 8.

⁴⁹ *Commission for Children and Young People Act 2012* (Vic) s 9.

⁵⁰ *Commission for Children and Young People Act 2012* (Vic) ss 24-25.

⁵¹ *Commission for Children and Young People Act 2012* (Vic) pt 4 s 28.

- Under Part 5, Victoria's Commission has the power to conduct inquiries in relation to vulnerable children and children generally.⁵² The following circumstances apply to inquiries:
 - The object of inquiries is to promote continuous improvement and innovation in policies and practices relating to child protection and safety.⁵³
 - The Commission may conduct an inquiry in relation to the safety or wellbeing of either a vulnerable child, or a group of vulnerable children.⁵⁴
 - Inquiries may be conducted into the provision of services (or failure to provide services) by a community service, health service, human service, school, child protection or youth justice service to either vulnerable children or children generally.⁵⁵

Western Australia

The Commissioner for Children and Young People is the independent advocate for all children aged under 18 in Western Australia. It acts in the best interests of children, with the aim of improving their wellbeing, and must ensure they are consulted. Under the *Commissioner for Children and Young People Act 2006* (WA), the Commissioner's functions include:

- (a) advocating for children and young people
- (b) promoting the participation of children in decision-making that affects their lives
- (c) promoting and monitoring the wellbeing of children and young people generally
- (d) monitoring the way in which a government agency investigates or otherwise deals with a complaint made by a child, and the outcome of the complaint
- (e) monitoring trends in complaints made by children and young people to government agencies
- (f) initiating and conducting inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children
- (g) monitoring and reviewing written laws, draft laws, policies, practices and services affecting the wellbeing of children
- (h) promoting public awareness and understanding of matters relating to the wellbeing of children
- (j) conducting special inquiries under Part 5
- (k) advising the minister on any matter relating to the wellbeing of children and young people, on the Commissioner's own initiative or at the request of the minister or the Standing Committee
- (n) consulting with children from a broad range of socio-economic backgrounds and age groups annually.⁵⁶

Additionally:

- The Commissioner has the power to do all things necessary to perform their functions.⁵⁷
- The Commissioner is independent of the minister and any other person in performing their functions.⁵⁸

⁵² *Commission for Children and Young People Act 2012 (Vic)* s 31.

⁵³ *Commission for Children and Young People Act 2012 (Vic)* s 31.

⁵⁴ *Commission for Children and Young People Act 2012 (Vic)* s 37.

⁵⁵ *Commission for Children and Young People Act 2012 (Vic)* s 39.

⁵⁶ *Commissioner for Children and Young People Act 2006 (WA)* pt 3 s 19.

⁵⁷ *Commissioner for Children and Young People Act 2006 (WA)* s 21.

⁵⁸ *Commissioner for Children and Young People Act 2006 (WA)* s 25.

A note on implementation

Without further exploration, which is beyond the scope of this project, it is difficult to indicate the exact extent to which children's commissions are readily accessible to children or their representatives, and the extent to which they implement their powers in relation to child sexual abuse in institutional contexts (Table 2.3). However, annual reports from children's commissions indicate that engagement with matters relating to child sexual abuse in institutional contexts have been infrequent and non-systemic.

2.3.3 Synthesis and summary of efficacy

Overall, the key functions of children's commissions are oversight, complaints resolution, promoting systemic and service delivery improvement, conduct of inquiries, and consultation with children. Based on the legislative parameters, the Australian Capital Territory scheme appears to be the most extensive in its scope, power and accessibility.

Table 2.3 sets out the key features of Australian children's commissions, informed by an analysis of the legislation. For this report, key dimensions – including the capacity and breadth of the schemes – have been analysed to fulfil the synthesis aspect of the project and to evaluate narrow efficacy. Accordingly, Table 2.3 synthesises key features and narrow efficacy dimensions relating to:

- each children's commission
- whether the commission's jurisdiction extends to all children, or only vulnerable children in the care system
- whether the commission is independent (implementation capacity)
- whether the commission is given all necessary powers to fulfil its functions (implementation capacity)
- whether the commission can initiate inquiries on its own motion (implementation capacity)
- whether the commission receives, monitors and resolves complaints
- the accessibility of the commission to children, including through required consultation methods.

Table 2.3 – Oversight systems: Children’s commissions

Australian jurisdictions	Key features	Narrow efficacy on key dimensions						
		Is there a specialised children’s commission?	Does jurisdiction apply to all children or only children in care (vulnerable children)?	Is the commission independent?	Under the legislation, does the commission have all necessary powers to fulfil its functions?	Is the commission readily accessible to children?	Can the commission initiate inquiries on its own motion?	Does the commission monitor and resolve complaints?
ACT Children and Young People Commissioner http://www.hrc.act.gov.au/childrenyoungpeople/	Key features include: <ul style="list-style-type: none"> • resolving complaints • encouraging improved delivery of services to children • encouraging improved complaint-resolution processes within services (including care and education services, and detention facilities) • identifying, inquiring into and reviewing issues that are the subject of complaints (primarily service provision) • emphasising consultation with children and accessibility <i>Human Rights Commission Act 2005</i>	Yes	All children	Yes	No express provision, but under s 73 has the power to compel information, documents etc.	Yes, with very strong provisions requiring that it ‘ensures’ it is accessible to children	Yes, via s 48	Yes
NSW	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
NT Northern Territory Children’s Commissioner http://www.childrenscommissioner.nt.gov.au/	Key features include: <ul style="list-style-type: none"> • monitoring the child protection system by investigating complaints and reporting on the administration of the <i>Care and Protection of Children Act 2007</i> • investigating complaints about services provided to vulnerable children • initiating investigations without receiving a formal complaint <i>Children’s Commissioner Act 2013</i>	Yes	Only vulnerable children	Yes	Yes	No clear provision for accessibility or consultation	Yes	Yes

Australian jurisdictions	Key features	Narrow efficacy on key dimensions						
		Is there a specialised children's commission?	Does jurisdiction apply to all children or only children in care (vulnerable children)?	Is the commission independent?	Under the legislation, does the commission have all necessary powers to fulfil its functions?	Is the commission readily accessible to children?	Can the commission initiate inquiries on its own motion?	Does the commission monitor and resolve complaints?
Qld Family and Child Commission http://www.qfcc.qld.gov.au/	The Queensland Family and Child Commission oversees the child protection system generally. There is no separate children's commissioner and the commission is not independent <i>Family and Child Commission Act 2014</i>	No	Not applicable	No	Not applicable	Not applicable	Not applicable	Not applicable
SA	The Child Development and Wellbeing Bill 2014 remains before Parliament	No, but Bill pending	All children	Yes	No express provision	Yes	Yes	Yes
Tas Commissioner for Children and Young People http://www.chilcocomm.tas.gov.au/	Key features include: <ul style="list-style-type: none"> • promoting the rights and wellbeing of children and young people, and examining the policies, practices, services and laws affecting the health, welfare, care, protection and development of children and young people • investigating and reporting on matters relating to children's health, welfare, care and protection, at the minister's request • providing advice to the minister, on own initiative or on request, about such matters • advocating for children detained under the <i>Youth Justice Act 1997</i> • advising the minister on any matter relating to children detained under the <i>Youth Justice Act 1997</i> <i>Children, Young Persons and Their Families Act 1997</i>	Yes	All children	Yes	Yes	Yes	No – can initiate only at minister's request	No

Australian jurisdictions	Key features	Narrow efficacy on key dimensions						
		Is there a specialised children's commission?	Does jurisdiction apply to all children or only children in care (vulnerable children)?	Is the commission independent?	Under the legislation, does the commission have all necessary powers to fulfil its functions?	Is the commission readily accessible to children?	Can the commission initiate inquiries on its own motion?	Does the commission monitor and resolve complaints?
Vic Commission for Children and Young People http://www.ccy.p.vic.gov.au/	Key features include: <ul style="list-style-type: none"> • promoting continuous improvement in policies and practices relating to the safety and wellbeing of vulnerable children and children generally, and providing out-of-home care services for children • conducting inquiries into a vulnerable child or a group of vulnerable children, and into health, education, child protection and youth justice services for vulnerable children or children generally • overseeing employment screening (the only jurisdiction to do so) <i>Commission for Children and Young People Act 2012</i>	Yes	Primarily only to vulnerable children	Yes	Yes	No express provision for accessibility or consultation	Yes	No
WA Commissioner for Children and Young People http://www.ccy.p.wa.gov.au/index.aspx	Key features include: <ul style="list-style-type: none"> • promoting and monitoring the wellbeing of children generally • monitoring how government agencies investigate or deal with a complaint made by a child • initiating and conducting inquiries into any matter affecting a child's wellbeing • conducting special inquiries under Part 5 <i>Commissioner for Children and Young People Act 2006</i>	Yes	All children	Yes	Yes	Yes	Yes	Yes

Part 2.4 – Oversight systems: Community visitors schemes

2.4.1 Community visitors schemes generally

A community visitors (CV) scheme, sometimes called an ‘official visitors scheme’, an ‘official community visitors scheme’, or an ‘independent visitors scheme’, is a technical term denoting a particular type of oversight system in a particular set of circumstances. In Australia, these schemes normally involve a mechanism where individuals independent from government agencies visit children who are in the child protection system to ensure they are safe and receiving adequate care.

For example, in Queensland, which has the most extensive scheme, the Office of the Public Guardian has teams of independent community visitors (CVs) who visit children in ‘visitable sites’, including out-of-home care (foster and kinship care), detention centres and other supported accommodation, such as mental health facilities.⁵⁹ Unusually, the scheme is universal, applying to every child entering care. Frequency of visits is determined by the level of need. The purpose of visits is to:

- listen to and develop trusting and supportive relationships with the child
- help the child with any issues they may have
- confirm that their placement meets all their needs
- help connect the child with the support people and services they might need
- help the child find out about allowances and money issues; education, health or counselling support; family contact issues; and their Child Safety Officer or supportive people from other government departments.

In New South Wales, official community visitors (OCVs) are appointed by the Minister for Disability Services and the Minister for Community Services.⁶⁰ There are 30 OCVs who are coordinated by the NSW Ombudsman, but they are independent and are responsible directly to the ministers. In relation to children in care, the OCVs visit most government and non-government accommodation services for children, with priority given to those at greatest risk. OCVs provide advice to the ministers and the Ombudsman about the quality of care provided, and identify issues raised by residents. As well, the Department of Justice’s (Juvenile Justice) Official Visitor Scheme provides independent monitoring of juvenile justice centres. Empowered by the *Children (Detention Centres) Act 1987* (NSW) section 8A, this scheme aims to protect the rights of detained children, and provide assistance relating to the welfare and treatment of children in detention. Official Visitors (OV) have the power to enter and inspect juvenile justice centres and confer privately with any person. OVs report to the Minister for Juvenile Justice, independently of the agency. Reporting includes formal written reports every six months on the care and welfare of children in detention. These reports detail the OVs’ concerns and views about the performance of the centres against the Australasian Juvenile Justice Administrators’ Standards for Juvenile Custodial Facilities.

In Victoria, several different community visitors schemes operate for the mental health and disability sectors.⁶¹ Under the *Commission for Children and Young People Act 2012*, the Commission oversees

⁵⁹ *Public Guardian Act 2014* (Qld) ss 5, 7, 13 and ch 4.

⁶⁰ *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) pt 2 (CS-CRAMA).

⁶¹ Community Visitors are created under three Acts of Parliament: the *Mental Health Act 2014* (Vic) pt 9; the *Supported Residential Services (Private Proprietors) Act 2010* (Vic) pt 9, and the *Disability Act 2006* (Vic) pt 3 div 6. Community visitors visit group homes, supported residential services and mental health facilities and talk to residents to ensure they are being cared for with dignity and respect, and to identify issues of concern. Visitors can liaise with staff and management to resolve these issues. More serious issues are referred to the Office of the Public Advocate.

out-of-home care for children to encourage children's participation in decisions affecting them, and to advise the minister on the performance of these services.⁶² Relevant to this project, there does not appear to be a fully operational statewide OCV scheme for children in care. However, under the *Commission for Children and Young People Act 2012* (Vic), the Commission is establishing a Pilot Independent Visitor Program for residential care services in Victoria's Southern Residential Care Services.⁶³ The independent visitor (IV) will visit children living in residential care to hear about their experiences, promote child safe practices and encourage cultural and community connections.⁶⁴ The IV will visit these services monthly to talk with children about their experiences of living in care, help resolve any issues, and report in writing to the Principal Commissioner within seven days of each visit.

In addition, Victoria began the Independent Visitor Program for Youth Justice Centres in April 2012 at the Parkville Youth Justice Centre Precinct. In September 2013, this program was extended to the Malmsbury Youth Justice Centre.⁶⁵ The IV for these centres has a traditional CV role, including monitoring children's safety and wellbeing while in detention, and promoting their rights and interests. IVs attend Parkville Youth Justice Centre Precinct monthly, and are empowered to enter and inspect the centre and talk to any young person.

In the Australian Capital Territory, Official Visitors (OVs) provide a monitoring and complaints service, visit sites and enquire about an 'entitled person' at a 'visitable place'.⁶⁶ A 'visitable place' is defined as including a place of detention; therapeutic protection places; and 'places of care', which are residential care and out-of-home care as defined by the *Children and Young People Act 2008* (ACT) s 525.⁶⁷ An entitled person is a child or young person detained in a visitable place.⁶⁸ OVs aim to safeguard treatment and care, and advocate for the rights and dignity of children in care or detention. The key purpose is to detect and prevent systemic dysfunction. OVs conduct visits and inspect records, and report on the standard of facilities to the minister. They may also receive and consider complaints and help resolve grievances.⁶⁹ Additionally, there must be at least two OVs for children.⁷⁰

However, not all states and territories appear to have official visitors for children in care. In the Northern Territory, South Australia, Tasmania and Western Australia, they exist for some sectors, such as mental illness and disability. But their introduction in other jurisdictions covering children in care appears to be either under consideration or in process, or not on the policy agenda.

In the Northern Territory, a Community Visitor Program has been established under the *Mental Health and Related Services Act* (NT) to protect the rights of people receiving treatment from the Northern Territory Mental Health Services.⁷¹ However, there is no independent oversight of children in out-of-home care.

⁶² *Commission for Children and Young People Act 2012* (Vic) s 28.

⁶³ Commission for Children and Young People. Pilot Independent Visitor Program for Residential Care Services. Retrieved 5 February 2016 from www.cryp.vic.gov.au/independentvisitors.htm.

⁶⁴ Visits to residential care facilities in Berwick, Cranbourne, Dandenong, Highett, Frankston, Churchill, Morwell and Traralgon began in early 2015. Additional locations may be included in the future.

⁶⁵ It is unclear whether this IV program has been rolled out statewide.

⁶⁶ Official visitors are appointed under the *Official Visitor Act 2012* (ACT), *Children and Young People Act 2008* (ACT) pt 2.3, *Mental Health (Treatment and Care) Act 1994* (ACT) pt 11, *Corrections Management Act 2007* (ACT) ch 7, *Disability Services Act 1991* (ACT) pt 3, and the *Housing Assistance Act 2007* (ACT) pt 4B.

⁶⁷ *Children and Young People Act 2008* (ACT) s 37.

⁶⁸ *Children and Young People Act 2008* (ACT) s 37. Note also that the ACT Charter of Rights for Children and Young People in Out-Of-Home Care was launched in November 2009.

⁶⁹ *Official Visitor Act 2012* (ACT) s 14.

⁷⁰ *Official Visitor Act 2012* (ACT) s 10.

⁷¹ *Mental Health and Related Services Act* (NT) pt 14.

In South Australia, the Community Visitor Scheme protects the rights of people experiencing acute mental illness, and those with disability living in disability accommodation facilities or supported residential facilities.⁷² Community Visitors (CVs) visit and inspect approved mental health treatment centres, disability accommodation and supported residential facilities; promote resolution of complaints; advocate for individuals' rights; and refer major issues to other agencies, including ministers. They report to the principal community visitor, who oversees their performance and reports on performance to the relevant ministers. However, there is no specific scheme for children in care.⁷³

In Tasmania, the Office of the Ombudsman and Health Complaints Commissioner administers two official visitor programs: the Mental Health OV Program and the Prison OV Program. With regard to children in care, the Commissioner for Children published 'Children's Visitor Pilot Evaluation: For the Commissioner for Children, Tasmania' in 2011 and recommended that the program be implemented fully.⁷⁴ The Commissioner established a working group to advise on the most appropriate model.⁷⁵ It is unclear what has occurred since.⁷⁶

Similarly, in Western Australia, the Council of Official Visitors has traditional visitor functions under the *Mental Health Act 2014 (WA)* pt 29 div 8 and *Mental Health Act 2014 (WA)* pt 9. The jurisdiction is limited to inspecting authorised hospitals and licensed private psychiatric hospitals to ensure they are safe, and to helping individuals receiving treatment involuntarily or mentally impaired defendants in an authorised hospital; individuals on community treatment orders; and individuals with a psychiatric disability who live in licensed private hostels or group homes. Western Australia does not appear to have a CV program for children in care, but published a discussion paper, *Out-of-home care strategic directions in WA 2015-2020*.⁷⁷ This will inform the Out-of-Home Care Reform Plan, which is currently under review.

2.4.2 Synthesis and summary of efficacy

Overall, the key function of a community visitors scheme is to provide an important and independent point of contact for children in out-of-home care or the child protection system. The scheme also enables problems to be made known. Queensland's scheme appears to be the most extensive in scope and implementation, although accessibility to children who wish to disclose sexual abuse is a separate question that would require further research. A review in South Australia in 2010 also found that Queensland's program was the most extensive.⁷⁸ It found that stakeholder surveys in Queensland had highlighted that consistency, reliability and trust were important features of the CV's role. The Queensland program employed more than 200 visitors on contracts, and supervisors and coordinators are permanent government employees.

Few jurisdictions implement a broad scheme. An evaluation of the Tasmanian pilot program observed that:

⁷² Established by the *Mental Health Act 2009 (SA)* Pt 8 Div 2, and Disability Services (Community Visitor Scheme) Regulations 2013 (SA).

⁷³ Though not a formal scheme, the Guardian's Office, established by the *Children's Protection Act 1993 (SA)*, monitors the wellbeing of children and young people at two campuses of the Adelaide Youth Training Centre, with visits by a team of two advocates every second month.

⁷⁴ Commissioner for Children Tasmania. (2012). *Children's Visitors 12 Month Evaluation Final Report*. Retrieved 3 July 2015 from www.childcomm.tas.gov.au/wp-content/uploads/2012/01/Childrens-Visitors-12-Month-Evaluation-Final-Report.pdf.

⁷⁵ www.dhhs.tas.gov.au/_data/assets/pdf_file/0009/84096/Carer_News_Spring_2011_-_final_corrected_and_approved.pdf.

⁷⁶ Department of Health and Human Services Tasmania. (2012). *Helping Tasmanian children transition from care*. Retrieved 5 February 2016 from www.dhhs.tas.gov.au/news/2012/helping_tasmanian_children_transition_from_care.

⁷⁷ Department of Child Protection and Family Support Western Australia. *Discussion Paper: Out-of-home care strategic directions in WA 2015-2020*. Retrieved 5 February 2016 from <https://www.dcp.wa.gov.au/ChildrenInCare/Pages/OOHCReform.aspx>.

⁷⁸ South Australian Guardian for Children and Young People. (2010). *A Community Visitor Program for Children in State Care – Report*. Retrieved 5 February 2016 from www.gcyp.sa.gov.au/wp-content/uploads/2010/08/A-Community-Visitor-Program-for-Children-in-State-Care.pdf.

The research demonstrates that very few jurisdictions nationally or internationally deliver a broad scale children's visitor model across all areas of the Out of Home Care (OOHC) system. In particular, there are very few that are available to all children in foster care. This is not necessarily because this is not a sound model to provide a voice in the best interests of children and young people. However, in terms of viability of a model both economically and practically, it presents major challenges for an often already strained system. Queensland has managed to achieve this with an annual investment of over \$7.5 million.⁷⁹

Table 2.4 sets out the key features of Australian schemes, informed by an analysis of the legislation and relevant secondary sources. For this report, key dimensions, including the capacity and breadth of the scheme, have been analysed to fulfil the synthesis aspect of the project and to evaluate narrow efficacy. Accordingly, Table 2.4 synthesises key features and narrow efficacy dimensions relating to:

- specific community visitors scheme for children in care, as distinct from other visitors schemes
- mechanisms to protect the independence of the visitors and ensure compliance; for example, by reporting
- implementation capacity (via analysis of the breadth of the scheme).

⁷⁹ 3p Consulting. (2012). *Children's Visitor Pilot evaluation: For the Commissioner for Children, Tasmania*. Retrieved 5 February 2016 from www.childcomm.tas.gov.au/wp-content/uploads/2012/01/Childrens-Visitors-12-Month-Evaluation-Final-Report.pdf, p 4.

Table 2.4 – Oversight systems: Community visitors schemes

Jurisdiction	Key features	Is there a community visitors scheme specifically for children in care?	Are there mechanisms to protect visitors' independence and ensure compliance; e.g., by reporting?	Does there appear to be sufficient capacity for implementation e.g., via breadth of operation and frequency of visits?
ACT	<p>Official visitors aim to safeguard standards of treatment and care, and advocate for the rights and dignity of people being treated under the legislation referred to above. The scheme aims is to detect and prevent systemic dysfunction in the specified environments. Official visitors achieve this by visiting, inspecting records, reporting on the standard of facilities, and reporting to the operational minister and other public authorities.</p> <p>Public Trustee for the Australian Capital Territory (www.publictrustee.act.gov.au/visitor-scheme)</p>	Yes	Yes	There must be at least two children's OCVs; it is unclear if this is sufficient
NSW	<p>There are 30 OCVs coordinated by the NSW Ombudsman. They are independent and responsible directly to the Minister for Disability Services and the Minister for Community Services. OCVs visit most government and non-government accommodation services for children in care; as well, the Department of Justice (Juvenile Justice) Official Visitor Scheme provides independent monitoring of juvenile justice centres</p> <p>NSW Ombudsman (https://www.ombo.nsw.gov.au/what-we-do/coordinating-responsibilities/official-community-visitors) NSW Department of Justice (www.djj.nsw.gov.au/officialvisitors.htm)</p>	Yes	Yes	Precise coverage is unclear; priority is given to those at greatest risk
NT	<p>In the Northern Territory, a Community Visitor Program has been established under the <i>Mental Health and Related Services Act</i> (NT) Part 14, to protect the rights of people receiving treatment from NT Mental Health Services. However, there is no independent oversight of children in out-of-home care</p> <p>Northern Territory Community Visitor Program (www.cvp.nt.gov.au/index.html)</p>	No	Not applicable	No
Qld	<p>In Queensland, the Office of the Public Guardian now runs the Community Visitor Program for children and young people in the child protection system</p> <p>www.publicguardian.qld.gov.au/child-advocate/child-community-visiting Under <i>Public Guardian Act 2014</i> (Qld) ss 5, 7, 13 and ch 4</p>	Yes	Yes	Has the broadest coverage of any Australian jurisdiction; frequency is unclear

SA	No specific OCV program for children in care SA Department for Communities and Social Inclusion https://www.sa.gov.au/topics/citizens-and-your-rights/feedback-and-complaints/community-visitor-scheme	No	Not applicable	No
Tas	No specific OCV program for children in care Office of the Ombudsman and the Health Complaints Commissioner (http://officialvisitors.tas.gov.au/home)	No	Not applicable	No
Vic <i>Commission for Children and Young People Act 2012</i>	Under s 28 of the <i>Commission for Children and Young People Act 2012</i> , the Commission oversees out-of-home care for children to encourage their participation in decisions affecting them, and to advise the minister on the performance of services. There does not appear to be a fully operational statewide OCV scheme for children in care. However, the Commission is establishing a Pilot Independent Visitor Program for residential care services in Victoria's Southern Residential Care Services. In addition, Victoria began the Independent Visitor Program for Youth Justice Centres in April 2012 at the Parkville Youth Justice Centre Precinct. In September 2013, this program was extended to the Malmsbury Youth Justice Centre. Commission for Children and Young People, Victoria (www.cryp.vic.gov.au/independentvisitors.htm)	Yes	Yes	Precise coverage is unclear, but does not appear to be statewide. Monthly visits are intended
WA	No specific OCV program for children in care but a discussion paper, <i>Out-of-home care strategic directions in WA 2015-2020</i> , has been published. (https://www.dcp.wa.gov.au/ChildrenInCare/Pages/OOHCreform.aspx). This will inform the Out-Of-Home Care Reform Plan, which is under review. <i>Commissioner for Children and Young People Act 2006</i>	No	Not applicable	No

Part 2.5 – Oversight systems: Child advocates and children’s guardians

2.5.1 Child advocates and children’s guardians schemes

Different jurisdictions use different terminology to describe the offices of advocates and guardians. There are also differences in their respective roles, and sometimes one office will cover aspects of both advocacy and guardianship roles. This report has focused on the key functions of the relevant body in each state and territory, while noting the role played by the associated body.

In general, a child advocate tends to have a more limited role, providing advocacy for children, and normally for children in care.

A children’s guardian normally has a broader role concerned with oversight of components of the child protection system, such as out-of-home care. This kind of guardian’s office essentially fulfils the functions carried out in other jurisdictions by children’s commissions. This at least partly explains why the two jurisdictions in Australia with guardian’s offices (New South Wales and South Australia) do not have children’s commissions.

Overall, states and territories have different approaches to oversight across and within offices of children’s guardians, child advocates and commissions for children. The following show these approaches:

- Only two jurisdictions have a dedicated children’s guardian (New South Wales and South Australia). Queensland has a public guardian, although not with specific guardianship over children’s matters.
- Four jurisdictions have a child advocate (Australian Capital Territory, New South Wales, South Australia and Western Australia). Queensland’s public guardian also has an advocacy role for children in some but not all types of care.
- Some functions normally performed by a guardian or advocate may be performed by the commission for children in the relevant jurisdiction; so, this section needs to be read with the prior section of this report about those bodies.
- Five jurisdictions have children’s commissioners (Australian Capital Territory, Northern Territory, Tasmania, Victoria and Western Australia), but New South Wales and South Australia do not (although South Australia has a Bill, which if passed will introduce one). Queensland has a Family and Child Commission but no specific children’s commissioner.

Therefore, the position is disparate and complicated across the nation, with agencies having different names performing similar advocacy or guardian functions. Other functions are apparently not performed by any of these bodies. Below is a summary of the key functions of each state and territory advocate and guardian, and the powers conferred by legislation to enable them to discharge their functions. This synthesis is then tabulated in Table 2.5.

Australian Capital Territory

In the Australian Capital Territory, the public advocate undertakes advocacy functions for children including children in care.

Under the *Public Advocate Act 2005*, the public advocate has functions including:

- (d) acting as advocate for the rights of children and young people and, as part of acting as advocate for those rights, doing the following:
 - i. fostering the provision of services and facilities for children and young people;

- ii. supporting the establishment of organisations that support children and young people;
 - iii. promoting the protection of children and young people from abuse and exploitation
- (e) monitoring the provision of services for the protection of children and young people;
- (f) dealing, on behalf of children and young people, with entities providing services.⁸⁰

The advocate can receive concerns from children about services provided for their protection, and can conduct investigations. However, there do not appear to be other provisions about the conduct or outcomes of such investigations.⁸¹

The advocate also may engage a lawyer to appear before a court or tribunal in relation to the exercise of the public advocate's functions under the Act.⁸²

New South Wales

New South Wales appears to have the most developed guardian scheme, supplemented by a child advocate. The scope of power and functions of these two bodies mean there is no children's commission.⁸³

The *Office of the Children's Guardian* is an independent statutory authority established under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ch 10. Under section 181, its core functions include protecting children in out-of-home care, by promoting and regulating quality, child safe organisations and services. In particular, the children's guardian accredits and monitors the agencies that arrange statutory out-of-home care for children, and registers and monitors agencies that provide, arrange or supervise voluntary out-of-home care⁸⁴ for children.⁸⁵ It also maintains a register of individuals who are authorised carers, and monitors working with children schemes. Under section 186A, the children's guardian may refer any information relating to a possible criminal offence to the police, the Ombudsman, the Director-General or others as deemed appropriate.⁸⁶

In New South Wales, the child advocate administers the *Advocate for Children and Young People Act 1998* and reports to the New South Wales Parliament. The advocate has a more general role than the children's guardian, and works to improve the safety, welfare and wellbeing of all children and young people in New South Wales, and represents their views after consulting with them.⁸⁷ However, the advocate does not deal

⁸⁰ *Public Advocate Act 2005* (ACT) s 10.

⁸¹ *Public Advocate Act* (ACT) s 11.

⁸² *Public Advocate Act* (ACT) s 13.

⁸³ Note that changes in NSW in 2014 bring the former functions of the NSW Commission for Children and Young People (the Commission) and the NSW Youth Advisory Council under the auspices of the Advocate for Children and Young People.

⁸⁴ Voluntary out-of-home care includes overnight centre-based respite, host family care, residential placements and camps that provide respite or address challenging behaviour.

⁸⁵ The Office of the Children's Guardian also helps organisations, employers and individuals understand the meaning, importance and benefits of being child safe. As well as out-of-home care, its regulatory functions relate to adoption services, the Working With Children Check, employment of children aged under 15 in entertainment, exhibitions, still photography and door-to-door sales; and employment of children aged under 16 in modelling.

⁸⁶ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 186A.

⁸⁷ Under the *Advocate for Children and Young People Act 1998* (NSW) s 15, the main functions of the Child Advocate include:

- advocating for and promoting the safety, welfare and wellbeing of children and young people aged 0 to 24
- promoting the participation of children in decision-making that affects their lives
- conducting special inquiries into issues affecting children and young people
- making recommendations to government and non-government agencies on legislation, reports, policies, practices, procedures and services affecting children and young people
- conducting, promoting and monitoring research into issues affecting children and young people
- promoting the provision of information and advice to assist children and young people.

directly with the complaints or concerns of a particular child.⁸⁸ There is no specific reference in these Acts to the capacity of either the children’s guardian or the advocate to represent the child in legal proceedings. The Charter of Rights for Children in Care contains provision for support in legal proceedings.

Queensland

In Queensland, under the *Public Guardian Act 2014*, the Office of the Public Guardian includes the child advocacy program, which gives ‘relevant children at visitable sites’ (i.e., under section 51, children in care at residential facilities, detention centres, corrective services facilities and mental health services, but apparently not children at ‘visitable homes’, such as foster care and kinship care) an independent voice, ensuring their views are obtained and considered in decisions affecting them, especially in legal proceedings.⁸⁹ Note that in Queensland, OCVs have advocacy powers for children in out-of-home care and in other care arrangements.⁹⁰

A child can contact an advocate through the Office of the Public Guardian, or through their community visitor, to seek advice and support in situations affecting them and their care arrangements.⁹¹ In addition, the public guardian has an advocacy function to help a child in care if the child considers the charter of rights in the *Child Protection Act 1999* is not being complied with.⁹²

South Australia

In South Australia, the *Children’s Protection Act 1993* (SA) Part 7A establishes the office of the guardian. The key functions of the guardian include:

- advocating for the interests of children in care, especially for children who have suffered sexual abuse
- monitoring the circumstances of children in care
- providing advice on the quality of care provided and on whether children’s needs are being met
- providing advice on necessary systemic reform to improve quality of care
- encouraging children to express their views.⁹³

In addition, individual advocacy is facilitated through outreach services to children and young people in out-of-home care. The guardian also works with relevant agencies to ensure children in care involved in investigations of sexual abuse have an advocate.⁹⁴

Under section 52AB(2), the guardian must act independently and it is expressly stated that the minister cannot control how the guardian exercises its statutory authority.

⁸⁸ *Advocate for Children and Young People Act 1998* (NSW) s 19.

⁸⁹ *Public Guardian Act 2014* (Qld) s 13; Pt 3.

⁹⁰ *Public Guardian Act 2014* (Qld) Pt 2. The *Family and Child Commission Act 2014* s 9(2) expressly states that it is not a function of the commission to investigate the circumstances of a particular child or to advocate on their behalf.

⁹¹ A child advocacy officer can help a child or young person by:

- ensuring their views are heard and taken into consideration when decisions are made that affect their care arrangements, such as family group meetings, court hearings and tribunals
- providing support in court conferences and organising legal and other representation
- applying to the tribunal or court about changes to a placement, a contact decision – contact with parents and siblings – or a change to a child protection order
- helping resolve disputes, including making official complaints to the police or the Ombudsman
- helping resolve issues at school.

⁹² *Public Guardian Act 2014* (Qld) s 13(2)(b).

⁹³ *Children’s Protection Act 1993* (SA) s 52C.

⁹⁴ *Children’s Protection Act 1993* (SA) s 52C.

Notably, South Australia also has a Youth Advisory Committee consisting of children who have been or are in care, to assist the guardian in fulfilling their duties.⁹⁵ It also has a Council for the Care of Children, which, under section 52J, reports to government on matters including progress in keeping children safe from harm.⁹⁶ The *Guardian's Annual Report 2013-14* reveals that the guardian responded to 134 requests for intervention, involving 193 children and young people in care. Children made 19 per cent of these requests; there is no specific information about whether any of these requests were related to sexual abuse, although 26 issues involved children's safety. The report notes that there have been 225 notifications of serious sexual abuse reported to the Office of the Guardian since November 2008.⁹⁷

Tasmania

Tasmania has no specific children's guardian or advocate. One of the functions of the Commissioner for Children and Young People is broad advocacy on children's matters. They have the power to act as an advocate for a detainee under the *Youth Justice Act 1997*.⁹⁸

Victoria

In Victoria, there is no specific children's guardian or advocate, although the Commissioner for Children has some oversight powers.

Western Australia

In Western Australia, the Advocate for Children in Care provides advocacy and complaints management services for children and young people in care. In 2011–12, the advocate implemented a statewide rollout of Viewpoint, an interactive online program for children in care aged 4 to 17. The program enables them to record their views, wishes and experiences to contribute to developing meaningful care plans. The department's Complaints Management Unit is available to all customers. A Standards Monitoring Unit began formal monitoring of protection and care service standards on 1 July 2007. Seventeen districts are monitored on a two-year cycle, and the monitoring regime has been extended across all placement service providers.

2.5.2 Synthesis and summary of efficacy

Overall, the key function of advocacy schemes is to represent and support the interests of children in care, especially in legal proceedings. Offices of the Children's Guardian, existing only in New South Wales and South Australia, have a broader remit, somewhat akin to children's commissions in other jurisdictions, overseeing the child protection system generally.

Table 2.5 sets out the key features of Australian advocacy and guardianship schemes, informed by an analysis of the legislation. For this report, key dimensions have been analysed to fulfil the synthesis aspect of the project and to evaluate narrow efficacy. Accordingly, Table 2.5 synthesises key features and narrow efficacy dimensions relating to:

- the existence of the scheme
- whether it applies to all children or only children in care
- the accessibility of the scheme to children.

⁹⁵ *Children's Protection Act 1993* (SA) s 52EA.

⁹⁶ *Children's Protection Act 1993* (SA) pt 7B.

⁹⁷ Office of the Guardian for Children and Young People (South Australia). (2014). *Annual Report 2013–14*. Retrieved 5 February 2016 from www.gcyp.sa.gov.au/2014/10/the-guardians-annual-report-2013-14/, 9, 14, 28.

⁹⁸ *Children, Young Persons and their Families Act 1997* (Tas) s 79(1)(fa).

Table 2.5 – Child Advocates schemes/Children’s Guardian schemes

Child advocate schemes	Key features	Narrow efficacy on key dimensions		
		Is there a specialised child advocate or guardian?	Does the jurisdiction extend to all children or only to children in care?	Is the advocate or guardian readily accessible to children, especially those who have experienced child sexual abuse in an institutional context?
<p>ACT</p> <p><i>Public Advocate Act 2005</i> http://www.publicadvocate.act.gov.au/children_young_people</p>	<p>No specific children’s guardian</p> <p>Advocate The Public Advocate of the Australian Capital Territory monitors the provision of services, and protects and advocates for the rights of children and young people</p> <p>The public advocate refers systemic issues to the Commissioner for Children and Young People</p>	Advocate	All children	Not clear – may interlink with other forms of outreach, such as broad communications strategies for children generally, and OCV schemes for children in care
<p>NSW</p> <p><i>Advocate for Children and Young People Act 2014</i> http://www.kids.nsw.gov.au/</p> <p>NSW Office of the Children’s Guardian http://www.kidsguardian.nsw.gov.au/ <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) ch 10</p>	<p>Advocate Advocate for Children and Young People has general broad advocacy powers for children and young people aged 0–24</p> <p>Guardian Under the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) s 181, the NSW Office of the Children’s Guardian’s core functions are to protect children in out-of-home care by promoting and regulating quality, child safe organisations and services. The office accredits and monitors the agencies that arrange statutory out-of-home care for children aged under 18, and registers and monitors agencies that provide, arrange or supervise voluntary out-of-home care for children aged under 18</p>	<p>Advocate</p> <p>Guardian</p>	<p>All children</p> <p>Guardian: Children in care</p>	Not clear – may interlink with other forms of outreach such as broad communications strategies for children generally, and OCV schemes for children in care
NT	No specific children’s guardian or advocate	Neither	Not applicable	Not applicable

<p>Qld</p> <p><i>Public Guardian Act 2014</i></p> <p>http://www.publicguardian.qld.gov.au/child-advocate/child-community-visiting</p>	<p>The Office of the Public Guardian includes the child advocacy program, which provides individual advocacy for children in ‘visitable sites’ in the child protection system (excludes those in foster and kinship care), ensuring their views are obtained and considered in decisions affecting them</p> <p>OCVs have advocacy powers for children in foster and kinship care</p>	<p>Hybrid model combining elements of both</p>	<p>Children in care</p>	<p>Not clear – may interlink with other forms of outreach, such as the OCV scheme for children in care</p>
<p>SA</p> <p>Office of the Guardian for Children and Young People</p> <p>http://www.gcyp.sa.gov.au/about-2/monitoring-childrens-wellbeing/</p> <p><i>Children’s Protection Act 1993</i> s 52C and provisions in Part 7A</p>	<p>Under the <i>Children’s Protection Act 1993</i>, the Office of the Guardian monitors and assesses out-of-home care arrangements, advocates for, and advises on, the circumstances and needs of children, and systemic issues affecting the quality of out-of-home care</p> <p>Through outreach services, the guardian also ensures all children and young people in out-of-home care receive individual advocacy; hence, it is fulfilling an advocacy role. Further, the guardian works with relevant agencies to ensure children in care involved in investigations of sexual abuse have an advocate</p>	<p>Guardian and advocacy functions</p>	<p>Children in care</p>	<p>Youth Advisory Committee includes children who have been or are in care to assist the guardian in fulfilling their duties (s 52EA). It offers good prospects for effective accessibility</p> <p>Otherwise, not clear – may interlink with other forms of outreach, such as OCV schemes for children in care</p>
<p>Tas</p>	<p>No specific children’s guardian or advocate</p> <p>The Commissioner for Children and Young People has as one of their functions broad advocacy in children’s matters, and the power to act as an advocate for a detainee under the <i>Youth Justice Act 1997</i></p>	<p>Neither</p>	<p>Children in detention</p>	<p>Not clear – may interlink with other forms of outreach, such as OCV schemes for children in care or detention</p>
<p>Vic</p>	<p>No specific children’s guardian or advocate</p>	<p>Neither</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>WA</p> <p>https://www.dcp.wa.gov.au/ChildrenInCare/Pages/AdvocateforChildreninCare.aspx</p>	<p>No specific guardian for children.</p> <p>Western Australia has an advocate for children in care, who provides advocacy and complaints management services. It is difficult to isolate the source of power for this office, but it may be the <i>Commissioner for Children and Young People Act 2006</i> s 19(1)(a), which provides that one of the commissioner’s functions is to advocate for children and young people</p>	<p>Advocate</p>	<p>Children in care</p>	<p>Statewide rollout of online program offers prospect of effective accessibility</p> <p>Otherwise, not clear – may interlink with other forms of outreach, such as OCV schemes for children in care</p>

Part 2.6 – Oversight systems: Crime and misconduct/corruption commissions

2.6.1 Crime and misconduct/corruption commissions generally

Crime and misconduct commissions, sometimes called ‘crime and corruption commissions’ and synonymous terms, are generally able to investigate crime, misconduct and corruption (including paedophilia) in the public sector and public sector agencies. Their jurisdiction extends to state government agencies, local government authorities, members of Parliament and the judiciary. In some instances, the jurisdiction specifically extends to organised crime. These agencies have investigative powers exceeding those ordinarily available to the police, to enable effective investigation of major crime.

Below is a summary of the key functions and parameters of each state crime or corruption commission, and of the powers conferred by legislation to enable the discharge of their functions. This synthesis is then tabulated in Table 2.6.

Australian Capital Territory

The Australian Capital Territory does not have a commission like other jurisdictions. It has a similar approach to the Northern Territory, using the *Public Interest Disclosure Act 2012*, which covers public officials and police. However, it lacks an independent commissioner with designated responsibility to investigate disclosures.

The Act aims:

- (a) to provide for a way for people to make ‘public interest disclosures’ of improper conduct on the part of public officers and public bodies;
- (b) to protect persons who make such disclosures from acts of reprisal;
- (c) to ensure that public interest information disclosed is properly investigated, and that any impropriety is properly dealt with.⁹⁹

‘Public interest disclosures’ are defined as being about ‘disclosable conduct’.¹⁰⁰ ‘Disclosable conduct’ is defined as including: (a) conduct that could, if proved, be a criminal offence, or give grounds for disciplinary action; (b) action of a public official that is maladministration that adversely affects a person’s interests, or that is a danger to public health or safety.¹⁰¹ Under section 8(2), ‘conduct’ for a public official includes conduct that is a breach of trust as a public official. In addition, ‘public health or safety’ includes health or safety of people under lawful care or control, including, for example, children under the care and control of a teacher.¹⁰² However, there is no independent Commissioner whose role is to investigate disclosures. Instead, disclosures are meant to be investigated by the head of the relevant public sector entity. The Commissioner for Public Administration has an oversight role regarding the treatment of disclosures by heads of relevant public sector entities.¹⁰³

New South Wales

The New South Wales Independent Commission Against Corruption (ICAC) implements the *Independent Commission Against Corruption Act 1988* (NSW). The Act focuses on responding to corrupt conduct by

⁹⁹ *Public Interest Disclosure Act 2012* (ACT) s 6.

¹⁰⁰ *Public Interest Disclosure Act 2012* (ACT) s 7.

¹⁰¹ *Public Interest Disclosure Act 2012* (ACT) s 8(1).

¹⁰² *Public Interest Disclosure Act 2012* (ACT) s 8(2).

¹⁰³ *Public Interest Disclosure Act 2012* (ACT) pt 6, s 28.

public officials, although acts by any person in relation to public officials' conduct also fall within ICAC's ambit.

ICAC has extensive functions.¹⁰⁴ They include investigating any allegation, complaint or circumstance implying corrupt conduct has occurred or may be about to occur. Its principal function is to conduct its own investigations, and to make findings and recommendations relating to corrupt conduct by public authorities or officials.

'Corrupt conduct' is defined extensively in section 8. It does not directly refer to child abuse, but includes any conduct of a public official that constitutes or involves a breach of public trust.

No recent reports or reviews on ICAC's website clearly relate to child sexual abuse in institutional contexts.¹⁰⁵ There is no reference to 'child', 'children', 'paedophilia' or 'abuse' in its *Annual Report 2014–2015*.¹⁰⁶

Northern Territory

The Northern Territory does not have a commission like other jurisdictions. Somewhat similar to the Australian Capital Territory, it has an independent Office of the Information Commissioner, which implements the *Public Interest Disclosure Act*, covering public officials and police. Part 5 establishes the Office of the Commissioner for Public Interest Disclosures. The Northern Territory model differs from the Australian Capital Territory in that it has an independent commissioner with responsibility for conducting investigations.

Under the Act, the Office of the Information Commissioner aims:

- (a) to provide for disclosure of improper conduct on the part of public officers and public bodies;
- (b) to protect persons who make such disclosures from acts of reprisal;
- (c) to ensure that public interest information disclosed is properly investigated, and that any impropriety is properly dealt with.¹⁰⁷

'Improper conduct' is defined extensively in section 5. The definition includes acts that breach public trust or constitute a risk to public safety, or 'substantial maladministration' contrary to law that adversely affects someone's interests.¹⁰⁸ The commissioner must investigate all disclosures, but can refer them to other appropriate agencies.¹⁰⁹

Queensland

The Crime and Corruption Commission implements the *Crime and Corruption Act 2001* (Qld). Its functions are detailed in Chapter 2 and include investigating and preventing 'major crime', and dealing with complaints relating to the police and public administration, including allegations of corruption.¹¹⁰ The

¹⁰⁴ *Independent Commission Against Corruption Act 1988* (NSW) s 13.

¹⁰⁵ Independent Commission Against Corruption. Past Investigations. Retrieved 5 February 2016 from <http://www.icac.nsw.gov.au/investigations/past-investigations>. Note the 1994 report 'NSW Police Service and Other Agencies – alleged police protection of paedophiles from criminal investigation and prosecution'.

¹⁰⁶ Independent Commission Against Corruption. Publications and Resources. Retrieved 5 February 2016 from <http://www.icac.nsw.gov.au/publications-and-resources>.

¹⁰⁷ *Public Interest Disclosure Act* (NT) s 3.

¹⁰⁸ *Public Interest Disclosure Act* (NT) s 5.

¹⁰⁹ *Public Interest Disclosure Act* (NT) s 20.

¹¹⁰ *Crime and Corruption Act 2001* (Qld) s 4.

additional focus on major crime, regardless of the identity of the perpetrator, gives this agency a broader remit than most commissions, which only focus on public agencies.

‘Corrupt conduct’ as defined in section 15 does not specifically refer to child abuse. However, it does include serious assault, breaching public trust, dishonest conduct, and any act that constitutes reasonable grounds for disciplinary action leading to termination.¹¹¹ The definition of ‘major crime’ in Schedule 2 includes indictable offences where punishment is a minimum sentence of 14 years, and criminal paedophilia.

Schedule 2 defines ‘criminal paedophilia’ as criminal activity that involves (a) offences of a sexual nature committed in relation to children; or (b) offences relating to obscene material depicting children. Schedule 2 defines ‘major crime’ as:

- (a) criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years;
- (b) criminal paedophilia; and
- (e) something that is (i) preparatory to the commission of criminal paedophilia; or (ii) undertaken to avoid detection of, or prosecution for, criminal paedophilia.

The Crime and Corruption Commission has published several investigations and reports on child sexual abuse. The Crime and Misconduct Commission (as it was named then) in 2000 published *Safeguarding Students: minimising the risk of sexual misconduct by Education Queensland staff*.¹¹² Further reports include, *Abuse of children in foster care* (2003), and *Protecting children: an inquiry into abuse of children in foster care* (2004).¹¹³

South Australia

In South Australia, the Independent Commissioner Against Corruption (ICAC) implements the *Independent Commissioner Against Corruption Act 2012* (SA). The commission’s functions are set out in section 7 and include the identification and investigation, and referral to a law enforcement agency, of any allegations of corruption in public administration.

‘Corruption in public administration’, and ‘misconduct in public administration’ are defined in section 5. This provision does not directly refer to child abuse, but ‘corruption in public office’ includes abuse of public office, and any offence under the *Criminal Law Consolidation Act 1935* (SA) committed by a public officer while acting in their capacity, or relating to their former capacity in that role.¹¹⁴ This extends to aiding, abetting, procuring, inducing, being party to, and conspiring to commit any of these offences. ‘Misconduct in public office’ includes contravening a code of conduct, raising grounds for disciplinary action, and other misconduct while acting as a public officer.

¹¹¹ *Crime and Corruption Act 2001* (Qld) s 15.

¹¹² Crime and Corruption Commission. (2000). *Safeguarding Students: minimising the risk of sexual misconduct by Education Queensland staff*. Retrieved 5 February 2016 from <http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/cmc-investigations>.

¹¹³ Crime and Corruption Commission. (2004). *Protecting children: an inquiry into abuse of children in foster care*. Retrieved 5 February 2016 from <http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/children-and-young-people>; Crime and Corruption Commission. (2003). *Abuse of children in foster care*. Retrieved February 2016 from <http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/children-and-young-people>.

¹¹⁴ *Independent Commissioner Against Corruption Act 2012* (SA) s 5.

No reports or reviews on the South Australian ICAC's website clearly relate to child sexual abuse in institutional contexts. There is no reference to 'child', 'children', 'paedophilia' or 'abuse' in its 2014 annual report, in the context of preventing child sexual abuse in institutional contexts.¹¹⁵

Tasmania

The Tasmanian Integrity Commission is responsible for discharging the functions and powers set out in the *Integrity Commission Act 2009* (Tas).

The commission's functions and powers are listed in section 8 of the Act, and include developing standards, guidelines and codes of conduct for public officers; receiving and assessing complaints about misconduct; referring these to public authorities where required; and investigating complaints or conducting inquiries by itself or in conjunction with a public authority, the police or the Director of Public Prosecutions.

'Misconduct' is defined in section 4. It does not directly refer to child abuse, but includes breaching codes of conduct; and dishonest and improper conduct.¹¹⁶

No reports or reviews on the website clearly relate to child sexual abuse in institutional contexts. In the most recent *Annual Report (2013–14)*, there is no mention of 'child', 'children', 'paedophilia' or 'abuse'.¹¹⁷

Victoria

In Victoria, the Independent Broad-based Anti-corruption Commission (IBAC) implements the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). IBAC's functions include identifying and investigating serious corrupt conduct and police personnel misconduct; and assessing police misconduct.¹¹⁸

'Corrupt conduct' is defined in section 4. This provision does not refer expressly to child abuse. However, it includes:

- conduct that adversely affects the honest performance of official functions;
- conduct that constitutes or involves the dishonest performance of official functions;
- conduct that constitutes or involves knowingly or recklessly breaching public trust.¹¹⁹

Section 5 defines 'police personnel misconduct' to include offences that are punishable by imprisonment or that bring the police force into disrepute or diminish public confidence, including by way of disgraceful or improper conduct.

No reports or reviews relating to 'child abuse' or 'children' were available on IBAC's website. The most recent IBAC annual report (2013-14) did not include any reference to 'child', 'children', 'paedophilia' or 'abuse' in relation to child sexual abuse in institutional contexts.¹²⁰

¹¹⁵ Independent Commissioner against Corruption. (2014). *2013–2014 ICAC & OPI Annual Report*. Retrieved 5 February 2016 from <http://www.icac.sa.gov.au/content/overview-1>.

¹¹⁶ *Integrity Commission Act 2009* (Tas) s 4.

¹¹⁷ Integrity Commission Tasmania. (2014). *Integrity Commission Annual Report 2013-2014*. Retrieved 5 February 2016 from http://www.integrity.tas.gov.au/resources_and_publications/publications.

¹¹⁸ *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) s 15.

¹¹⁹ *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) s 4(1)(a)-(c).

¹²⁰ Independent Broad-based Anti-Corruption Commission. (2014). *Annual report 2013–14*. Retrieved 5 February 2016 from <http://www.ibac.vic.gov.au/publications-and-resources>.

Western Australia

The Corruption and Crime Commission implements the *Corruption and Crime Commission Act 2003* (WA).

The Commission's functions are detailed in pt 2 div 1 and include preventing misconduct by public officers (as defined by the Criminal Code (WA) section 1); ensuring any allegation or information about such misconduct is dealt with appropriately (through an investigative process set out in section 18); working with the Police Royal Commission, and the Western Australia Police to combat 'organised crime' (defined in section 4 as 'activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation'); and reviewing any police action referred to it by the Commissioner of Police.¹²¹

'Misconduct' as defined in section 4 does not expressly refer to child abuse, but includes taking advantage of office to the detriment of another; committing an offence punishable by imprisonment; engaging in dishonest conduct; and breaching public trust.

In recent years, the following investigations into, and reports on, child sexual abuse have been made:

- *Sexual Contact with Children by Persons in Authority in the Department of Education and Training of Western Australia* (2006)¹²²
- *Report on the Investigation of Alleged Public Sector Misconduct in Relation to Contact with Students and the Accessing of Child Pornography by a Department of Education Employee* (2012).¹²³

The most recent annual report (2014) does not mention 'child', 'children', 'paedophilia' or 'abuse' (in relation to preventing child sexual abuse in institutional contexts).¹²⁴

2.6.2 Synthesis and summary of efficacy

Overall, crime and misconduct commissions have the key function of investigating corrupt conduct by public officials. These agencies exist in all six states. The Northern Territory and Australian Capital Territory have different models relating to 'public interest disclosures', which are akin to whistleblowing schemes. The Australian Capital Territory does not have an independent commissioner with responsibility for investigating complaints or disclosures. Commissions in Queensland and Western Australia have an additional express function of investigating major crime or organised crime, extending to persons other than public officials. Searches of organisational websites did not reveal significant activity relating to investigations of child sexual abuse in institutional contexts.

Table 2.6 sets out the key features of the Australian crime and misconduct commissions, informed by an analysis of the legislation and published reports. For this report, key dimensions have been analysed to fulfil the synthesis aspect of the project and to evaluate narrow efficacy. Accordingly, Table 2.6 synthesises key features and narrow efficacy dimensions relating to:

- the existence of a commission

¹²¹ *Corruption and Crime Commission Act 2003* (WA) ss 16–21A.

¹²² Corruption and Crime Commission. (2006). *Sexual Contact with Children by Persons in Authority in the Department of Education and Training of Western Australia*. Retrieved 5 February 2016 from <https://www.ccc.wa.gov.au/Publications/Reports/Pages/PublishedReports2006.aspx>.

¹²³ Corruption and Crime Commission. (2012). *Report on the Investigation of Alleged Public Sector Misconduct in Relation to Contact with Students and the Accessing of Child Pornography by a Department of Education Employee*. Retrieved 5 February 2016 from <https://www.ccc.wa.gov.au/Publications/Reports/Pages/PublishedReports2012.aspx>.

¹²⁴ Corruption and Crime Commission. (2014). *Corruption and Crime Commission Annual Report 2013-2014*. Retrieved 5 February 2016 from <https://www.ccc.wa.gov.au/annual-reports>.

- the jurisdiction of the scheme (ie, which bodies are covered by its remit)
- the application of the scheme to child sexual abuse in institutional contexts
- the frequency with which these agencies have investigated child sexual abuse in institutional contexts.

Table 2.6 – Oversight systems: Crime and misconduct/crime and corruption schemes

Jurisdiction	Narrow efficacy on key dimensions			
	Does a crime and misconduct commission/crime and corruption commission exist?	Which agencies are covered by the commission's jurisdiction?	Is child sexual abuse in institutional contexts included in its remit?	How frequently has child sexual abuse in institutional contexts been investigated?
ACT	Yes, but different model – no independent commissioner with investigatory responsibility	Crime and misconduct by public officials	Yes, clearly	Difficult to be certain, but there is little publicly available evidence indicating activity
NSW Independent Commission Against Corruption http://www.icac.nsw.gov.au/ <i>Independent Commission Against Corruption Act 1988</i> (NSW)	Yes	Crime and misconduct by public officials	Yes, by implication	Difficult to be certain, but there is little publicly available evidence indicating activity
NT	Yes, but different model – although has independent commissioner with investigatory responsibility	Crime and misconduct by public officials	Yes, by implication	Difficult to be certain, but there is little publicly available evidence indicating activity
Qld Crime and Corruption Commission http://www.ccc.qld.gov.au/	Yes	Both crime and misconduct by public officials, and organised crime	Yes, clearly	Some indication of activity
SA Independent Commissioner Against Corruption http://www.icac.sa.gov.au/	Yes	Crime and misconduct by public officials	Yes, clearly	Difficult to be certain, but there is little publicly available evidence indicating activity
Tas Tasmanian Integrity Commission www.integrity.tas.gov.au	Yes	Crime and misconduct by public officials	Yes, by implication	Difficult to be certain, but there is little publicly available evidence indicating activity
Vic Independent Broad-based Anti-corruption Commission http://www.ibac.vic.gov.au/ <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic)	Yes	Crime and misconduct by public officials	Yes, by implication	Difficult to be certain, but there is little publicly available evidence indicating activity
WA Corruption and Crime Commission https://www.ccc.wa.gov.au/Pages/default.aspx	Yes	Both crime and misconduct by public officials, and organised crime	Yes, clearly	Some indication of activity

Part 2.7 – Regulatory systems: Non-government schools

2.7.1 Introduction: Regulation of non-government schools and their teachers – national and state/territory context

Across Australia, 35 per cent of children in school attend a non-government school.¹²⁵ Non-government schools broadly fall into one of two categories: Catholic schools or independent schools. Independent schools comprise a diverse range of schools underpinned by a particular religious belief system or a commitment to a specific educational philosophy. Accordingly, they include Anglican, Uniting Church, Jewish, Muslim and non-denominational Christian schools, as well as performing arts, Steiner and Montessori schools.

The regulation of school education is within the legislative power of State and Territory governments. Accordingly, most components of regulation are designed and administered by these governments and associated non-State education bodies at the State and Territory level. This creates a high level of autonomy within each State and Territory for the regulation of different kinds of non-government schools. This creates the possibility of further fragmentation in regulation within and across States and Territories, at both the macro and micro level.

2.7.2 Structure of this section of the report

This synthesis describes the main dimensions of the regulation of non-government schools and of individual teachers employed in them. It examines key aspects of legislation and policy, at national, state and territory levels, and evaluates the narrow efficacy of each. Since most regulation occurs at the state and territory level, most of the synthesis in this part of the project is concerned with methods of regulation by legislation and policy within states and territories. The four main dimensions of regulation are:

- nationwide regulation of non-government schools: registration and policy (Part 2.7.4.1)
- nationwide regulation of individual teachers in non-government schools (Part 2.7.4.2)
- state and territory regulation of non-government schools by legislation: requirements for school registration (Part 2.7.4.3)
- state and territory regulation of individual non-government school teachers: registration, law and policy (Part 2.7.4.4).

2.7.3 Synthesis and summary of efficacy

Overall, as summarised in detail below (2.7.4.1–2.7.4.4), in this multifaceted domain there are four broad categories of regulation at national and state/territory level, covering non-government schools and individual teachers within them. An evaluation of narrow efficacy on multiple dimensions across these

¹²⁵ Australian Bureau of Statistics. (2015). Schools, Australia 2014, (Table 80a Summary Tables, Table 10: Full-time students by affiliation, sex, level and year of education). Of girls, 639,931 were in non-government schools and 1,154,498 were in government schools. Of boys, 646,305 were in non-government schools and 1,233,031 were in government schools. In total, there were 1,286,236 children in non-government schools, and 2,387,529 children in government schools: a total of 3,674,365 children in all schools, cat no 4221.0, ABS. Retrieved 5 February 2016 from <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4221.0>.

categories, based on the legislative and regulatory frameworks and regulatory theory principles, indicates diffuse approaches of greater and lesser narrow efficacy, and potential avenues for substantial development. For the purposes of this report, the key questions for evaluation of narrow efficacy, and the findings made in the detailed coverage of 2.7.4.1-2.7.4.4, are summarised here as follows.

2.7.3.1 National level – registration of non-government schools.

At the national level, the report evaluates whether requirements exist for non-government school registration through law and policy in relation to managing child sexual abuse.

Summary of narrow efficacy

At the nationwide level, there are no requirements for non-state school registration through law and policy in relation to managing child sexual abuse. However, since the Australian Government facilitates the financing of school education under the *Australian Education Act 2013*, and this can be conditional on compliance with national policy initiatives, there is potential to use this regulatory mechanism to centralise a child sexual abuse initiative. This could be supported by existing national educational representative councils and policymaking bodies.

2.7.3.2 National level – individual teachers in non-government schools.

At the national level, the report evaluates regulation of individual teachers in non-government schools, examining whether there are:

- conditions for individual registration/eligibility for admission to the profession, such as criminal history checks of employees; other assessment of fitness to practise; employee training in child protection, especially child sexual abuse, through continuing professional development
- other regulatory measures for teachers, once admitted to the profession, regarding child sexual abuse (for example, reporting, training and provision of resources) through means such as codes of ethics, codes of conduct and professional standards.

Summary of narrow efficacy

National non-government school representative bodies exist, but generally do not make sector-wide policy that applies nationally. This is more commonly the domain of state and territory bodies. In this context, at the national level of regulation of individual teachers in non-state schools:

- there are no conditions for individual registration/eligibility for admission to the profession, such as:
 - criminal history checks of employees
 - other assessment of fitness to practise
 - employee training regarding child protection, especially relating to child sexual abuse, through continuing professional development
- there are no other regulatory measures for teachers, once admitted to the profession, relating to child sexual abuse (for example, reporting, training and provision of resources) through means such as codes of ethics, codes of conduct and professional standards.

However, in some instances the national bodies have developed policy to support national government initiatives, indicating that the capacity exists to play a nationwide role.

2.7.3.3 State and territory level – registration of non-government schools.

At the state and territory level, the report evaluates the existence and nature of requirements for non-government school registration through law and policy relating to managing child sexual abuse, including through:

- employee criminal history checks
- policies for student safety
- processes for teacher training in child protection
- processes for teacher training in reporting of child sexual abuse
- regulatory standards supporting legislative frameworks about the matters above, and enabling their implementation
- availability of clear, detailed and accessible resources about child sexual abuse.

Summary of narrow efficacy

Each state and territory has legislation requiring conditions to be met for the registration of non-government schools. These legislative conditions are supported by regulatory standards, which are created either by the relevant minister for education, or the jurisdiction's non-government schools' registration authority. There is some variance in the legislative frameworks, and considerable diffusion in the standards adopted across jurisdictions, relating to aspects of these regulatory frameworks covering child protection and child sexual abuse. Table 2.7(1) sets out a concise synthesis and evaluation of narrow efficacy on nine dimensions. In summary, this evaluation of narrow efficacy reveals the following:

- (1) Legislation in three jurisdictions expressly requires criminal history checks (although in the other jurisdictions they may be required by other statutes).
- (2) Legislation in seven jurisdictions requires the school to have policies and procedures for student safety (all except Tasmania).
- (3) Legislation in all jurisdictions does not require the school to have processes for teacher training in child protection generally or child sexual abuse specifically.
- (4) Legislation in only one jurisdiction (Queensland) requires the school to have processes for teacher training about their duty to report child sexual abuse.
- (5) Standards supporting the legislative framework existed in six jurisdictions; of these, two were particularly well detailed and specific regarding child sexual abuse.
- (6) Standards usually do not require teachers to be trained in child protection generally and child sexual abuse specifically, although New South Wales, Victoria and Western Australia had partial requirements.
- (7) Standards usually do not require teachers to be trained in their duty to report child sexual abuse, with Western Australia being the notable exception; New South Wales and Victoria have partial requirements.
- (8) Standards are generally not particularly detailed, but Victoria and Western Australia have very detailed and specific documentation.
- (9) There was no clear evidence of implementation of the standards; this would need further research.

2.7.3.4 State and territory level – school teacher registration and continuing professional practice.

At the state and territory level, the report evaluates the existence and nature of requirements for individual non-government school teacher registration and continuing professional practice through law and policy relating to managing child sexual abuse, through:

- legislative requirements for employee criminal history checks
- legislative requirements for employees to be fit and proper persons to practise
- legislative requirements for teacher training in child protection
- legislative duties for reporting child sexual abuse
- statewide policies or codes of ethics for individual teacher professional education on child protection and child sexual abuse (generally or through continuing professional development)
- statewide policies or codes of ethics requiring reporting of child sexual abuse
- non-government sector-wide policy requiring reporting of child sexual abuse
- non-government sector-wide policy requiring individual teacher professional education on child protection and child sexual abuse (generally or through continuing professional development)
- non-government sector-wide availability of clear, accessible resources on child sexual abuse.

Summary of narrow efficacy

Each state and territory has regulatory frameworks comprising legislation, codes of ethics and other key policies, which are relevant to both the initial conditions that individual teachers must meet for registration to practise in non-government schools, and to their conduct while registered. As might be expected, since multiple different legislatures and regulatory authorities create these frameworks, there is substantial variation in regulation relating to child protection and child sexual abuse, and different outcomes when evaluating their narrow efficacy. This evaluation reveals the following observations relating to registration of teachers in non-government schools:

- (1) Legislation in all jurisdictions requires criminal history checks to be conducted before a teacher can be registered to teach in a non-government school.
- (2) Legislation in six jurisdictions requires an assessment of fitness to practise before a teacher can be registered to teach in a non-government school.
- (3) Legislation in only one jurisdiction (South Australia) expressly requires applicant teachers to have completed a training course in mandatory notification before being registered; and no other jurisdiction requires continuing professional development in matters relating to child sexual abuse.
- (4) Legislation in each jurisdiction requires suspected cases of child sexual abuse to be reported, although some differences apply.
- (5) Codes of ethics do not require teachers to undertake training in child protection, including in child sexual abuse, except in Victoria.
- (6) Codes of ethics do not require teachers to report child sexual abuse, except in Victoria and the Northern Territory.
- (7) For Catholic schools, statewide, sector-wide policy requires all individual teachers to report suspected child sexual abuse; however, for independent schools, this sector-wide policy only exists in South Australia.
- (8) For Catholic schools, statewide, sector-wide policy exists in only two jurisdictions (South Australia and Western Australia), requiring all individual teachers to undertake training in child protection; however, for independent schools, this sector-wide policy only exists in South Australia.
- (9) For Catholic schools, sector-wide resources on child sexual abuse are available in clear, detailed and accessible form in one jurisdiction (South Australia), with other jurisdictions having fewer resources; for independent schools, this sector-wide approach only exists in South Australia, with Victoria having less information.

2.7.4 Detailed synthesis and evaluation of narrow efficacy

2.7.4.1 Nationwide regulation of non-government schools: registration and policy

Summary of narrow efficacy

At the nationwide level, there are no requirements for non-state school registration through law and policy relating to the management of child sexual abuse. However, since the Australian Government facilitates the financing of school education under the *Australian Education Act 2013* (Cth), and this can be conditional on compliance with national policy initiatives, there is potential to use this national regulatory mechanism to centralise a child sexual abuse initiative. This could be supported by existing national educational representative councils and policymaking bodies.

National legislative context

Federally, the Australian Government facilitates the delivery of school education by contributing funding. Under the *Australian Education Act 2013* (Cth), the Australian Government provides financial assistance to schools. The assistance for non-government schools is provided to the states and territories, which must pass the funding to the approved school authorities.

To be registered, all schools must operate under an approved authority (for one or a small number of associated schools) or an approved system authority (for multiple schools in the same system, such as Catholic schools within a particular Diocese), with the Minister for Education approving these authorities.¹²⁶ These authorities are responsible for administering funding; implementing curriculum and policies for performance management; and ensuring schools participate in the National Assessment Program for Literacy and Numeracy. For non-government schools, the approved authority (or system authority) is a body corporate approved by the relevant minister.

The *Australian Education Act 2013* (Cth) states that one of its objects is to meet students' needs by placing 'the highest priority on: (a) identifying and addressing the needs of school students, including barriers to learning and wellbeing; and (b) providing additional support to school students who require it.'¹²⁷ Financial assistance is provided subject to the condition that the state or territory implement national policy initiatives for school education in accordance with the regulations.¹²⁸

Under Part 7, approved authorities must have implementation plans, which must explain how the approved authority intends to implement the education reforms it agreed to.¹²⁹ The approved authority must be able to implement the plan¹³⁰, and it must review the implementation plan and evaluate progress.¹³¹ The implementation plan, and reports on reviews of the plan, must be published in a form accessible to the public.¹³²

Federal government educational representative councils and policymaking bodies

The federal government has the capacity to influence broad-based policy agendas for schools and teachers through peak representative councils and general educational policy initiatives. Several are summarised below.

¹²⁶ For all government schools, the approved authority is the jurisdiction's Department of Education or Directorate of Education. These departments have policies on recognising and responding to child sexual abuse.

¹²⁷ *Australian Education Act 2013* (Cth) s 3(8).

¹²⁸ *Australian Education Act 2013* (Cth) s 22(1).

¹²⁹ *Australian Education Act 2013* (Cth) s 99.

¹³⁰ *Australian Education Act 2013* (Cth) s 100.

¹³¹ *Australian Education Act 2013* (Cth) s 99.

¹³² *Australian Education Act 2013* (Cth) s 104.

Education Council

The Education Council (sometimes referred to as the Standing Council of Education Ministers, and formerly known as the Standing Council on School Education and Early Childhood) is the body that approves national professional standards for teachers.¹³³ Members are state, territory, Australian Government and New Zealand ministers with responsibilities in school education and early childhood development. The council is supported by senior public servants in these departments. The Education Council owns and administers a national not-for-profit corporation, Education Services Australia (ESA), which supports delivery of national priorities and initiatives in the schools, training and higher education sectors.¹³⁴

Australian Institute for Teaching and School Leadership

The Australian Institute for Teaching and School Leadership (AITSL) is a public company funded by the Australian Government, established under the *Corporations Act 2001* (Cth). The Minister for Education and Training is the sole member of the company.¹³⁵ As demonstrated in its Statement of Intent, AITSL's primary focus is on lifting the standard of teaching in Australia to maximise teachers' impact on learning. As such, its primary focus is not child protection.

However, currently, every state and territory subscribes to the *Australian Professional Standards for Teachers*, which are promulgated by AITSL. The standard most relevant to this project is *Standard 4: Create and maintain supportive and safe learning environments*. In particular, *Standard 4.4 Maintain student safety*, sets out requirements of teachers at four levels:

- Graduate teachers will be able to 'describe strategies that support students' wellbeing and safety working within school and/or system, curriculum and legislative requirements'.
- Proficient teachers will 'ensure students' wellbeing and safety within school by implementing school and/or system, curriculum and legislative requirements'.
- Highly accomplished teachers will 'initiate and take responsibility for implementing current school and/or system, curriculum and legislative requirements to ensure student wellbeing and safety'.
- Lead teachers will 'evaluate the effectiveness of student wellbeing policies and safe working practices using current school and/or system, curriculum and legislative requirements and assist colleagues to update their practices'.

AITSL's minimal requirement for all graduate teachers is only that they will be able to 'describe strategies that support students' wellbeing and safety working within school and/or system, curriculum and legislative requirements'. There is no specific detail about child protection, student safety or training. There is no specific implementation mechanism.

National Safe Schools Framework

The federal government can influence broad-based policy agendas, such as the *National Safe Schools Framework*.¹³⁶ The framework was first devised in 2003 to respond to several dimensions of student safety, including child abuse and neglect. In more recent years, it appears to have focused on school bullying. The framework is based on the overarching vision that 'All Australian schools are safe, supportive and respectful teaching and learning communities that promote student wellbeing'.

Currently, the framework's guiding principles include that Australian schools:

¹³³ See the website of the Education Council at <http://scseec.edu.au/>.

¹³⁴ See the Education Services Australia's website at <http://www.esa.edu.au/about-us>.

¹³⁵ See the Australian Institute of Teaching and School Leadership's website at <http://www.teacherstandards.aitsl.edu.au/Standards/Standards/AllStandards>.

¹³⁶ See the National Safe Schools Framework's website at <https://education.gov.au/national-safe-schools-framework-0>.

- affirm the rights of all members of the school community to feel safe and be safe at school
- acknowledge that being safe and supported at school is essential for student wellbeing and effective learning
- accept responsibility for developing and sustaining safe and supportive learning and teaching communities that also fulfil the school's child protection responsibilities.

Within the framework, the *Safe Schools Hub* contains *Professional Learning Modules* for teachers. These are optional professional development resources about the nine elements of its Safe Schools Toolkit. The publicly accessible information did not appear to include material on child sexual abuse. Generally, it is not clear what the framework precisely requires of jurisdictions, school sectors, individual schools or teachers; nor is it clear what mechanisms exist for school reporting against this framework.

2.7.4.2 Nationwide regulation of individual teachers in non-government schools

Summary of narrow efficacy

National non-government school representative bodies exist, but generally do not make sector-wide policy that applies nationally. This is more commonly the domain of state and territory bodies. In this context, at the national level of regulation of individual teachers in non-state schools:

- (1) there are no conditions for individual registration/eligibility for admission to the profession, such as:
 - criminal history checks of employees
 - other assessment of fitness to practise
 - employee training regarding child protection, especially child sexual abuse, through continuing professional development
- (2) there are no other regulatory measures for teachers once admitted to the profession regarding child sexual abuse (for example, reporting, training and provision of resources) through means such as codes of ethics, codes of conduct and professional standards.

However, in some instances the national bodies have developed policy to support national government initiatives, indicating that the capacity exists to play a nationwide role.

National non-government school representative bodies and their role

Most non-government schooling is administered by Catholic and independent schools. Most of these non-government schools work with their approved authorities, and with one of two main peak bodies at the national level: the *National Catholic Education Commission* (NCEC) or the *Independent Schools Council of Australia* (ISCA) (or their jurisdictional branches). The NCEC and ISCA liaise with Commonwealth, state and territory education bodies to promote the interests of their schools and guide development of policy and curriculum. However, neither of these two federal bodies possesses overarching regulatory functions for their member schools. In general, they do not promulgate policies that apply nationwide to their member schools or employees; however, in some instances they have developed policy to support federal initiatives such as a *Privacy Compliance Manual*.¹³⁷ Instead, each state and territory has its own Catholic Education Commission and Independent Schools Association, which have the power to make policy; there

¹³⁷ Independent Schools Council of Australia and National Catholic Education Commission. (2013). *Privacy Compliance Manual*. Retrieved 5 February 2016 from <http://isca.edu.au/wp-content/uploads/2011/03/Privacy-Compliance-Manual-Amended-September-2013.pdf>. See also websites of the organisations: National Catholic Education Commission, <http://www.ncec.catholic.edu.au/>; Independent Schools Council of Australia, <http://isca.edu.au/>.

may also be policies at the individual school level. The extent to which these bodies make policy in this context is addressed in Part 2.7.4.3.

2.7.4.3 State and territory regulation of non-government schools by legislation: Requirements for school registration

Summary of narrow efficacy

Each state and territory has legislation requiring conditions to be met for the registration of non-government schools. These legislative conditions are supported by regulatory standards, which are created either by the relevant minister for education, or the jurisdiction's non-government schools registration authority. There is some variance in the legislative frameworks, and considerable diffusion in the standards adopted across jurisdictions, in relation to aspects regulations related to child protection and child sexual abuse. Table 2.7(1) sets out a concise synthesis and evaluation of narrow efficacy on nine dimensions. This evaluation of narrow efficacy reveals the following:

- (1) Legislation in three jurisdictions expressly requires criminal history checks (although in the other jurisdictions they may be required by other statutes).
- (2) Legislation in seven jurisdictions requires the school to have policies and procedures for student safety (all except Tasmania).
- (3) Legislation in all jurisdictions does not require the school to have processes for teacher training in child protection generally or child sexual abuse specifically.
- (4) Legislation in only one jurisdiction (Queensland) requires the school to have processes for teacher training about their duty to report child sexual abuse.
- (5) Standards supporting the legislative framework exist in six jurisdictions; of these, two are particularly well detailed and specific regarding child sexual abuse.
- (6) Standards usually do not require teachers to be trained in child protection generally and child sexual abuse specifically, although New South Wales, Victoria and Western Australia had partial requirements.
- (7) Standards usually do not require teachers to be trained in their duty to report child sexual abuse, with Western Australia being the notable exception, and New South Wales and Victoria having partial requirements.
- (8) Standards are generally not particularly detailed, but Victoria and Western Australia have very detailed and specific documentation.
- (9) There was no clear evidence of implementation of the standards; this would need further research.

Legislation and standards

In each state and territory, legislation requires that non-government schools be registered with the relevant body.¹³⁸ Applications for registration as a non-government school must meet criteria established by the legislation. Applications for registration are assessed by boards or similar bodies, which are also established under the legislation, or by the minister or CEO. It is an offence to operate an unregistered school.¹³⁹ In each jurisdiction, standards promulgated by the educational authority support the legislative

¹³⁸ *Education Act 2004* (ACT); *Education Act 1990* (NSW); *Education Act* (NT); *Education (Accreditation of Non-State Schools) Act 2001* (Qld) and *Education (Accreditation of Non-State Schools) Regulation 2001* (Qld); *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA); *Education Act 1994* (Tas) and *Education Regulations 2015* (Tas); *Education and Training Reform Act 2006* (Vic) and *Education and Training Reform Regulations 2007* (Vic); and *School Education Act 1999* (WA).

¹³⁹ See for example in *Education Act 1994* (Tas) s 51; *Education and Training Reform Act 2006* (Vic) s 4.7.1; *School Education Act 1999* (WA) s 154.

framework. The key legislative provisions and standards in each state and territory are set out below, and are then summarised in Table 2.7(1) with an evaluation of narrow efficacy on nine dimensions.

Australian Capital Territory

In the Australian Capital Territory, the Minister for Education is responsible for registration of non-government schools through the Australian Capital Territory Education and Training Directorate. The *Education Act 2004* (ACT) sets out the requirements for registration of a non-government school, which are:

- (a) the proprietor of the school is a corporation; and
- (b) the school has appropriate policies, facilities and equipment for—
 - i. the curriculum offered by the school; and
 - ii. the safety and welfare of its students; and
- (c) the curriculum (including the framework of the curriculum and the principles on which the curriculum is based) meets the curriculum requirements for students attending government schools; and
- (d) the nature and content of the education offered at the school are appropriate for the educational levels for which the school is provisionally registered; and
- (e) the teaching staff are qualified to teach at the educational levels at which they are employed to teach; and
- (f) the school has satisfactory processes to monitor quality educational outcomes; and
- (g) the school is financially viable.¹⁴⁰

Standards: A manual provides further detail about registration requirements. The *Australian Capital Territory Non-government School 2015 Registration Manual* is currently being revised.¹⁴¹

New South Wales

In New South Wales, the *Education Act 1990* (NSW) sets out the requirements for registration of non-government schools. The provision states that:

- (a) if the school is seeking to become registered as an individual school – the school’s proposed proprietor must be a corporation or other form of legal entity approved by the minister
- (b) each responsible person for the school, and any other person or body having similar functions in relation to the school as those of such a responsible person, is of good character
 - (b1) policies and procedures for the proper governance of the school are in place
- (d) teaching staff for the school have the necessary experience and qualifications (having regard to accreditation under the Teacher Accreditation Act 2004 but without limiting such other matters as may be relevant)
- (f) school premises and buildings are satisfactory
- (g) a safe and supportive environment is provided for students by means that include:

¹⁴⁰ *Education Act 2004* (ACT) s 88(6).

¹⁴¹ Department of Education and Training. (2015). *ACT Non-government school 2015 registration manual*. Retrieved 5 February 2016 from http://www.det.act.gov.au/school_education/act_non_government_schools.

- i. school policies and procedures that make provision for the welfare of students, and
 - ii. persons who are employed at the school being employed in accordance with Part 2 of the *Child Protection (Working with Children) Act 2012*, and
 - iii. school policies and procedures that ensure compliance with relevant notification requirements imposed in relation to persons employed at the school by Part 3A of the *Ombudsman Act 1974* and the *Child Protection (Working with Children) Act 2012*, and
 - iv. maintaining a student enrolment and attendance register.
- (h) school policies relating to discipline of students attending the school are based on principles of procedural fairness, and do not permit corporal punishment of students
- (i) if the school provides boarding facilities, whether itself or by contractual arrangement – school policies and procedures that are satisfactory to ensure the safety and welfare of boarders.¹⁴²

Standards: The Board of Studies, Teaching and Educational Standards New South Wales (BOSTES) has created regulatory manuals for both individual and member non-government schools, and parts of these manuals concern child safety.¹⁴³ For example, Part 5.6 of the *Registration Systems and Member Non-government Schools (NSW) Manual* sets out material regarding a ‘safe and supportive environment’ which includes:

A registered non-government school must have in place and implement policies and procedures to:

- ensure that staff who have direct contact with students are informed of the legal responsibilities related to child protection, mandatory reporting and other relevant school expectations
- ensure that requirements to notify and investigate allegations of reportable conduct in compliance with the *Ombudsman Act 1974* are made known to staff
- ensure that all persons engaged in child-related work at the school, as defined by the *Child Protection (Working with Children) Act 2012*, have a working with children check clearance from the Office of the Children’s Guardian, as required
- ensure that evidence of working with children check clearances is maintained by the school for all persons in child-related work at the school as required under the *Child Protection (Working with Children) Act 2012*
- respond to reportable matters in accordance with legislative requirements
- ensure that all staff who are mandatory reporters under the *Children and Young Persons (Care and Protection) Act 1998* are informed of their obligations and the process that the school has in place in relation to mandatory reporting.¹⁴⁴

Part 5.6.2 states that ‘A registered non-government school must provide a safe and supportive environment by having in place policies and procedures that provide for student welfare ... A safe environment for students is one where the risk of harm is minimised and students feel secure. Harm relates

¹⁴² *Education Act 1990* (NSW) s 47.

¹⁴³ Board of Studies, Teaching and Educational Standards NSW. *Registration Systems and Member Non-government Schools (NSW) Manual*. Retrieved 5 February 2016 from <http://rego.bostes.nsw.edu.au/>; Board of Studies, Teaching and Educational Standards NSW. *Registered and Accredited Individual Non-Government Schools (NSW) Manual*. Retrieved 5 February 2016 from <http://rego.bostes.nsw.edu.au/>.

¹⁴⁴ Board of Studies, Teaching and Educational Standards NSW. *Registration Systems and Member Non-government Schools (NSW) Manual*. Retrieved 5 February 2016 from <http://rego.bostes.nsw.edu.au/>, 5.6.1, p 53.

not only to dangers in the built environment ... but also refers to violence, physical threats, verbal abuse, threatening gestures, sexual harassment and racial vilification'.¹⁴⁵

This material is duplicated in the *Registered and Accredited Individual Non-government Schools (NSW) Manual* at Part 3.6.3.

Northern Territory

In the Northern Territory, a Registration and Assessment Panel is established under the *Education Act* (NT) to assess applications for registration of non-government schools.¹⁴⁶ The Education Act sets out the conditions for registration of non-government schools. These include:

- (a) the school must be administered by a body corporate (the governing body), whose directors:
 - i. must be persons of good character; and
 - ii. must collectively possess the skills and experience necessary for the proper administration of the school;
- (b) the governing body's philosophy and objects and the school's educational programs must be consistent with the principles mentioned in section 61B as required by that section;
- (f) the school must have adequate financial and other resources for its operation;
- (h) the school's staff establishment (including its structure and size) must be appropriate and adequate for the school's educational programs and the year levels and number of its students;
- (i) the school's staff:
 - i. must be of good character; and
 - ii. for its teaching staff – must be registered with the Teacher Registration Board of the Northern Territory and must maintain appropriate standards of professional competence;
- (j) the school's curriculum and methods of student assessment must meet the requirements of the Northern Territory Board of Studies established by section 10B;
- (m) the school's policy for the discipline of students must be based on procedural fairness and must not involve corporal punishment;
- (n) the school must have adequate provision for meeting the needs of any of its students who has a disability;
- (o) the school must have adequate safeguards for the health, safety and wellbeing of its staff and students, including, for example, the following:
 - i. an adequate occupational health and safety manual for its staff;
 - ii. appropriate procedures to ensure a criminal history report is obtained for each member of its staff.
- (p) the school must have appropriate policies and procedures to deal with complaints and disputes.¹⁴⁷

¹⁴⁵ Board of Studies, Teaching and Educational Standards NSW. Registration Systems and Member Non-government Schools (NSW) Manual. Retrieved February 5, 2016 from <http://rego.bostes.nsw.edu.au/>, 5.6.2.

¹⁴⁶ *Education Act* (NT) s 64A.

Standards: The Chief Executive of the Department of Education and Training is responsible for registering non-government schools in the Northern Territory. This department receives advice from the Non-Government School Ministerial Advisory Council, which considers policy on non-government school registration, regulation and standards. There do not appear to be any further publicly accessible standards regarding accreditation matters.¹⁴⁸

Queensland

In Queensland, the *Education (Accreditation of Non-State Schools) Act 2001* (Qld) and the *Education (Accreditation of Non-State Schools) Regulation 2001* (Qld) together contain provisions regarding accreditation of non-government schools. The Non-State Schools Accreditation Board assesses applications for registration.¹⁴⁹ Section 9 states that a regulation may prescribe accreditation criteria relevant to a school's accreditation, and other governance, including student welfare processes. Regulation 10 provides that for accreditation, a non-government school must demonstrate the following:

- (1) A school must have written processes about the health and safety of its staff and students, that accord with relevant workplace health and safety legislation.
- (2) Also, the school must have written processes about –
 - (a) how the school will respond to harm, or allegations of harm, to students under 18 years old; and
 - (b) the appropriate conduct of the school's staff and students.
- (3) Without limiting subsection (2), the processes must include –
 - (a) a process for the reporting by a student to a stated staff member of behaviour of another staff member that the student considers is inappropriate; and
 - (b) a process for how the information reported to the stated staff member must be dealt with by the stated staff member.
- (4) For the process mentioned in subsection (3)(a), there must be stated at least 2 staff members to whom a student may report the behaviour.
- (5) Also, without limiting subsection (2), the processes must include the following –
 - (a) a process for reporting –
 - i. sexual abuse or suspected sexual abuse in compliance with the *Education (General Provisions) Act 2006*, section 366; and
 - ii. a suspicion of likely sexual abuse in compliance with the *Education (General Provisions) Act 2006*, section 366A;
 - (b) a process for reporting a reportable suspicion under the *Child Protection Act 1999*, section 13E.
- (6) The school's governing body must ensure that –
 - (a) staff, students and parents are made aware of the processes; and
 - (b) staff are trained in implementing the processes; and
 - (c) the school is implementing the processes; and

¹⁴⁷ s 61A.

¹⁴⁸ See the website at

http://www.education.nt.gov.au/parents-community/schooling/ngs?SQ_DESIGN_NAME=printer_friendly

¹⁴⁹ *Education (Accreditation of Non-State Schools) Act 2001* (Qld) s 106.

- (d) the processes are readily accessible by staff, students and parents.
- (7) The school must have a written complaints procedure to address allegations of non-compliance with the processes.
- (7A) The complaints procedure may form part of any other written procedure of the school for dealing with complaints.
- (8) In this section – **harm** see the Child Protection Act 1999, section 9.¹⁵⁰

Standards: The Non-State Schools Accreditation Board does not appear to list any further publicly accessible standards regarding accreditation matters.¹⁵¹

South Australia

In South Australia, the *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)* provides that ‘a school is eligible for registration on the schools register if the Board, on application made in accordance with this Act, is satisfied that’:

- (a) the nature and content of the instruction offered, or to be offered, at the school is satisfactory; and
- (b) the school provides adequate protection for the safety, health and welfare of its students; and
- (c) the school satisfies any other requirements set out in the regulations for the purposes of this subsection.¹⁵²

Standards: The Education and Early Childhood Services Registration and Standards Board of South Australia does not appear to have any further regulatory standards or policies relevant to registration.¹⁵³ However, an information sheet on registration provides further information on what must be submitted for registration purposes regarding the criterion of *Safety, health and welfare of students*, which includes:

The following comprehensive set of policies and procedures are to be submitted as evidence of the intention to provide adequate protection for the safety, health and welfare of students.

- Child Protection Policy (including associated procedures for mandatory reporting)
- Anti Harassment Policy (including bullying, racism, sexism, cyber bullying and cyber safety)
- Positive Problem/Grievance Resolution Policy for students and adults with associated action/resolution flowcharts for students and adults
- Camp/Excursion Policy (including risk assessment procedures).¹⁵⁴

Tasmania

In Tasmania, the *Education Act 1994 (Tas)* requires that to be registered a non-government school must provide evidence of meeting certain conditions including:

- (a) the proposed curriculum of that school;

¹⁵⁰ Education (Accreditation of Non-State Schools) Regulation 2001 (Qld) r 10.

¹⁵¹ See the website of the Non-State Schools Accreditation Board at www.nssab.qld.edu.au/.

¹⁵² *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)* s 43(1).

¹⁵³ See the Education and Early Childhood Services Registration and Standards Board of South Australia website at <http://www.eecrsb.sa.gov.au/registration>.

¹⁵⁴ Education and Early Childhood Services Registration and Standards Board of South Australia. (2015). Information for registration of new or changed government and non-government schools in 2016. Retrieved 5 February 2016 from <http://www.eecrsb.sa.gov.au/registration>.

- (b) the qualifications required of teachers at that school;
- (c) the facilities to be provided at that school;
- (d) the minimum number of students to attend that school;
- (e) the kinds of students to attend that school;
- (f) the enrolment and attendance procedures of that school;
- (fa) the financial viability of the school;
- (fb) the proposed arrangements for the governance and administration of the school;
- (fc) the likely impact of the registration of the school on existing schools in the same geographical area;
- (fd) the proposed grievance process;
- (g) any other prescribed matter.¹⁵⁵

In addition, under the Education Regulations 2015 (Tas), the following must be taken into account in determining an application for registration as a school:

- (a) the proposed code of conduct for employees at the school;
- (b) the proposed plan for school review and development.¹⁵⁶

Standards: In Tasmania, the Schools Registration Board is established under the *Education Act 1994* (Tas). The board ensures that non-government schools comply with standards for education approved by the Minister for Education. Relevant standards are set out in Part 4 of the *Registration Handbook*.¹⁵⁷ These relate directly to the matters set out in the Act.¹⁵⁸ In Part 4 of the handbook, there are no references to child safety or child protection generally or child sexual abuse specifically.

Victoria

The *Education and Training Reform Act 2006* (Vic) section 4.3.1(6) requires the following conditions to be met for a non-government school to be registered:

- (a) the school policies relating to the discipline of students are based on principles of procedural fairness and do not permit corporal punishment; and
- (b) the school complies with the minimum standards for registration prescribed by the regulations including standards relating to –
 - i. student learning outcomes;
 - ii. enrolment policies and minimum enrolment numbers;
 - iii. student welfare;
 - iv. curriculum programs;
 - v. governance of the school and the probity of any proprietor or person responsible for managing the school;
 - vi. processes for the review and evaluation of school performance.¹⁵⁹

Standards: In addition, the Education and Training Reform Regulations 2007 (Vic) set out additional provisions classified as ‘prescribed minimum standards for registration of a school’. The regulations include:

¹⁵⁵ *Education Act 1994* (Tas) s 53.

¹⁵⁶ Education Regulations 2015 (Tas) r 5.

¹⁵⁷ Schools Registration Board. (2015). *Registration Handbook*. Retrieved 5 February 2016 from <http://education.tas.edu.au/initiatives/srb/Supporting%20Material/SRB%20Handbook%20-%20April%202015.pdf>.

¹⁵⁸ *Education Act 1994* (Tas) s 53.

¹⁵⁹ *Education and Training Reform Act 2006* (Vic) s 4.3.1(6).

4. (1) All teachers employed to teach at a school must be registered under Part 2.6 of the Act or be granted permission to teach under that Part;
5. The requirements of the Working with Children Act 2005 must be complied with in respect of the employment of all staff at a school.
12. Care, safety and welfare of students
A school must ensure that –
 - (a) the care, safety and welfare of all students attending the school is in accordance with any applicable state or Commonwealth laws; and
 - (b) all staff employed at the school are advised of their obligations under those laws.
21. Schools must have policies and procedures in place to enable it to comply with the prescribed minimum standards for registration that are applicable to the school.¹⁶⁰

These standards are administered by the Victorian Registration and Qualifications Authority (VRQA), which has established minimum standards and other requirements for school registration. The VRQA is responsible for registering all schools, including non-government schools, and for ensuring their compliance with the standards required for registration. The *Guide to the Minimum Standards and Other Requirements for School Registration* sets out further details regarding registration requirements.¹⁶¹ They include material on *Regulation 12: Care, safety and welfare of students and staff eligibility*.¹⁶² In relation to Care, safety and welfare of students, the guide states that:

Intent:

To ensure that a school has policies and procedures to provide students with a safe environment where the risk of harm is minimised and students feel physically and emotionally secure.

Evidence guide:

Student welfare: There must be evidence in the form of the school's policies and procedures with respect to: student welfare; bullying and harassment, including cyber bullying; managing complaints or grievances.

Student safety: There must be evidence in the form of the school's policies and procedures with respect to on-site supervision of students.

Additional evidence: There must also be evidence of the school's: mandatory reporting policy and procedures; accidents and incident register; internet use policy and procedures. There must also be evidence of how the school communicates policies and procedures on the care, safety and welfare of students to staff, students, guardians, parents and the school community.¹⁶³

¹⁶⁰ Education and Training Reform Regulations 2007 (Vic) pt 5 s 51; Schedule 2.

¹⁶¹ Victorian Registration and Qualifications Authority. *Guide to the Minimum Standards and Other Requirements for School Registration*. Retrieved 5 February 2016 from <http://www.vrqa.vic.gov.au/registration/Pages/schminsdards.aspx>.

¹⁶² Victorian Registration and Qualifications Authority. *Guide to the Minimum Standards and Other Requirements for School Registration*. Retrieved 5 February 2016 from <http://www.vrqa.vic.gov.au/registration/Pages/schminsdards.aspx>, pp 10, 13.

¹⁶³ Victorian Registration and Qualifications Authority. *Guide to the Minimum Standards and Other Requirements for School Registration*. Retrieved 5 February 2016 from <http://www.vrqa.vic.gov.au/registration/Pages/schminsdards.aspx>, p 10. Note that the *Education and Training Reform Amendment (Child Safe Schools) Act 2015* gives the VRQA new responsibilities and powers, expected to commence on 21 December 2015. The VRQA will gain new responsibilities in relation to child safety, including regulating school providers against new Child Safe Standards being developed by the Department of Human Services. The Act

Western Australia

In Western Australia, registration requirements for non-government schools are set by the *School Education Act 1999* (WA). They include:

- (a) the governing body of the school is the person or body that has the ownership, management or control of the school; and
- (b) the constitution of the governing body of the school is satisfactory for the purposes of this Act; and
- (c) each member of the governing body of the school is a fit and proper person to operate a school;
- (d) the school will observe any standards determined by the Minister under section 159; and
- (f) the governing body of the school will be accountable for the following –
 - i. development and implementation of an effective strategic direction for the school;
 - ii. development and implementation of effective processes to plan for, monitor and achieve improvements in student learning;
 - iii. effective management of the school's financial resources in accordance, where relevant, with any purposes for which they were provided;
 - iv. compliance with all written and other laws that apply to and in respect of the school and the operation of the school; and
- (h) the school will provide satisfactory levels of care for the children concerned.¹⁶⁴

Under section 159, the minister is empowered to create standards for non-government schools regarding matters including:

- (l) the management, recording and reporting of critical and emergency incidents at schools
- (k) the response to, and recording of, complaints and disputes at schools
- (j) the arrangements for preventing child abuse at schools and for responding to any such abuse which may occur.¹⁶⁵

Standards: The Western Australian Department of Education Services has created standards under the Act, which are detailed in *Non-Government Schools in Western Australia: Registration Standards and Requirements 2015*.¹⁶⁶ The key assessment criterion in these standards is *Criterion 4: Level of care*. This standard states:

Criterion: The school must ensure that it provides a safe and healthy environment for students at all times. Policies and procedures related to the care, safety and welfare of

requires Victorian schools to comply with those standards, to be formalised via a Ministerial Order. Note also that in Victoria, the new 'failure to protect' offence strengthens protections for children. It has been created under the *Crimes Act 1958*, and commenced on 1 July 2015. The offence will apply to persons in positions of authority in organisations that exercise care, supervision or authority over children.

¹⁶⁴ *School Education Act 1999* (WA) s 160(1).

¹⁶⁵ *School Education Act 1999* (WA) s 159.

¹⁶⁶ Western Australia Department of Education Services. (2015). *Non-Government Schools in Western Australia: Registration Standards and Requirements 2015*. Retrieved 3 July 2015 from

<http://www.des.wa.gov.au/schooleducation/nongovernmentschools/Documents/NGS%20Registration%20Standards%20and%20Requirements%202015.PDF>.

students are in accordance with any applicable State and Commonwealth laws, and that staff are advised of their obligations under those laws.

Intent: To ensure that the school provides a positive, inclusive and safe environment in which students feel physically and emotionally secure and has effective policies, procedures and strategies in place to respond promptly and appropriately to critical incidents affecting student wellbeing.

Written evidence: Schools are requested to submit the following evidence with the application for registration or renewal of registration (refer to explanatory notes).

4.1 Strategies to develop a positive learning environment.

4.2 Student welfare policies and procedures.

4.3 Student safety policies and procedures.

4.4 Procedure for notification of critical incidents.

4.5 Student health policies and procedures.

4.6 Where applicable, the policies and procedures for welfare, safety and care of students in boarding facilities.¹⁶⁷

The related explanatory notes state:

4.2. Student welfare: Policies and procedures related to student welfare include child protection (including mandatory reporting); privacy principles; internet and mobile phone usage including social media; parent/guardian access arrangements; and maintaining appropriate relationships between staff and students.

Child Protection: Registered non-government schools must develop and implement a child protection policy as a component of duty of care obligations to students. The policy is to include procedures for safeguarding students from harm; identifying neglect or emotional, physical or sexual maltreatment; responding to allegations of students being harmed or put at risk; dealing with allegations of misconduct within the school; and providing access to qualified counselling support and referring situations of maltreatment or neglect to relevant outside agencies. The policy must refer to and be consistent with mandatory reporting requirements which came into force on 1 January 2009.

The CPFS website provides information and additional resources for mandatory reporters

Mandatory Reporting: The Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008 mandates that individual teachers are personally responsible for making a written report directly to the CPFS in the following instance:

- a. If he/she believes on reasonable grounds that a child has been the subject of sexual

¹⁶⁷ Western Australia Department of Education Services. (2015). *Non-Government Schools in Western Australia: Registration Standards and Requirements 2015*. Retrieved 3 July 2015 from <http://www.des.wa.gov.au/schooleducation/nongovernmentschools/Documents/NGS%20Registration%20Standards%20and%20Requirements%202015.PDF>, p 19.

abuse or is the subject of ongoing sexual abuse; and b. He/she forms the belief in the course of his/her work. Failure to do so can result in a fine of up to \$6000.¹⁶⁸

2.7.4.4 State and territory regulation of individual non-government school teachers: Registration, law and policy

Summary of narrow efficacy

Each state and territory has regulatory frameworks comprising legislation, codes of ethics and other key policies, which are relevant to both the initial conditions that must be met for registration of individual teachers to practise in non-government schools, and to their conduct while registered. As might be expected, since multiple different legislatures and regulatory authorities create these frameworks, there is substantial variation in the nature of each of the dimensions of regulation relating to child protection and child sexual abuse. This leads to different outcomes when evaluating their narrow efficacy.

Table 2.7(2) sets out a concise synthesis and evaluation of narrow efficacy on six dimensions. Table 2.7(3) sets out a synthesis and evaluation of narrow efficacy on three dimensions. This evaluation of narrow efficacy reveals the following:

- (1) Legislation in all jurisdictions requires criminal history checks to be conducted before a teacher can be registered to teach in a non-government school.
- (2) Legislation in six jurisdictions requires an assessment of fitness to practise before a teacher can be registered to teach in a non-government school.
- (3) Legislation in only one jurisdiction (South Australia) expressly requires applicant teachers to have completed a training course in mandatory notification before being registered; and no other jurisdiction requires continuing professional development in matters relating to child sexual abuse.
- (4) Legislation in each jurisdiction requires suspected cases of child sexual abuse to be reported, although some differences apply.
- (5) Codes of ethics do not require teachers to undertake training in child protection, including *in* child sexual abuse, except in Victoria.
- (6) Codes of ethics do not require teachers to report child sexual abuse, except in Victoria and the Northern Territory.
- (7) For Catholic schools, statewide sector-wide policy exists in every jurisdiction, *requiring* all individual teachers to report suspected child sexual abuse; however, for independent schools, this sector-wide policy only exists in South Australia.
- (8) For Catholic schools, statewide sector-wide policy exists in only two jurisdictions (South Australia and Western Australia), *requiring* all individual teachers to undertake training in child protection; however, for independent schools, this sector-wide policy only exists in South Australia.
- (9) For Catholic schools, sector-wide resources on child sexual abuse are available in clear, detailed and accessible form in one jurisdiction (South Australia), with other jurisdictions having a lower level of resources; for independent schools, this sector-wide approach only exists in South Australia, with Victoria having a lower level of information.

¹⁶⁸ Western Australia Department of Education Services. (2015). *Non-Government Schools in Western Australia: Registration Standards and Requirements 2015*. Retrieved 3 July 2015 from <http://www.des.wa.gov.au/schooleducation/nongovernmentschools/Documents/NGS%20Registration%20Standards%20and%20Requirements%202015.PDF>, p 20.

Regulation of individual teachers in non-government schools using registration conditions in legislation, codes of ethics and policy frameworks

Several methods for regulating individual teachers in non-government schools occur at the state and territory level in the context of child sexual abuse. This can create differences across jurisdictions, especially in practitioners' training, awareness of child sexual abuse and relevant obligations. These frameworks can be evaluated from an efficacy perspective to determine whether further strategies – such as training – are included to develop professionals' capacity to deal with child sexual abuse.

The methods of regulation include:

- teacher accreditation requirements (especially Working With Children Check and training requirements in child abuse)
- professional policy-based requirements/codes of ethics regarding child sexual abuse (codes of professional practice)
- statewide organisational policies about preventing and responding to child sexual abuse
- Legislative requirements to report child sexual abuse.

2.7.4.4.1 Teacher accreditation or registration requirements

In each state and territory, all teachers must register with, or be accredited by, the statutory board or authority responsible for ensuring that registered persons have the appropriate professional qualifications and personal qualities to teach.¹⁶⁹ These authorities and their key features are detailed in Table 2.7(2).¹⁷⁰

These registration authorities are responsible for various dimensions of regulation of the teaching profession, such as:

- the professional registration of teachers
- accrediting education courses for pre-service teachers and teachers
- certifying teachers against national professional standards
- developing and applying codes of professional practice for teachers
- working closely with employers to promote continuous professional learning by teachers.

Typically, these authorities assess applicants for registration against several criteria, including:

- criminal history
- fitness to practise
- professional qualifications/competence.

Continuing professional development requirements are sometimes a feature of the regulatory context for teachers but, where identified, these did not specifically require training in child protection in general, or child sexual abuse specifically.¹⁷¹

¹⁶⁹ The relevant legislation is *Teacher Quality Institute Act 2010* (ACT) and *Teacher Quality Institute Regulation 2010* (ACT); *Teacher Accreditation Act 2004* (NSW), *Teacher Accreditation Regulation 2015* (NSW), and *Board of Studies, Teaching and Educational Standards Act 2013* (NSW); *Teacher Registration (Northern Territory) Act* and *Teacher Registration (Northern Territory) Regulations* (NT); *Education (Queensland College of Teachers) Act 2005* (Qld) and *Education (Queensland College of Teachers) Regulation 2005* (Qld); *Teachers Registration and Standards Act 2004* (SA) and *Teachers Registration and Standards Regulations 2005* (SA); *Teachers Registration Act 2000* (Tas) and *Teachers Registration Regulations 2011* (Tas); *Education and Training Reform Act 2006* (Vic) pt 2.6 and *Education and Training Reform Regulations 2007* (Vic); and *Teacher Registration Act 2012* (WA) and *Teacher Registration (General) Regulations 2012* (WA).

¹⁷⁰ The ACT Teacher Quality Institute; New South Wales Board of Studies Teaching and Educational Standards; Teacher Registration Board of the Northern Territory; Queensland College of Teachers; Teacher Registration Board of South Australia; Teachers Registration Board of Tasmania; Victorian Institute of Teachers; and Teacher Registration Board of Western Australia.

¹⁷¹ For example, see Teachers Registration Board of South Australia. Evidence Requirements. Retrieved 5 February 2016 from <http://www.trb.sa.edu.au/PL-evidence-requirements>.

2.7.4.4.2 Professional policy-based requirements/codes of ethics

State and territory codes of ethics operate in conjunction with Australian Professional Standards

State and territory boards/registering authorities maintain their own codes of ethics, or codes of professional conduct and practice. The relevant aspects of these codes are detailed in Table 2.7(2). In addition, every state and territory subscribes to the *Australian Professional Standards for Teachers*, promulgated by the AITSL.¹⁷² The most relevant is *Standard 4: Create and maintain supportive and safe learning environments*. In particular, *Standard 4.4: Maintain student safety*, sets out requirements of teachers at the following four levels:

- Graduate teachers will be able to ‘describe strategies that support students’ wellbeing and safety working within school and/or system, curriculum and legislative requirements’.
- Proficient teachers will ‘ensure students’ wellbeing and safety within school by implementing school and/or system, curriculum and legislative requirements’.
- Highly accomplished teachers will ‘initiate and take responsibility for implementing current school and/or system, curriculum and legislative requirements to ensure student wellbeing and safety’.
- Lead teachers will ‘evaluate the effectiveness of student wellbeing policies and safe working practices using current school and/or system, curriculum and legislative requirements and assist colleagues to update their practices’.

AITSL’s minimal requirement applying to all graduate teachers is only that they will be able to ‘describe strategies that support students’ wellbeing and safety working within school and/or system, curriculum and legislative requirements’. There is no further specific detail about child protection or student safety, or training. There is no specific implementation mechanism. However, in New South Wales, accreditation for teachers is transitioning to the mandatory level of ‘proficient teacher’. This would require that teachers are able to ‘ensure students’ wellbeing and safety within school by implementing school and/or system, curriculum and legislative requirements’.

2.7.4.4.3 Statewide non-government organisational policies about child sexual abuse

State and territory non-government school representative bodies: Catholic education commissions and independent schools associations

The two main branches of non-government school organisations have state and territory commissions or associations: Catholic education commissions and independent schools associations. An examination of their approaches to regulating their schools and teachers reveals great variation in the nature and extent of policy and regulation in this field (Table 2.7(3)). In general, Catholic education commissions are more active in this field than independent schools associations. This is probably due to the common nature of Catholic schools as opposed to the diffuse nature of independent schools. However, even Catholic education commissions rarely demonstrate significant activity. The exception is South Australia, where both Catholic Education South Australia and the Association of Independent Schools of SA have extremely detailed approaches to regulating teachers and schools in this context.

2.7.4.4.4 Legislative requirements to report child sexual abuse

Legislative requirements to report suspected child sexual abuse exist in all states and territories. These mandatory reporting laws have been analysed by another project undertaken for the Royal Commission.¹⁷³

¹⁷² Australian Institute of Teaching and School Leadership. *Australian Professional Standards for Teachers*. Retrieved 5 February 2016 from <http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list>.

¹⁷³ Mathews, B. (2014). *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*. Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse.

In sum, legislative duties to report child sexual abuse as applied to teachers are now very similar across the nation, although not identical. This is depicted in Table 2.7(2).

Table 2.7(1) – Regulatory systems: Non-government schools registration authorities and key legislative requirements and regulatory standards

	Legislation and key provisions containing requirements for registration	Non-government schools registration authority	Narrow efficacy on key dimensions								
			Legislative requirements for registration				Regulatory Standards accompanying legislation				
			To qualify for registration, is the school expressly required by legislation to show it has:				Are there standards supporting legislative conditions, and how detailed are they?	Do the standards require teacher training in child protection in general or in child sexual abuse specifically?	Do the standards require teacher training in legal or policy duties to report child sexual abuse?	Are the standards clear and detailed?	Is there clear evidence standards are enforced?
			Processes for conducting criminal history checks for staff? <i>*Note: may be required by other law or process</i>	Policies and procedures for student safety?	Processes for teacher training in child protection in general, or in child sexual abuse in particular?	Processes for teacher training in legal or policy duties relating to reporting child sexual abuse?					
ACT	<i>Education Act 2004 s 88(6)</i>	ACT Education and Training Directorate http://www.det.act.gov.au/school_education/act_no_n_government_schools	No	Yes – under s 88(6)(b)(ii)	No	No	Yes – not possible to ascertain as manual is under review	Not possible to ascertain as manual is under review	Not possible to ascertain as manual is under review	Not possible to ascertain as manual is under review	Would require further research
NSW	<i>Education Act 1990 s 47</i>	Board of Studies, Teaching and Educational Standards NSW http://www.boardofstudies.nsw.edu.au/non-gov-schools/	Yes	Yes – under s 47(g)	No	No	Yes – quite detailed	Not training specifically, but requires that staff be informed of legal responsibilities relating to child protection, mandatory reporting and other school expectations	Not training specifically, but requires that staff be informed of legal responsibilities relating to child protection and mandatory reporting	Relatively	Would require further research

	Legislation and key provisions containing requirements for registration	Non-government schools registration authority	Narrow efficacy on key dimensions								
			Legislative requirements for registration				Regulatory Standards accompanying legislation				
			To qualify for registration, is the school expressly required by legislation to show it has:				Are there standards supporting legislative conditions, and how detailed are they?	Do the standards require teacher training in child protection in general or in child sexual abuse specifically?	Do the standards require teacher training in legal or policy duties to report child sexual abuse?	Are the standards clear and detailed?	Is there clear evidence standards are enforced?
			Processes for conducting criminal history checks for staff? <i>*Note: may be required by other law or process</i>	Policies and procedures for student safety?	Processes for teacher training in child protection in general, or in child sexual abuse in particular?	Processes for teacher training in legal or policy duties relating to reporting child sexual abuse?					
NT	<i>Education Act s 61A</i>	NT Department of Education and Training http://www.education.nt.gov.au/parents-community/schooling/ngs	Yes	Yes – under s 61A(o)	No	No	Not apparent from publicly available documents	Not applicable	Not applicable	Not applicable	Not applicable Would require further research
Qld	<i>Education (Accreditation of Non-State Schools) Act 2001; Education (Accreditation of Non-State Schools) Regulations 2001 reg 10</i>	Queensland Non-State Schools Accreditation Board http://www.nssa.qld.edu.au/	No	Yes – under reg 10(1) and (2)	No	Not generally, although reg 10(6) requires that staff are trained in the process of reporting harm to students	Not apparent from publicly available documents	Not applicable	Not applicable	Not applicable	Not applicable Would require further research

	Legislation and key provisions containing requirements for registration	Non-government schools registration authority	Narrow efficacy on key dimensions								
			Legislative requirements for registration				Regulatory Standards accompanying legislation				
			To qualify for registration, is the school expressly required by legislation to show it has:				Are there standards supporting legislative conditions, and how detailed are they?	Do the standards require teacher training in child protection in general or in child sexual abuse specifically?	Do the standards require teacher training in legal or policy duties to report child sexual abuse?	Are the standards clear and detailed?	Is there clear evidence standards are enforced?
			Processes for conducting criminal history checks for staff? <i>*Note: may be required by other law or process</i>	Policies and procedures for student safety?	Processes for teacher training in child protection in general, or in child sexual abuse in particular?	Processes for teacher training in legal or policy duties relating to reporting child sexual abuse?					
SA	<i>Education and Early Childhood Services (Registration and Standards) Act 2011 s 43</i>	Education and Early Childhood Services Registration and Standards Board of South Australia http://www.eecsr.sb.sa.gov.au/registration	No	Yes – under s 43(1)(b)	No	No	Yes – but not well detailed	No	No	No	Would require further research
Tas	<i>Education Act 1994 s 53</i>	Schools Registration Board of Tasmania http://education.tas.edu.au/initiatives/srb/SitePages/Home.aspx	No	No	No	No	Yes, but none relating to child protection	No	No	Not applicable	Would require further research

	Legislation and key provisions containing requirements for registration	Non-government schools registration authority	Narrow efficacy on key dimensions								
			Legislative requirements for registration				Regulatory Standards accompanying legislation				
			To qualify for registration, is the school expressly required by legislation to show it has:				Are there standards supporting legislative conditions, and how detailed are they?	Do the standards require teacher training in child protection in general or in child sexual abuse specifically?	Do the standards require teacher training in legal or policy duties to report child sexual abuse?	Are the standards clear and detailed?	Is there clear evidence standards are enforced?
			Processes for conducting criminal history checks for staff? <i>*Note: may be required by other law or process</i>	Policies and procedures for student safety?	Processes for teacher training in child protection in general, or in child sexual abuse in particular?	Processes for teacher training in legal or policy duties relating to reporting child sexual abuse?					
Vic	<i>Education and Training Reform Act 2006</i> pt 4.3; <i>Education and Training Reform Regulations 2007</i> Part 5 (s 51) and Sched 2	Victorian Registration and Qualifications Authority http://www.vrqa.vic.gov.au/about/Pages/default.aspx	Yes – under reg 5	Yes – under s 4.3.1(6)(b)(iii)	No	No	Yes – very well detailed	Not specifically, although reg 21 states that a school must have policies and procedures in place that enable it to comply with the standards. The standards also require evidence of how the school communicates policy and procedures to staff	Not specifically, although reg 21 states that a school must have policies and procedures in place that enable it to comply with the standards. The standards also require evidence of how the school communicates policy and procedures to staff	Yes – detailed and specific	Would require further research

	Legislation and key provisions containing requirements for registration	Non-government schools registration authority	Narrow efficacy on key dimensions								
			Legislative requirements for registration				Regulatory Standards accompanying legislation				
			To qualify for registration, is the school expressly required by legislation to show it has:				Are there standards supporting legislative conditions, and how detailed are they?	Do the standards require teacher training in child protection in general or in child sexual abuse specifically?	Do the standards require teacher training in legal or policy duties to report child sexual abuse?	Are the standards clear and detailed?	Is there clear evidence standards are enforced?
			Processes for conducting criminal history checks for staff? <i>*Note: may be required by other law or process</i>	Policies and procedures for student safety?	Processes for teacher training in child protection in general, or in child sexual abuse in particular?	Processes for teacher training in legal or policy duties relating to reporting child sexual abuse?					
WA	<i>School Education Act 1999 s 160</i>	Department of Education Services http://www.des.wa.gov.au/school_education/nongovernment_schools/info-regs/School_registration/Pages/default.aspx	Not specifically	Yes – under s 160(1)(h)	No	No	Yes – detailed and specific	In a sense – 4.2 states that schools must ‘develop and implement’ a child protection policy. However, there is no specific requirement about training in a broader sense	Yes – under 4.2	Yes – detailed and specific	Would require further research

Table 2.7(2) – Regulation of individual teachers in non-state schools: Teacher registration authorities and individual teacher registration requirements – law and policy

	Teacher registration authority and legislation	Code of conduct	Narrow efficacy on key dimensions					
			Key legislative requirements			Key requirements in regulatory policies, codes of conduct/ethics applying to all teachers in the state or territory		
			Does the board/ authority conduct criminal history checks as a condition of registration (either directly or indirectly)?	Does the board/ authority otherwise ensure registered teachers are fit and proper persons to practise, especially in the context of child abuse?	Does the board/ authority require registered teachers to have training in child protection, including about child sexual abuse, either generally or as part of a continuing professional development condition?	Is there a separate legislative duty to report suspected child sexual abuse, and does its breadth apply to suspected past child sexual abuse as well as suspected likely child sexual abuse; for example, grooming?	Does the policy or code of conduct or ethics require teachers to undertake training in child protection, including about child sexual abuse?	Does the policy or code of conduct or ethics require teachers to report child sexual abuse specifically?
ACT	ACT Teacher Quality Institute http://www.tqi.act.edu.au/home <i>ACT Teacher Quality Institute Act 2010</i> (ACT); ACT Teacher Quality Institute Regulation 2010 (ACT)	Code of Professional Practice and Conduct (ACT Teacher Quality Institute): http://www.tqi.act.edu.au/_data/assets/pdf_file/0010/577396/Code-of-practice-April-2014-excluding-footer.pdf For govt schools: ACT Education and Training Directorate, <i>Teachers' Code of Professional Practice</i> : http://www.det.act.gov.au/_data/assets/pdf_file/0007/17692/TeachersCode_ofProfessionalPractice.pdf	Yes – under s 32(1)(d)	No	No, although continuing professional education may be required under s 38	Yes – very broad, applying to both dimensions	No	No

NSW	<p>Board of Studies, Teaching and Educational Standards</p> <p><i>Teacher Accreditation Act 2004</i> (NSW); <i>Teacher Accreditation Regulation 2015</i>; <i>Board of Studies, Teaching and Educational Standards Act 2013</i>; Board of Studies, Teaching and Educational Regulations 2015</p>	<p>BOSTES does not appear to have a code for all teachers, including those in non-government schools. A Code of Conduct exists for teachers employed in government schools. It is published by the Department of Education and Communities.</p> <p>BOSTES Professional Learning Policy http://www.nswteachers.nsw.edu.au/publications-policies-resources/policies/</p>	Yes – <i>Teacher Accreditation Act</i> s 25A	There is no apparent further requirement in this respect	No – The BOSTES Professional Learning Policy gives effect to the Act’s provisions on professional development. Different requirements exist, depending on the teacher’s AITSL level. However, there is no specific requirement regarding training in child protection	Yes – very broad, applying to both dimensions	No	No
NT	<p>Teacher Registration Board of the Northern Territory http://www.trb.nt.gov.au</p> <p><i>Teacher Registration (Northern Territory) Act</i>; <i>Teacher Registration (Northern Territory) Regulations</i> (NT)</p>	<p>Code of Ethics for Northern Territory Teachers http://www.trb.nt.gov.au/_data/assets/pdf_file/0020/33059/CodeOfEthicsNTteachers.pdf</p> <p>Protective Practices policy applies to all teachers in the Northern Territory http://www.trb.nt.gov.au/professional-standards-and-ethics</p>	Yes – under s 32(1)(a)	Yes – under ss 30(b), 32	Under s 11 of the Act, the board is responsible for the development of professional teaching standards. The Protective Practices policy applies to all teachers in the Northern Territory. It provides extremely detailed information about appropriate conduct and relationships between teachers and students in the context of sexual abuse.	Yes – very broad, applying to both dimensions	No	Yes – via Protective Practices policy p 11.

Qld	<p>Queensland College of Teachers https://www.qct.edu.au/Registration/index.html</p> <p><i>Education (Queensland College of Teachers) Act 2005 (Qld);</i> Education (Queensland College of Teachers) Regulation 2005 (Qld)</p>	<p>Code of Ethics for Teachers in Queensland: http://www.qct.edu.au/PDF/PCU/CodeOfEthicsPoster20081215.pdf</p> <p>Professional Standards for Queensland Teachers: http://www.qct.edu.au/publications/ProfessionalStandards/ProfessionalStandardsForQldTeachers2006.pdf</p> <p>https://www.qct.edu.au/publications/StandardsPub.html</p>	<p>Yes – must be ‘suitable to teach’ under s 8(1)(c), which includes consideration of criminal history (ss 11, 12) and further broad considerations (s 12)</p>	<p>Yes – must be ‘suitable to teach’ under s 8(1)(c), which includes consideration of criminal history (ss 11, 12)</p>	<p>No</p>	<p>Yes – broad, applying to both dimensions (<i>Child Protection Act 1999</i> ss 13E(1), 13E(2)(a)); but under s 13E(2) limited to cases where the child ‘may not have a parent able and willing to protect the child from the harm’</p>	<p>No – although Standard 10 (p 16) of the Professional Standards requires that ‘teachers know and understand the legal, ethical and professional responsibilities of teachers and obligations in regard to child protection’</p>	<p>No</p>
SA	<p>Teacher Registration Board of South Australia http://www.trb.sa.edu.au</p> <p><i>Teachers Registration and Standards Act 2004 (SA)</i> Teachers Registration and Standards Regulations 2005 (SA)</p>	<p>Code of Ethics for the Teaching Profession in South Australia: http://www.trb.sa.edu.au/sites/default/files/Code-of-Ethics.pdf</p> <p>http://www.trb.sa.edu.au/code-of-ethics</p>	<p>Yes – under ss 22(2)(a), 50</p>	<p>Yes – under s 21(1)(c)</p>	<p>Yes – under regs 4(3) and (3), which state that for the purposes of s 21(1)(b) of the Act, a person must have satisfactorily completed a mandatory notification course in the 12 months before an application for registration</p>	<p>Yes – very broad, applying to both dimensions</p>	<p>No</p>	<p>No</p>

Tas	<p>Teachers Registration Board of Tasmania http://www.trb.tas.gov.au</p> <p><i>Teachers Registration Act 2000</i> (Tas); Teachers Registration Regulations 2011 (Tas)</p>	<p>Code of Professional Ethics for the Teaching Profession in Tasmania https://www.trb.tas.gov.au/Shared%20Documents/Code%20of%20Professional%20Ethics%20for%20the%20Teaching%20Professional%20in%20Tasmania.pdf</p>	<p>Yes – s 13(2)(b) of the Act contains a good character requirement</p> <p>Good character is defined in s 17J to include criminal history and other behaviour</p>	<p>Yes – s 13(2)(c) contains a fit and proper person requirement</p> <p>‘Fitness’ is further defined in s 17K to include medical and psychological considerations</p>	No	Yes – very broad, applying to both dimensions	No	No
Vic	<p>Victorian Institute of Teaching http://www.vit.vic.edu.au</p> <p>Registration policies: http://www.vit.vic.edu.au/registration/registration-policies/Pages/default.aspx</p> <p><i>Education and Training Reform Act 2006</i> (Vic); See Part 2.6 of the Victorian Institute of Teaching, including div 3 Registration of teachers and Education and Training Reform Regulations 2007 (Vic)</p>	<p>Victorian Teaching Profession Code of Conduct http://www.vit.vic.edu.au/SiteCollections/Documents/PDF/Code-of-Conduct-June-2008.pdf</p>	<p>Yes – requirement is in ss 2.6.7 and 2.6.8 and s 2.6.9(2)(b) and (c); and in div 6</p>	<p>Yes – good character requirement is in s 2.6.9(2)(a); 2.6.9(2)(f) relates to ‘fitness to teach’, which is defined in s 2.6.1 as ‘whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school’</p>	No	Yes – broad, applying to both dimensions, but limited to cases where no parent is able and willing to protect the child	No – but has detailed requirements about teachers relations with students (Principles 1.4 and 1.5); Principle 3.2 requires teachers to know their legal duties in relation to relevant matters, including harassment and mandatory reporting	No – but has detailed requirements about teachers relations with students (Principles 1.4 and 1.5); Principle 3.2 requires teachers to know their legal duties in relation to relevant matters, including harassment and mandatory reporting

<p>WA</p>	<p>Teacher Registration Board of Western Australia http://www.trb.wa.gov.au</p> <p><i>Teacher Registration Act 2012 (WA); Teacher Registration (General) Regulations 2012 (WA)</i></p>	<p>Professional Standards for Teachers in Western Australia http://www.trb.wa.gov.au/SiteCollectionDocuments/Professional-Standards-for-Teachers-in-WA.pdf</p> <p>Professional Standards Policy http://www.trb.wa.gov.au/SiteCollectionDocuments/Policy-Professional-Standards-Policy.pdf</p> <p>Code of Conduct (Department of Education – applies to all employees) http://det.wa.edu.au/policies/detcms/policy-planning-and-accountability/policies-framework/guidelines/code-of-conduct1.en?cat-id=3457094</p>	<p>Yes – under s 10(2)(d) (although note that under s 44, the board’s conduct of a criminal history check appears to be optional rather than required</p>	<p>Yes – fit and proper person requirement for registration is in s 15(c).</p> <p>Under the ‘fit and proper person’ assessment, the criminal history check is conducted http://www.trb.wa.gov.au/Professional_conduct/Criminal-record-checks/Pages/default.aspx</p>	<p>No</p> <p>Under reg 9, the board must have a written policy about professional learning activities, and must determine which matters are the subject of these activities</p> <p>The relevant policy requires 20 hours per year of continuing professional development, but while linked with AITSL standards, these activities are self-directed and informal http://www.trb.wa.gov.au/SiteCollectionDocuments/Policy%20-%20Professional%20Learning%20Activities%20Policy%20-%20POL9%20v1.PDF</p>	<p>Yes – but narrow as it only applies to cases of past and presently occurring child sexual abuse</p>	<p>No</p>	<p>No</p>
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Table 2.7(3) – State and territory non-government school representative bodies: Catholic education commissions and independent schools associations – regulation of individual non-government school teachers

	Key state/territory non-government sector authorities, and their policies in relation to child protection/child sexual abuse	Narrow efficacy on key dimensions		
		Does the policy require teachers to report child sexual abuse specifically?	Does the policy require teachers to undertake training in child protection, including about child sexual abuse?	Do the major organisational websites contain clear, detailed and accessible resources on child sexual abuse?
ACT	Catholic Education Archdiocese of Canberra and Goulburn http://cg.catholic.edu.au/ 'Parents – Policies – Student Safety and Wellbeing' <i>Child Protection – Mandatory Reporting ACT Policy</i> <i>Guidelines for Professional Conduct in the Protection of Children and Young People</i>	Yes	No	Yes – relatively detailed
	The Association of Independent Schools of the ACT http://ais.act.edu.au/	No – no policy identified	No – no policy identified	No
NSW	Catholic Education Commission NSW http://www.cecsw.catholic.edu.au/dbpage.php?pg=home&_navlink=1 'Programs/Compliance – Child Protection/Keep Them Safe' Contains links to the <i>NSW Interagency Guidelines for Child Protection Intervention</i> and reporting requirements	Not directly	No	Not directly
	Association of Independent Schools NSW https://www.aisnsw.edu.au/Services/ChildProtection/Pages/default.aspx 'Defining reportable conduct' document is available and relates to sexual misconduct by employees Links are present to: <i>NSW Online Mandatory Reporter Guide</i> <i>NSW Interagency Guidelines – Guide to Making a Child Protection Report</i>	Not directly	No	Not directly
NT	Catholic Education Office of the Northern Territory 'Our publications – Teacher reference' <i>Procedures for dealing with allegations of misconduct made against employees in schools</i> http://www.ceont.catholic.edu.au/our-publications/teacher-reference	Yes	No	Material focuses on staff misconduct, but does not include general material on child sexual abuse
	Association of Independent Schools of the Northern Territory http://www.aisnt.asn.au/	No – no policy identified	No – no policy identified	No

	Key state/territory non-government sector authorities, and their policies in relation to child protection/child sexual abuse	Narrow efficacy on key dimensions		
		Does the policy require teachers to report child sexual abuse specifically?	Does the policy require teachers to undertake training in child protection, including about child sexual abuse?	Do the major organisational websites contain clear, detailed and accessible resources on child sexual abuse?
Qld	Catholic Education Commission 'Catholic Education – Student Protection' http://www.qcec.catholic.edu.au/catholic-education/student-protection	Yes – through staff training PowerPoint presentations on the website	No – professional development activities are required, but none specifically relate to child protection or child sexual abuse (<i>Accreditation to teach in a Catholic School</i> , p 3)	The website has some resources, but they mostly focus on reporting obligations and compliance
	Independent Schools Queensland http://www.isq.qld.edu.au/	No – no policy identified	No – no policy identified	No
SA	Catholic Education South Australia 'Our Schools – Safety and Security – Policies and Publications' http://www.cesa.catholic.edu.au/our-schools/safety-security/policies-publications <i>Protective practices for staff in their interactions with children and young people: guidelines for staff working or volunteering in education and care settings</i> <i>Procedures for reporting child abuse and neglect</i> <i>Responding to problem sexual behaviour guidelines – intersectoral</i> <i>Managing allegations of sexual misconduct in SA education and care settings</i> <i>Child safe environments: Principles of good practice</i> http://www.cesa.catholic.edu.au/_files/f/7573/ScreeningrecruitmentguidelinesOct2011.pdf	Yes	Yes – (Pr 1.6: <i>Screening and Recruitment Procedures for Applicants</i>)	Yes – extensive resources about all aspects
	Association of Independent Schools of SA Compliance Framework http://www.ais.sa.edu.au/compliance-framework/child-protection Extensive resources including: <i>Protective practices for staff in their interactions with children and young people: guidelines for staff working or volunteering in education and care settings</i> http://www.ais.sa.edu.au/_files/f/88489/Protective%20practices_WEB2.pdf <i>Child safe environments: Principles of good practice</i> http://www.ais.sa.edu.au/_files/f/188662/CSE%20Principles%20of%20Good%20Practice%20-%20July%202012.pdf <i>Responding to abuse and neglect/mandatory reporting</i> <i>Child protection</i>	Yes	Yes	Yes – extensive resources about all aspects

	Key state/territory non-government sector authorities, and their policies in relation to child protection/child sexual abuse	Narrow efficacy on key dimensions		
		Does the policy require teachers to report child sexual abuse specifically?	Does the policy require teachers to undertake training in child protection, including about child sexual abuse?	Do the major organisational websites contain clear, detailed and accessible resources on child sexual abuse?
Tas	Tasmanian Catholic Education Office Code of Conduct http://catholic.tas.edu.au/key-documents/code-of-conduct	Yes – Pr 3.3 and Collaborative Caring Protocol (although this protocol wasn't found). Also Part 6 includes clear statements prohibiting sexual interaction with students	No	Yes – regarding the items noted in the first criterion; but not generally regarding child sexual abuse
	Independent Schools Tasmania http://www.independentschools.tas.edu.au/	No – no policy identified	No – no policy identified	No
Vic	Catholic Education Commission of Victoria No documents about child protection are listed on the 'Policies' section of the commission's website. On the 'Publications' page, a link is provided to the Department of Education's Student Wellbeing policy entitled <i>Protecting the safety and wellbeing of children and young people</i> : http://www.cecv.catholic.edu.au/publications/StudentWellbeing/ProtectProtocol_011009.pdf	Yes – by implication, although no contextual information is provided on the commission's website	No	No
	Independent Schools Victoria 'Child protection/mandatory reporting' information in the Compliance Framework: http://www.is.vic.edu.au/compliance/students/child_protection_mand_rep.htm	Yes	No	Information is provided on reporting obligations and processes for child abuse and neglect generally. There isn't a great deal of information on child sexual abuse

	Key state/territory non-government sector authorities, and their policies in relation to child protection/child sexual abuse	Narrow efficacy on key dimensions		
		Does the policy require teachers to report child sexual abuse specifically?	Does the policy require teachers to undertake training in child protection, including about child sexual abuse?	Do the major organisational websites contain clear, detailed and accessible resources on child sexual abuse?
WA	Catholic Education Western Australia 'Child Protection' Policy 2-D3 http://internet.ceo.wa.edu.au/AboutUs/Governance/Policies/Documents/Community/Policy%202D3%20Child%20Protection.pdf	Yes	Yes – Principle 4.1.4 states, 'Principals are required to ensure that all staff are aware of and comply with legislation and policies with respect to child protection'. Principle 5.4 states, 'The principal shall ensure that staff receive induction, in relation to the Child Protection Procedures for Catholic Schools in Western Australia and Mandatory Reporting within the first 12 months of appointment'. Staff are required to follow requirements in the associated document entitled 'Child Protection Procedures for Catholic Schools in Western Australia' – although this policy was not accessible on the website.	Yes – in relation to the general child protection policy; but not generally regarding child sexual abuse
	Association of Independent Schools Western Australia http://ais.wa.edu.au/	No – no policy identified	No – no policy identified	No

Part 2.8 – Regulatory systems: Early childhood education and care

2.8.1 Federal and state/territory context

Early childhood education and care (ECEC) comprises a range of services, including childcare services (services provided to children aged 0–12, including long day care; outside-school-hours care; vacation care; family day care; occasional care; and other care) and pre-school services.¹⁷⁴ These services are provided based on the child's age, and care and educational needs. This education and care sector caters to many children. At 30 June 2014, there were 10,711 approved or licensed childcare services, and 5,964 pre-school services nationwide.¹⁷⁵

Governments use a range of methods – including approvals, licensing, quality assurance, assessing performance against standards and outcomes-linked funding – to ensure these services are of an acceptable quality. The Australian Government, and state and territory governments cooperate to design and administer national approaches and reforms in the sector. A package of initiatives were drawn together to form the *Early Childhood Reform Agenda*, which is administered by the Council of Australian Governments.

A key component of this agenda is the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (NP NQAECEC)¹⁷⁶, which comprises:

- the *National Quality Framework for Early Childhood Education and Care* (NQF), which is funded and supported by the Australian Government
- the *National Quality Standard* (NQS), which ensures quality and consistency across the country.

2.8.2 The National Quality Framework for Early Childhood Education and Care, and the Education and Care Services National Law

The National Quality Framework for Early Childhood Education and Care (NQF) is embedded in a national applied law, which is a similar legislative scheme enacted by each state and territory.¹⁷⁷ The NQF commenced on 1 January 2012, after being created to increase the focus on care and education in the early years of childhood to 'ensure the wellbeing of children throughout their lives and to lift the productivity of our nation as a whole'.¹⁷⁸ State and territory governments are responsible for

¹⁷⁴ Productivity Commission (2015). 'Chapter 3: Early Childhood Education and Care.' *Report on Government Services 2015*. Retrieved 5 February 2016 from <http://www.pc.gov.au/research/ongoing/report-on-government-services/2015/childcare-education-and-training/early-childhood-education-and-care>, pp 3.1–3.3.

¹⁷⁵ Productivity Commission (2015). 'Chapter 3: Early Childhood Education and Care', *Report on Government Services 2015*. Retrieved 5 February 2016 from <http://www.pc.gov.au/research/ongoing/report-on-government-services/2015/childcare-education-and-training/early-childhood-education-and-care>, p 3.13.

¹⁷⁶ Productivity Commission (2015). 'Chapter 3: Early Childhood Education and Care', *Report on Government Services 2015*. Retrieved 5 February 2016 from <http://www.pc.gov.au/research/ongoing/report-on-government-services/2015/childcare-education-and-training/early-childhood-education-and-care>, pp 3.6–3.9.

¹⁷⁷ See generally: Australian Children's Education & Care Quality Authority (2014). *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011*. Retrieved 5 February 2016 from http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/2014/NQF02%20Guide%20to%20ECS%20Law%20and%20Regs_web.pdf.

¹⁷⁸ Australian Children's Education & Care Quality Authority. (2013). *Guide to the National Quality Framework*. Retrieved 4 February 2016 from <http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/NQF01-Guide-to-the-NQF-130902.pdf>, p 3.

approving and licensing ECEC services under the NQF, via their respective statutes, which embed the Education and Care Services National Law (ECSNL). To obtain approval to operate, a service provider must satisfy the NQF legislative and regulatory requirements for premises, staffing, policies and procedures. Services approved in this way are then regulated under the ECSNL.

State and territory 'regulatory authorities' are responsible for administering the NQF¹⁷⁹, including monitoring and enforcing compliance with the National Law and the National Regulations.¹⁸⁰ Under the *Children (Education and Care Services) National Law (NSW)*, these regulatory authorities are:

- (a) to administer the National Quality Framework;
- (b) to assess approved education and care services against the National Quality Standard and the national regulations and determine the ratings of those services;
- (c) to monitor and enforce compliance with this Law;
- (d) to receive and investigate complaints arising under this Law;
- (e) in conjunction with the National Authority and the relevant Commonwealth Department, to educate and inform education and care services and the community in relation to the National Quality Framework;
- (f) to work in collaboration with the National Authority to support and promote continuous quality improvements in education and care services;
- (g) to undertake information collection, review and reporting for the purposes of –
 - i. the regulation of education and care services; and
 - ii. reporting on the administration of the National Quality Framework; and
 - iii. the sharing of information under this Law;
- (h) any other functions conferred on the Regulatory Authority under this Law.¹⁸¹

Therefore, the respective roles of the Australian, and state and territory governments are complementary in this context.¹⁸² The Australian Government's role includes:

- coordination
- contributing funds to support the NQF through the NP NQA/ECEC
- funding organisations to provide support and training to service providers
- funding some providers.

The state and territory governments' roles include:

¹⁷⁹ In this context the 'national authority' is ACECQA. A 'regulatory authority' is 'a person declared by a law of a participating jurisdiction to be the Regulatory Authority for that jurisdiction or for a class of education and care services for that jurisdiction': Qld s 5. The regulatory authorities are: ACT Education & Training Directorate (Children's Education and Care Assurance); New South Wales Department of Education and Communities (Early Childhood Education and Care Directorate); Northern Territory Department of Education and Training (Quality Education and Care); Queensland Department of Education and Training (Early Childhood Education and Care); South Australian Education and Early Childhood Services Registration and Standards Board; Tasmanian Department of Education (Department of Education and Care Unit); Victorian Department of Education and Training; and Western Australian Department of Local Government and Communities (Education and Care Regulatory Unit).

¹⁸⁰ Australian Children's Education & Care Quality Authority. (2014). *Guide to the National Law and Regulations*. Retrieved 4 February 2016 from http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/2014/NQF02%20Guide%20to%20ECS%20Law%20and%20Regs_web.pdf, p 120ff.

¹⁸¹ *Children (Education and Care Services) National Law (NSW)* s 260.

¹⁸² Productivity Commission (2015). 'Chapter 3: Early Childhood Education and Care'. *Report on Government Services 2015*. Retrieved 5 February 2016 from <http://www.pc.gov.au/research/ongoing/report-on-government-services/2015/childcare-education-and-training/early-childhood-education-and-care>, 3.7.

- providing the legislative framework for approving and licensing ECEC services
- licensing services under the NQF
- monitoring and resourcing licensed and approved ECEC providers
- funding non-government service providers
- delivering some pre-school and other services
- developing new ECEC services
- giving information, support, training and professional development to ECEC providers, management and staff.

2.8.3 Australian Children’s Education and Care Quality Authority

ACECQA is a ‘national authority’ administered by the Australian, and state and territory governments. It was established by legislation to have oversight of the whole system and to ensure consistent implementation across jurisdictions. ACECQA is governed by a board of 13 members, including a nominee from each state and territory. ACECQA’s powers and functions are set out in the legislation. For example, the New South Wales Act states that the functions of ACECQA are:

- (a) to guide the implementation and administration of the National Quality Framework and to monitor and promote consistency in its implementation and administration;
- (b) to report to and advise the Ministerial Council on the National Quality Framework;
- (c) to report to the Regulatory Authorities and the relevant Commonwealth Department in relation to the following –
 - i. the collection of information under this Law;
 - ii. the evaluation of the National Quality Framework;
- (d) to establish consistent, effective and efficient procedures for the operation of the National Quality Framework;
- (e) to determine the arrangements for national auditing for the purposes of this Law;
- (f) to keep national information on the assessment, rating and regulation of education and care services;
- (g) to establish and maintain national registers of approved providers, approved education and care services and certified supervisors and to publish those registers;
- (h) to promote and foster continuous quality improvement by approved education and care services;
- (i) to publish, monitor and review ratings of approved education and care services;
- (j) to make determinations with respect to the highest level of rating for approved education and care services;
- (k) in conjunction with the Regulatory Authorities, to educate and inform education and care services and the community about the National Quality Framework;
- (l) to publish guides and resources—
 - i. to support parents and the community in understanding quality in relation to education and care services; and
 - ii. to support the education and care services sector in understanding the National Quality Framework;
- (m) to publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children;

- (n) to publish practice notes and guidelines for the application of this Law;
- (o) to determine the qualifications for authorised officers and to provide support and training for staff of Regulatory Authorities;
- (p) to determine the qualifications required to be held by educators, including the assessment of equivalent qualifications;
- (q) any other function given to the National Authority by or under this Law.¹⁸³

2.8.4 The Education and Care Services National Law and the National Quality Standard

The state and territory *Education and Care Services National Law* legislation embeds the NQF and is similar in approach across jurisdictions.¹⁸⁴ The model law was first passed in Victoria¹⁸⁵, and other jurisdictions then enacted their own legislation. Through the legislation, the NQF imposes compulsory standards to require high-quality early childhood education and care. The Ministerial Council developed the *Education and Care Services National Regulations*, and were published on the New South Wales legislation website. Specific regulations can be made to apply to one jurisdiction, but the *National Regulations* are intended to have general application.¹⁸⁶ Accordingly, they are generally applied in the same way in each state and territory, although there can be differences across jurisdictions.

Key legislative requirements

Most relevant to this report, the following are key legislative requirements in this context:

- When seeking a *provider approval*, which enables a person to operate approved services in any jurisdiction, an applicant must demonstrate they are fit and proper to be involved in the provision of an education and care service. In determining this, a regulatory authority must consider the applicant's past compliance with education and care services law, Working with Children Checks and criminal history.
- Applications for *service approval* must be made by an approved provider and must be made in the required form.¹⁸⁷ An applicant must show, among other things, the adequacy of the policies and procedures for the service.¹⁸⁸
- **Provisions relating directly to child protection:** The Education and Care Services National Regulations (ECSNR) set out general requirements regarding children's health, safety and wellbeing. Chapter 7 of the New South Wales ECSNR sets out regulations specific to each state and territory; most of these are about staff ratios per child, but some cover criminal history checking. They also include the following:
 - New South Wales requires approved providers of an education and care service to ensure the nominated supervisor and staff members at the service who work with

¹⁸³ *Children (Education and Care Services) National Law (NSW)* s 225(1).

¹⁸⁴ *Education and Care Services National Law (ACT) Act 2011 (ACT)*; *Children (Education and Care Services National Law Application) Act 2010 (NSW)* and *Education and Care Services National Regulations 2011*; *Education and Care Services (National Uniform Legislation) Act 2011 (NT)*; *Education and Care Services National Law (Queensland) Act 2011 (Qld)*; *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)* and *Education and Early Childhood Services (Registration and Standards) Regulations 2011 (SA)*; *Education and Care Services National Law (Application) Act 2011 (Tas)*; *Education and Care Services National Law Act 2010 (Vic)*; *Education and Care Services National Law (WA) Act 2012 (WA)* and *Education and Care Services National Regulations 2012 (WA)*.

¹⁸⁵ *Education and Care Services National Law Act 2010 (Vic)*.

¹⁸⁶ *Education and Care Services National Law Act 2010 (Vic)* ss 301–302. Created in 2011 by the former Ministerial Council for Education, Early Childhood Development and Youth Affairs under ss 301 and 324 of the National Law.

¹⁸⁷ *Education and Care Services Act 2013 (Qld)* ss 43–44.

¹⁸⁸ *Education and Care Services Act 2013 (Qld)* s 47(1)(c).

children have training in the jurisdiction's child protection law. Specifically, they must be 'advised of (a) the existence and application of the current child protection law; and (b) any obligations that they may have under that law'.¹⁸⁹ This regulation is also present in Western Australia, but not in other jurisdictions.

- New South Wales requires the approved provider of an education and care service to ensure the nominated supervisor of the service and any certified supervisor in day-to-day charge of the service have successfully completed a course in child protection approved by the New South Wales Regulatory Authority.¹⁹⁰
 - In Queensland, the *Working With Children (Risk Management and Screening) Act 2000* (Qld) requires a person who employs someone else in regulated employment to develop and implement a written strategy about the person's employees that (a) implements employment practices and procedures to promote the wellbeing of a child affected by the regulated employment and to protect the child from 'harm' (as defined in the *Child Protection Act 1999* s 9, including sexual abuse); and (b) includes the matters prescribed under a regulation.¹⁹¹ Under the *Working with Children (Risk Management and Screening) Regulation 2011* (Qld), this written risk management strategy must include: (a) a statement about commitment to the safety and wellbeing of children and the protection of children from 'harm'; (b) a code of conduct for interacting with children; (c) procedures for recruiting, selecting, training and managing persons engaged, as the procedures relate to the safety and wellbeing of children and the protection of children from harm; (d) policies and procedures for handling disclosures or suspicions of harm, including reporting guidelines; (h) strategies for communication and support, including (i) written information for parents and persons engaged by the person that includes details of the person's risk management strategy or where the strategy can be accessed; and (ii) training materials for persons engaged by the person to (a) help identify risks of harm and how to handle disclosures or suspicions of harm; and (b) outline the person's risk management strategy.¹⁹²
 - In South Australia, there are also some provisions about training, although these are less direct (see Table 2.8).
- It should be noted that section 167 of the New South Wales Act creates an offence where the approved provider, nominated supervisor, or family day care educator, fails to 'ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury'.¹⁹³ Based on the text of the provision, the context of the provision, and the purpose of the provision, and direct application of established principles of statutory interpretation¹⁹⁴, this does not impose a

¹⁸⁹ Education and Care Services National Regulation (NSW) reg 84. A penalty of \$1,000 applies. In relation to this, the ACECQA Guide to the National Law and National Regulations states that 'Regulation 84 might be met by attending regular refresher training or in-house workshops, completing online training, or by other ways. Compliance with this regulation will be determined by an outcome focus; that is, whether educators and staff are aware of the current child protection law and their responsibilities.'

¹⁹⁰ Education and Care Services National Regulation (NSW) reg 273.

¹⁹¹ *Working With Children (Risk Management and Screening) Act 2000* (Qld) s 171.

¹⁹² *Working with Children (Risk Management and Screening) Regulation 2011* (Qld) reg 3(1).

¹⁹³ *Children (Education and Care Services) National Law (NSW)* s 167.

¹⁹⁴ On text: see *Visy Paper Pty Ltd v Australian Competition and Consumer Commission* (2003) 216 CLR 1; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355. On context: *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389; *K & S Lake City Freighters Pty Ltd v Gordon and Gotch Ltd* (1985) 60 ALR 509. On purpose: *Project Blue Sky Inc v*

legislative mandatory reporting duty in relation to sexual abuse on those who work in the ECEC service or family day care service. Accordingly, childcare and family day care employees are not mandated reporters of child sexual abuse under this legislative scheme. Rather, state and territory child protection legislation specifies which members of occupational groups are, and are not, mandated reporters in this technical sense. Childcare practitioners are mandated reporters in some but not all jurisdictions.

- A primary function of state and territory regulatory authorities is to assess approved services against the National Regulations and the National Quality Standard. The regulatory authority conducts assessments of service quality and is empowered to suspend a service approval if a provider is rated as not meeting a standard.¹⁹⁵

2.8.5 National Quality Standard and ratings of services

Associated mechanisms appear rigorous, at least nominally. The *National Quality Standard* has seven dimensions or 'Quality Areas' and within each of these sits a *Standard* and several *Elements*. The Quality Areas, and most relevant standards and elements are:

- (1) Educational program and practice
- (2) Children's health and safety
 - (a) Standard 2.3: Each child is protected
 - (b) Element 2.3.4: Educators, coordinators and staff members are aware of their roles and responsibilities to respond to every child at risk of abuse or neglect
- (3) Physical environment
- (4) Staffing arrangements
- (5) Relationships with children
- (6) Collaborative partnerships with families and communities
- (7) Leadership and service management
 - (a) Standard 7.1: Effective leadership promotes a positive organisational culture and builds a professional learning community
 - (b) Element 7.1.2: The induction of educators, coordinators and staff members is comprehensive
 - (c) Element 7.1.5: Adults working with children and those engaged in management of the service or residing on the premises are fit and proper.

Australian Broadcasting Authority (1998) 194 CLR 355. The offence relates not to all employees, but to approved providers, nominated supervisors and family day care educators. It also relates to general harm and hazards relating to the operation of a service, without specifically naming which kinds of harm. The whole of part 4.2 relates to children's health and safety in a general sense; child protection is contextualised within requirements for supervision, harms and hazards likely to cause injury while on site. There is no mention in the Act or the Regulations about child sexual abuse. Both Victorian and New South Wales Hansard are silent as to child abuse and sexual abuse. The ACECQA Guide to the National Law and National Regulations are silent as to child abuse in general and child sexual abuse specifically, except for the vague and undefined requirement in Element 2.3.4 that educators, coordinators and staff members are aware of 'their roles and responsibilities' to respond to every child at risk of abuse or neglect. Based on legislative requirements, these differ substantially across states and territories.

¹⁹⁵ *Children (Education and Care Services) National Law (NSW)* s 70. In this context, the 'national authority' is ACECQA. A 'regulatory authority' is 'a person declared by a law of a participating jurisdiction to be the Regulatory Authority for that jurisdiction or for a class of education and care services for that jurisdiction'.

While the scheme is several years old, it is still relatively new, and not all services have been rated for performance. The most recent ACECQA annual report shows that at 31 March 2015¹⁹⁶:

- 8,287 out of a national total of 14,827 services (56 per cent of all services) have been rated, with substantial variance between jurisdictions (28–71 per cent)
- 66 per cent of all assessed ECEC providers met or exceeded the standard.

While there are breakdowns of performance against each of the seven Quality Areas, there are not detailed breakdowns of the ratings against each element of the Standards and Elements.

2.8.6 Synthesis and summary of efficacy

Table 2.8 sets out the key features of regulation of early childhood care and education services, informed by an analysis of the legislation. For this report, key dimensions have been analysed to fulfil not only the synthesis aspect of the project but to evaluate narrow efficacy. Accordingly, Table 2.8 synthesises key features and narrow efficacy dimensions regarding:

- whether approval of service providers includes criminal history checks
- whether approval of service providers includes an assessment of fitness and propriety
- whether it is an offence for an employee to be employed without a criminal history clearance
- whether it is an offence for a provider to employ a person who does not have a criminal history clearance
- whether a provider is required to ensure staff are aware of their duties under the jurisdiction's child protection law to report suspected child sexual abuse
- whether a provider is required to ensure staff are trained in child protection generally
- whether childcare staff are required by legislation to report suspected child sexual abuse.

Overall, there are aspects of the national framework, as applied in states and territories, that appear to provide consistent and positive strategies for regulating the early childhood care and education sector. These include the approach to criminal history checks for both providers and employees, and fitness and propriety checks for providers. The national approach aims to, and seems to, provide a more harmonious approach to regulating this sector, although the legislative context is complicated.

However, the following are the most notable areas of difference between jurisdictions:

- Only two jurisdictions (New South Wales and Western Australia) appear to require service providers ensure staff members are aware of their duty to report suspected child sexual abuse (Western Australia's child protection law does not actually require reports, although it enables them).
- Only two jurisdictions (New South Wales (in part) and Queensland) appear to require service providers ensure staff are trained in child protection generally. Queensland's legislative framework for training appears to be the most developed, at least nominally.
- In five jurisdictions, childcare employees are required by the legislation to report suspected child sexual abuse (Australian Capital Territory, New South Wales, Northern Territory, South Australia and Tasmania); the other three (Queensland, Victoria and Western Australia) do not, although they enable reports to be made.

¹⁹⁶ Australian Children's Education and Care Quality Authority. (2015). *NQF Snapshot Q1 2015*. Retrieved 6 February 2015 from <http://files.acecqa.gov.au/files/Reports/2015/NQF%20Snapshot%20Q1%202015%20FINAL.pdf>.

Table 2.8 – National Law provisions: ECEC services, staff and child protection requirements

	Legislation	Narrow efficacy on key dimensions					
		Are criminal history checks conducted as a condition of approving a provider?	Is there a 'fit and proper person' requirement for the approval of a provider?	Is it an offence for an approved provider to employ a staff member without a Working With Children Check, and for an employee to be employed at a service without a criminal history check?	Are service providers required to ensure that staff members:		Are childcare employees (excluding registered teachers) required by the jurisdiction's child protection legislation to report suspected child sexual abuse?
					are aware of their duties under the jurisdiction's child protection law?	are trained in child protection?	
ACT	<i>Education and Care Services National Law (ACT) Act 2011</i>	Yes – through s 6, adopting the National Law as set out in the schedule to the Victorian Act	Yes – through s 6, adopting the National Law as set out in the schedule to the Victorian Act	Yes – under reg 269A NSW (family day care) Also via <i>Working with Vulnerable People (Background Checking) Act 2011</i> . Under S 13, it is an offence to engage in child-related work without clearance; and under s 14, it is an offence to employ such a person in child-related work	No – (ACT Act 2011 s 6 adopts ECSNL as set out in the Victorian schedule)	No	Yes
NSW	<i>Children (Education and Care Services National Law Application) Act 2010</i> (NSW) Education and Care Services National Regulations 2011	Yes – under s 13	Yes – under s 12	Yes – via <i>Child Protection (Working with Children) Act 2012</i> . Under s 8, a person must not work in 'child-related work' without a clearance; and s 6(2)(f) defines child-related work to include early childhood education and care (see also Child Protection (Working with Children) Regulation 2013 reg 9(1)). Under s 9, an employer must not employ someone without a clearance	Yes – NSW reg 84 expressly requires service providers to ensure staff members are aware of their duties under the jurisdiction's child protection law	Yes in part – NSW reg 273 expressly requires an approved provider to ensure the nominated supervisor of the service, and any certified supervisor in daily charge of the service, to have completed a course in child protection approved by the NSW Regulatory Authority	Yes

	Legislation	Narrow efficacy on key dimensions					
		Are criminal history checks conducted as a condition of approving a provider?	Is there a 'fit and proper person' requirement for the approval of a provider?	Is it an offence for an approved provider to employ a staff member without a Working With Children Check, and for an employee to be employed at a service without a criminal history check?	Are service providers required to ensure that staff members:		Are childcare employees (excluding registered teachers) required by the jurisdiction's child protection legislation to report suspected child sexual abuse?
					are aware of their duties under the jurisdiction's child protection law?	are trained in child protection?	
NT	<i>Education and Care Services (National Uniform Legislation) Act 2011</i>	Yes – under s 13	Yes – under s 12	Yes – via <i>Care and Protection of Children Act</i> . Under S 187(1), it is an offence for a person to engage in child-related work without a clearance; and under s 187(2), it is an offence to employ such a person in child-related work	No	No	Yes
Qld	<i>Education and Care Services National Law (Queensland) Act 2011</i> Education and Care Services National Law (Queensland)	Yes – under s 13	Yes – under s 12	Yes – via <i>Working With Children (Risk Management and Screening) Act 2000</i> ch 8 pt 4	No – the Qld Act 2011 s 4 adopts ECSNL as set out in Victorian schedule	Yes. Not via the Qld Act 2011 s 4, which adopts ECSNL as set out in the Victorian schedule, but via the WWC Act s 171 – it requires written risk management strategies – and the WWC Regulation 2011 reg 3(1)(h) (in combination with the CPA s 9), which states that it must include training materials to help identify risks of child abuse and how to handle suspected harm	No

	Legislation	Narrow efficacy on key dimensions					
		Are criminal history checks conducted as a condition of approving a provider?	Is there a 'fit and proper person' requirement for the approval of a provider?	Is it an offence for an approved provider to employ a staff member without a Working With Children Check, and for an employee to be employed at a service without a criminal history check?	Are service providers required to ensure that staff members:		Are childcare employees (excluding registered teachers) required by the jurisdiction's child protection legislation to report suspected child sexual abuse?
					are aware of their duties under the jurisdiction's child protection law?	are trained in child protection?	
SA	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i> Education and Early Childhood Services (Registration and Standards) Regulations 2011	Yes – Schedule s 13	Yes – Schedule s 12	Yes – via <i>Children's Protection Act 1993</i> . Under s 8BA, it is an offence for a person to engage in child-related work without clearance; and under s 8B, it is an offence to employ such a person in child-related work	Not directly (although the <i>Children's Protection Act 1993</i> s 8C requires organisations to have appropriate policies and procedures for ensuring reports of child sexual abuse are made as required by the CPA)	Not directly	Yes
Tas	<i>Education and Care Services National Law (Application) Act 2011</i>	Yes – through s 4, adopting the National Law as set out in the schedule to the Victorian Act	Yes – through s 4, adopting the National Law as set out in the schedule to the Victorian Act	Yes – reg 344 NSW Also via <i>Registration to Work with Vulnerable People Act 2013</i> . Under s 16, it is an offence for a person to engage in child-related work without clearance; and under s 17, it is an offence to employ such a person in child-related work	No – Tasmanian Act 2011 adopts ECSNL as set out in the Victorian schedule	No	Yes

	Legislation	Narrow efficacy on key dimensions					
		Are criminal history checks conducted as a condition of approving a provider?	Is there a 'fit and proper person' requirement for the approval of a provider?	Is it an offence for an approved provider to employ a staff member without a Working With Children Check, and for an employee to be employed at a service without a criminal history check?	Are service providers required to ensure that staff members:		Are childcare employees (excluding registered teachers) required by the jurisdiction's child protection legislation to report suspected child sexual abuse?
					are aware of their duties under the jurisdiction's child protection law?	are trained in child protection?	
Vic	<i>Education and Care Services National Law Act 2010</i>	Yes – under s 13	Yes – under s 12	Yes – under reg 358 NSW Also via <i>Working with Children Act 2005</i> . Under s 33, it is an offence for a person to engage in child-related work without clearance; and under s 35, it is an offence to employ such a person in child-related work	No	No	No
WA	<i>Education and Care Services National Law Act 2012 (WA)</i> Education and Care Services National Regulations 2012	Yes – under Schedule s 13	Yes – under Schedule s 12	Yes – via <i>Working with Children (Criminal Record Checking) Act 2004</i> . Under s 24, it is an offence for a person to engage in child-related work without clearance; and under s 22, it is an offence to employ such a person in child-related work	Yes – WA reg 84 applies in the same way as NSW reg 84	No	No

Part 2.9 – Regulatory systems: The medical sector

2.9.1 The Medical sector generally

In Australia, federal, state and territory governments finance, deliver and regulate health services. State and territory governments conduct most activities. The Australian Government funds state and territory governments to assist with the cost of providing public hospital and health services under the National Health Reform Agreement and the National Healthcare Agreement, and promulgates and coordinates health regulations.¹⁹⁷

States and territories have constitutional power to legislate in relation to health. State-owned and managed hospitals account for more than half of all hospitals in the country. These are managed by the relevant state or territory department of health, which creates regulatory frameworks, including policies for responding to child abuse.

Nationally, in 2012–13, there were 746 public hospitals (55 per cent of all hospitals) and 592 private hospitals (45 per cent).¹⁹⁸ State and territory governments own and administer public hospitals, while private hospitals are owned and managed by private organisations, comprising non-profit non-government organisations and for-profit companies. The workforce is diverse: the employee profile includes nurses (45 per cent of the workforce in public hospitals and 56 per cent in private hospitals), salaried medical officers (13 per cent and 2 per cent respectively), and diagnostic and allied health professionals (14 per cent and 5 per cent respectively).¹⁹⁹

In Australia, there are multiple legislative and regulatory frameworks for the medical sector. This part of the report first synthesises the major dimensions of these frameworks. Then, the report addresses key questions relevant to the narrow efficacy evaluation. Overall, the key questions for synthesis and evaluation of narrow efficacy are:

- (1) At the national level of regulation of health professions and their members, are there conditions for individual registration/eligibility for admission to the profession, such as:
 - criminal history checks of employees?
 - other assessment of fitness to practise?
 - employee training regarding child protection, especially child sexual abuse, through continuing professional development?
- (2) At the national level of regulation of health professions and their members, are there other regulatory measures for health professionals, once admitted to the profession, regarding child sexual abuse (for example, reporting, training and provision of resources) using means such as codes of ethics, codes of conduct, and professional standards?

¹⁹⁷ Productivity Commission. (2014) *Report on Government Services 2014. Volume E: Health*. Retrieved 5 February 2016 from <http://www.pc.gov.au/research/ongoing/report-on-government-services/2015/health>.

¹⁹⁸ Australian Institute of Health and Welfare. (2014) *Australia's hospitals 2012-13 at a glance*. Canberra: AIHW. Retrieved 5 February 2016 from <http://www.aihw.gov.au/publication-detail/?id=60129547006>.

¹⁹⁹ Australian Institute of Health and Welfare. (2014) *Australia's hospitals 2012-13 at a glance*. Canberra: AIHW. Retrieved 5 February 2016 from <http://www.aihw.gov.au/publication-detail/?id=60129547006>.

- (3) At the state and territory level, do public health institutions have child protection measures for the health professionals employed by them (and what is their efficacy?), including:
- legislative duties for reporting child sexual abuse?
 - policies on child sexual abuse generally, including for the reporting of suspected cases?
 - policies requiring the provision of professional education relating to child sexual abuse?
- (4) For private hospitals, are there accreditation requirements for hospitals in relation to managing child sexual abuse, including through employee training?

This synthesis will describe the main parameters of four dimensions of systems of health regulation, and evaluate the narrow efficacy of each. The dimensions are:

- regulation at the nationwide level of health professions and their members
- other regulation of individual health professionals – specific policies and policy requirements
- regulation at the state and territory level – organisations and individuals
- regulation of private hospitals.

2.9.2 Regulation at the nationwide level: Health professions and their members

Nationally, the National Registration and Accreditation Scheme (NRAS) for health practitioners has been established by state and territory governments through consistent legislation in all jurisdictions, commencing on 1 July 2010. NRAS aims to protect the public by ensuring that only suitably trained and qualified practitioners are registered and facilitate workforce mobility across Australia.

Fourteen professions are regulated under NRAS.²⁰⁰ Each of these professions has a national board, which regulates the profession; registers practitioners; develops standards, codes and guidelines; and manages notifications and complaints about the health, conduct or performance of practitioners.

NRAS is administered by the Australian Health Practitioner Regulation Agency (AHPRA).²⁰¹ AHPRA also provides administrative support to each of the 14 national boards that regulate the health professions.²⁰² AHPRA works with the national boards to implement the NRAS under the *Health Practitioner Regulation National Law*, enacted in all states and territories.²⁰³ The National Law has introduced a coordinated and more consistent approach to regulating diverse health professions.

²⁰⁰ Aboriginal and Torres Strait Islander health practice; Chinese medicine; chiropractic; dental practice; medicine; medical radiation practice; nursing and midwifery; occupational therapy; optometry; osteopathy; pharmacy; physiotherapy; podiatry; and psychology.

²⁰¹ See the AHPRA website at <https://www.ahpra.gov.au/>.

²⁰² The 14 national boards are Aboriginal and Torres Strait Islander Health Practice Board of Australia; Chinese Medicine Board of Australia; Chiropractic Board of Australia; Dental Board of Australia; Medical Board of Australia; Medical Radiation Practice Board of Australia; Nursing and Midwifery Board of Australia; Occupational Therapy Board of Australia; Optometry Board of Australia; Osteopathy Board of Australia; Pharmacy Board of Australia; Physiotherapy Board of Australia; Podiatry Board of Australia; Psychology Board of Australia.

²⁰³ The National Law in force in each jurisdiction is: *Health Practitioner Regulation National Law (ACT) Act 2010*; *Health Practitioner Regulation National Law (NSW)*; *Health Practitioner Regulation (National Uniform Legislation) Act 2010 (NT)*; *Health Practitioner Regulation National Law Act 2009 (Qld)* and from 1 July 2014, *Ombudsman Act 2013 (Qld)*; *Health Practitioner Regulation National Law (South Australia) Act 2010*; *Health Practitioner Regulation National Law (Tasmania)*

Key legal provisions regulating the professions

The primary role of the National Law, the national boards and AHPRA is to protect the public. For example, the *Health Practitioner Regulation National Law (NSW)* states, 'The object of this Law is to establish a national registration and accreditation scheme for the regulation of health practitioners'.²⁰⁴ Section 3(2) incorporates the key regulatory principles of fitness to practise, commonality of eligibility standards and continuing professional development:

The objectives of the national registration and accreditation scheme are –

- (a) to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered; and
- (b) to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or to practise in more than one participating jurisdiction; and
- (c) to facilitate the provision of high quality education and training of health practitioners.

Eligibility for registration

Further provisions are included regarding eligibility for registration under the National Law. Relevant to this report, the New South Wales Act provides that:

52 Eligibility for general registration

- (5) An individual is eligible for general registration in a health profession if –
 - (a) the individual is qualified for general registration in the health profession;
 - (b) the individual has successfully completed any period of supervised practice or any examination or assessment required by an approved registration standard;
 - (c) the individual is a suitable person to hold general registration in the health profession; and
 - (d) the individual is not disqualified under this Law or a law of a co-regulatory jurisdiction from applying for registration, or being registered, in the health profession.²⁰⁵

Under section 38, the relevant national board must develop registration standards about matters for its health profession including the following:

- (b) matters about the criminal history of applicants for registration in the profession, and registered health practitioners and students registered by the Board, including, the matters to be considered in deciding whether an individual's criminal history is relevant to the practice of the profession;
- (c) requirements for continuing professional development for registered health practitioners registered in the profession.²⁰⁶

Before deciding an application for registration, a national board must check the applicant's criminal history.²⁰⁷ AHPRA conducts all Australian criminal history checks and obtains a criminal history report on behalf of the applicant before they are registered. An international criminal history check is now required if an applicant declares they have lived outside Australia for more than six months as an

Act 2010; Health Practitioner Regulation National Law (Victoria) Act 2009; and Health Practitioner Regulation National Law (WA) Act 2010.

²⁰⁴ *Health Practitioner Regulation National Law (NSW) s 3(1).*

²⁰⁵ *Health Practitioner Regulation National Law (NSW) s 52.*

²⁰⁶ *Health Practitioner Regulation National Law (NSW) s 38.*

²⁰⁷ *Health Practitioner Regulation National Law (NSW) s 79.*

adult, or if an applicant or practitioner has declared a criminal history outside Australia. AHPRA's international criminal checks now align with the approach to domestic criminal history checks.²⁰⁸

Under the Act, the national board may decide a person is not suitable to hold registration in a health profession if, having regard to the individual's criminal history to the extent that is relevant to the individual's practise of the profession, the individual is not, in the board's opinion, an appropriate person to practise the profession or it is not in the public interest for the individual to practise the profession.²⁰⁹ The national board may decide a person is not suitable to hold registration in a health profession. This may occur if the individual fails to meet any other requirement in an approved registration standard for suitability to be in the profession, or to competently and safely practise the profession.²¹⁰

Continuing professional development

A registered health practitioner must undertake the continuing professional development required under the approved registration standard for the practitioner's health profession.²¹¹

Regulatory standards

In addition to the provisions under the National Law, there are five common regulatory standards promulgated by AHPRA, which reinforce the statutory framework and apply to all 14 professions. Two of these are particularly relevant for this report: criminal history checking and continuing professional development.²¹²

2.9.3 Other regulation of individual health professionals: Specific policies and policy requirements

Together with the national regulatory frameworks made up of legislation and regulatory standards, the health professions are also able to create regulatory tools for administration. Tools that may be relevant for this report are those that impose professional requirements to act in a certain way when encountering child sexual abuse. In addition, these frameworks can be evaluated for efficacy to determine the extent to which further strategies, such as providing training, are used to develop these professionals' capacity to deal with child sexual abuse. Since doctors and nurses constitute the majority of the health workforce, this report explores the regulatory tools for their professions.

Doctors

The Medical Board of Australia registers medical practitioners, develops standards, codes and guidelines for the medical profession, investigates notifications and complaints about practitioners, conducts hearings and refers serious matters to tribunals, and approves accreditation standards and accredited courses of study.²¹³ Doctors are regulated by codes of conduct and codes of ethics promulgated by the board²¹⁴, the Australian Medical Association²¹⁵ and various colleges of surgeons

²⁰⁸ Australian Health Practitioner Regulation Agency. Criminal history checks. Retrieved 5 February 2016 from <http://www.ahpra.gov.au/Registration/Registration-Process/Criminal-history-checks.aspx>.

²⁰⁹ *Health Practitioner Regulation National Law (NSW)* s 55(1)(b).

²¹⁰ *Health Practitioner Regulation National Law (NSW)* s 55(1)(g).

²¹¹ *Health Practitioner Regulation National Law (NSW)* s 128(1).

²¹² The others are English language proficiency; professional indemnity insurance; and recency of practice. Some professionals may have additional standards specific to their field of practice; a search of these did not identify relevant additional standards.

²¹³ See the Medical Board of Australia website at <http://www.medicalboard.gov.au/About.aspx>.

²¹⁴ Australian Medical Council Limited. *Good Medical Practice: A code of conduct for doctors in Australia*. Retrieved 5 February 2016 from <http://www.amc.org.au/about/good-medical-practice>.

(including the Royal Australasian College of Surgeons²¹⁶, the Royal Australasian College of Physicians²¹⁷ and the Australian and New Zealand College of Anaesthetists.²¹⁸ Under NRAS, the Medical Board of Australia has adopted *Good Medical Practice: A Code of Conduct for Doctors in Australia*, with minor modifications required to reflect the National Law.

Nurses

Nurses and midwives are regulated by the Nursing and Midwifery Board of Australia (NMBA)²¹⁹, the Australian Nursing and Midwifery Accreditation Council (ANMAC)²²⁰ and the Australian Nursing and Midwifery Federation (ANMF). The NMBA and ANMAC administer a co-regulatory scheme in cooperation with all state and territory nursing boards. ANMAC's key function is to develop accreditation standards for educational programs for the nursing and midwifery professions and to review existing accreditation standards approved under the national scheme.²²¹ As one of the 14 boards under the national scheme, the NMBA creates regulatory codes of conduct, codes of ethics and guidelines for practice.

2.9.4 Regulation at the state and territory level: Organisations and individuals

The existence of the national scheme under the National Law has meant that many of the approaches to regulating health practitioners are consistent across the nation. However, several methods for regulating health practitioners in the context of child sexual abuse occur at the state and territory level. This can mean differences exist across jurisdictions in elements of regulation for practitioners and their awareness of, and obligations in relation to, child sexual abuse. The methods of regulation that are relevant to this report are:

- legislative requirements to report child sexual abuse
- professional policy-based requirements to report child sexual abuse
- state health department policies about child sexual abuse.

Legislative requirements to report child sexual abuse

Legislative requirements to report suspected child sexual abuse exist at the state and territory level. These mandatory reporting laws have been analysed extensively by another research project undertaken for the Royal Commission.²²² In sum, mandatory reporting laws on child sexual abuse as they apply to health professionals are similar but not identical across the nation. Legislative frameworks also exist at the state and territory level, imposing obligations on medical practitioners that are relevant in the context of child sexual abuse. Notably, in all states and territories, legislation requires registered medical practitioners and nurses to report suspected cases of child sexual abuse.

²¹⁵ Australian Medical Association. (2006). AMA Code of Ethics. Retrieved 5 February 2016 from https://ama.com.au/sites/default/files/documents/AMA_Code_of_Ethics_2004_Editorially_Revised_2006.pdf.

²¹⁶ Royal Australasian College of Surgeons. (2011). Code of Conduct. Retrieved 5 February 2016 from http://www.surgeons.org/media/346446/pos_2011_02_24_code_of_conduct_2011.pdf.

²¹⁷ Royal Australasian College of Physicians. Code of Conduct. Retrieved 5 February 2016 from <http://www.racp.edu.au/download.cfm?downloadfile=29167C5E-E0EA-3546-DCF6A26B73CE319F&typename=dmFile&fieldname=filename>.

²¹⁸ Australian and New Zealand College of Anaesthetists. Code of Professional Conduct. Retrieved 5 February 2016 from <http://www.anzca.edu.au/resources/professional-documents/pdfs/Code-of-Conduct.pdf>.

²¹⁹ See the Nursing and Midwifery Board website at <http://www.nursingmidwiferyboard.gov.au/>.

²²⁰ See the Australian Nursing and Midwifery Accreditation Council website at <http://www.anmac.org.au/about-anmac>.

²²¹ Australian Nursing and Midwifery Accreditation Council *Accreditation Standards*. Retrieved 5 February 2016 from <http://www.anmac.org.au/accreditation-standards>.

²²² Mathews, B. (2014). *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*. Royal Commission into Institutional Responses to Child Sexual Abuse: Sydney.

However, there are differences across the nation because not all states and territories apply this legislative obligation to other health personnel, such as dentists, psychologists and occupational therapists. The obligation is applied to a broader range of health professionals in the Australian Capital Territory, New South Wales, Northern Territory, South Australia and Tasmania, but is narrower in Queensland, Victoria and Western Australia. This is depicted in Table 2.9(2).

Professional policy-based requirements to report child sexual abuse

A profession may have regulatory policies that either support the legislative duty to report child sexual abuse, or, where there is no legislative duty, may supply a 'soft' policy-based duty to report suspected cases. However, some professions may not have a policy on child sexual abuse. These professional policies are depicted in Table 2.9(2).

State health department policies on child sexual abuse

Each state and territory has its own government department responsible for administering the jurisdiction's health system. Each state and territory has various policies applying to child abuse, some of which cover child sexual abuse specifically. The key features of these policies are set out in Table 2.9(1).

2.9.5 Regulation of private hospitals

Private hospitals are regulated under legislative frameworks in each state and territory.²²³ These frameworks provide conditions under which private hospitals are licensed. The legislation requires that private hospitals must meet various conditions to be granted a licence, including that the applicant be suitable, and that it meets prescribed standards for construction, facilities and equipment.

These requirements are set out in principle in the statute, with further details commonly listed in the regulations. However, a doctrinal analysis of the legislation in each jurisdiction reveals that there are no licensing conditions for staff management of child abuse generally or sexual abuse specifically.

Accordingly, regulation of individual health professionals through the National Law, and at the state and territory level as applied to individuals, constitute the regulatory framework for health professionals in private hospitals to the extent that they apply. This means that professionals in these institutions may not receive the same level of regulatory support and resourcing (such as training and access to resources) as their colleagues in public institutions.

A caveat that should be noted: it is possible that private institutions develop their own policies and training systems. However, the number and diffusion of private institutions means it would require further detailed work to ascertain the nature and extent of such initiatives and efforts.

²²³ *Public Health Act 1997* (ACT); *Private Health Facilities Act 2007* (NSW); and *Private Health Facilities Regulation 2010* (NSW); *Private Hospitals Act 2011* (NT); *Private Health Facilities Act 2009* (Qld); *Health Care Act 2008* (SA) and *Health Care Regulations 2008* (SA); *Health Service Establishments Act 2006* (Tas) and *Health Service Establishments Regulations 2011* (Tas); *Health Services Act 1988* (Vic) and *Health Services (Private Hospitals and Day Procedure Centres) Regulations 2013* (Vic); *Hospitals and Health Services Act 1927* (WA) and *Hospitals (Licensing and Conduct of Private Hospitals) Regulations 1987* (WA).

2.9.6 Synthesis and summary of efficacy

Tables 2.9(1) and 2.9(2) set out the key features of regulation of the medical sector, informed by an analysis of the legislation and regulatory frameworks. Table 2.9(1) focuses on national regulation of individual practitioners under the national scheme and board registration practice, examining requirements for individual eligibility for entry to the profession, and the regulation of individuals once they are admitted to the profession. Table 2.9(2) focuses on state and territory regulation of practitioners in public health organisations.

For this report, key dimensions have been analysed to fulfil not only the synthesis aspect of the project but to evaluate narrow efficacy.

Table 2.9(1) synthesises key features and narrow efficacy dimensions including:

- whether individuals are subject to criminal history checks as a condition of admission to the profession
- whether individuals are otherwise assessed for fitness to practise
- whether individuals are required to undertake continuing professional development in child protection to gain an awareness and understanding of sexual abuse and their related obligations
- whether professional codes of ethics, codes of conduct or policy directives: (a) require medical practitioners and nurses to report suspected child sexual abuse; (b) require them to undertake training in child protection; and (c) provide ready access to resources on child sexual abuse.

Table 2.9(2) synthesises key features and narrow efficacy dimensions including:

- whether in each state and territory, individuals in different health professions are required by legislation to report suspected child sexual abuse
- whether the health department policy on child protection in each state and territory: (a) supports or expands a legislative duty to report; (b) requires health professionals to have in-service education in child protection; (c) provides easily accessible policy documents; and (d) provides ready access to resources on child sexual abuse.

Overall, aspects of these frameworks appear to provide consistent and positive strategies, such as the approach to criminal history checks, for regulating the health professions. However, there are areas of difference between jurisdictions and professions, such as in legislative and policy-based reporting duties. In addition, there appear to be common areas where there may be opportunities for development, including:

- the National Scheme, which:
 - does not appear to use any other assessment on fitness to practise
 - has a continuing professional development requirement under all national boards, but none of these include a component on child sexual abuse or child protection
- the key policies of the boards for medical practitioners and nurses, which:
 - are not as direct as they might be in reinforcing legislative reporting duties
 - do not require or demonstrate the delivery of training in child protection
 - do not appear to contain helpful resources on child sexual abuse
- state and territory health department regulatory frameworks, which:

- are generally comprehensive, extending a reporting duty even to non-mandated health professionals
- usually require the delivery of training, although whether this occurs in practice is difficult to evaluate
- usually have readily accessible policy documents
- usually have extensive policy documents with a lot of helpful detail

These areas would generally benefit by making further, well-developed resources relating to child sexual abuse available.

Table 2.9(1) – National regulation of individual practitioners under national scheme and board registration practice

Eligibility for registration as an individual practitioner by a board – key features of law and policy		Narrow efficacy on key dimensions		
		Does the board conduct criminal history checks as a condition of registration, either itself or via AHPRA or the National Law?	Does the board otherwise ensure registered practitioners are fit and proper persons to practise, especially in the context of child abuse, either itself or via AHPRA or the National Law?	Does the board require registered practitioners to have training in child protection, including relating to child sexual abuse, either itself or via AHPRA or the National Law as part of the continuing professional development standard?
Health practitioners	AHPRA and the National Law provisions	Yes – AHPRA conducts all criminal history checks required under the National Law	While there is general power under the National Law to decide whether a person is suitable to hold registration based on criminal history, there does not appear to be any further mechanism for assessing applicants' suitability	Continuing professional development is required under the National Law for registered practitioners in all 14 professions. However, there is no clear requirement in any of the professions for continuing training relating to child abuse or child sexual abuse. Each profession sets its own standard about the nature and amount of continuing professional development, which is usually self-selected. These are detailed below for each profession
	Aboriginal and Torres Strait Islander Health Practice Board of Australia	As above	As above	No – (Aboriginal and Torres Strait Islander Health Practice Board of Australia continuing professional development standard) http://www.atsihealthpracticeboard.gov.au/Registration-Standards.aspx
	Chinese Medicine Board of Australia	As above	As above	No – (Chinese Medicine Board of Australia continuing professional development standard) http://www.chinesemedicineboard.gov.au/Registration-Standards.aspx
	Chiropractic Board of Australia	As above	As above	No – (Chiropractic Board of Australia continuing professional development standard) http://www.chiropracticboard.gov.au/Registration-standards.aspx
	Dental Board of Australia	As above	As above	No – (Dental Board of Australia continuing professional development standard) http://www.dentalboard.gov.au/Registration-Standards/CPD-registration-standard.aspx
	Medical Board of Australia	As above	As above	No – (Medical Board of Australia continuing professional development standard) http://www.medicalboard.gov.au/Registration-Standards.aspx

Eligibility for registration as an individual practitioner by a board – key features of law and policy		Narrow efficacy on key dimensions		
		Does the board conduct criminal history checks as a condition of registration, either itself or via AHPRA or the National Law?	Does the board otherwise ensure registered practitioners are fit and proper persons to practise, especially in the context of child abuse, either itself or via AHPRA or the National Law?	Does the board require registered practitioners to have training in child protection, including relating to child sexual abuse, either itself or via AHPRA or the National Law as part of the continuing professional development standard?
Health practitioners cont.	Medical Radiation Practice Board of Australia	As above	As above	No – (Medical Radiation Practice Board of Australia continuing professional development standard) http://www.medicalradiationpracticeboard.gov.au/Registration-Standards.aspx
	Nursing and Midwifery Board of Australia	As above	As above	No – (Nursing and Midwifery Board of Australia continuing professional development standard) http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx
	Occupational Therapy Board of Australia	As above	As above	No – (Occupational Therapy Board of Australia continuing professional development standard) http://www.optometryboard.gov.au/Registration-Standards.aspx
	Optometry Board of Australia	As above	As above	No – (Optometry Board of Australia continuing professional development standard) http://www.optometryboard.gov.au/Registration-Standards.aspx
	Osteopathy Board of Australia	As above	As above	No – (Osteopathy Board of Australia continuing professional development standard) http://www.osteopathyboard.gov.au/Registration-Standards.aspx
	Pharmacy Board of Australia	As above	As above	No – (Pharmacy Board of Australia continuing professional development standard) http://www.physiotherapyboard.gov.au/Registration-Standards.aspx
	Physiotherapy Board of Australia	As above	As above	No – (Physiotherapy Board CPD Standard) http://www.physiotherapyboard.gov.au/Registration-Standards.aspx
	Podiatry Board of Australia	As above	As above	No – (Podiatry Board of Australia continuing professional development standard) http://www.podiatryboard.gov.au/Registration-Standards.aspx
	Psychology Board of Australia	As above	As above	No (Psychology Board CPD Standard) http://www.psychologyboard.gov.au/Standards-and-Guidelines/Registration-Standards.aspx

Regulation of individuals at work in their profession	Key regulatory policies, codes of conduct, codes of ethics, standards etc, and their core features	Narrow efficacy on key dimensions		
		Does the policy, code of conduct or standard require medical practitioners to report child sexual abuse specifically?	Does the policy, code of conduct or standard require registered practitioners to undertake training in child protection, including relating to child sexual abuse?	Do major organisational websites contain clear and accessible resources on child sexual abuse?
Medical practitioners	<p>The Medical Board of Australia's <i>Good Medical Practice: A code of conduct for doctors in Australia</i> cl 3.6.4 states that, 'Caring for children and young people brings additional responsibilities for doctors. Good medical practice involves: Being alert to children and young people who may be at risk, and notifying appropriate authorities, as required by law.' There is no specific mention of sexual abuse. http://www.amc.org.au/about/good-medical-practice.</p> <p>The Australian Medical Association's <i>Position Statement: Child Abuse and Neglect</i> (2006) states that: 2.2: Medical practitioners must encourage attitudes and actions necessary to prevent child abuse and neglect, identify 'at risk' children and families, prevent further abuse and assist abused children to receive appropriate help and protection. 2.3 There is a potential to do further harm through delay or failure to act or through acting precipitately or inappropriately. All interventions should minimise harm and prevent further abuse. 2.9 All medical practitioners must be trained to suspect and to recognise the possibility of abuse or neglect, to intervene early and to support the child and the family. Medical training should also encompass the sequelae of child abuse and neglect as they present in adolescence and adulthood. 2.11 The AMA endorses appropriate systems of mandatory reporting of suspected abuse. https://ama.com.au/position-statement/child-abuse-and-neglect-1996-revised-2005</p> <p>The Australian Medical Association's <i>Code of Ethics</i> is silent regarding children. https://ama.com.au/sites/default/files/documents/AMA_Code_of_Ethics_2004_Editorially_Revised_2006.pdf.</p>	<p>Yes – although it could be more direct</p> <p>Practitioners are required by law to notify authorities of 'at risk' or abused children, but sexual abuse is not specifically mentioned</p>	<p>This training requirement is framed as an imperative by the Australian Medical Association's <i>Position Statement</i> cl 2.9, but there is no apparent method by which this is implemented. This may warrant further research to determine the nature and extent of training</p>	<p>The MBA and AMA websites do not contain clear, separate resources on child sexual abuse</p> <p>The MBA website has a separate page on requirements to make reports about the health, conduct or performance of fellow practitioners under the National Law http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-mandatory-notifications.aspx</p>
Nurses	<p>Under the NMBA's <i>Code of Professional Conduct for Nurses in Australia</i>, nurses are required to comply with legal requirements. This includes complying with the legislative duty to report suspected child sexual abuse. <i>Conduct Statement 3 states that</i>, 'Nurses practise and conduct themselves in accordance with laws relevant to the profession and practice of nursing'. http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines.aspx</p> <p>This is supplemented by the NMBA's <i>Code of Ethics for Nurses in Australia</i>. This code expressly requires nurses to 'comply with mandated reporting requirements and conform to relevant privacy and other legislation' (p 6). This code is supported by the <i>Code of Professional Conduct for Nurses in Australia</i> and the <i>National Competency Standards for the Registered Nurse, National Competency Standards for the</i></p>	<p>Yes – although could be more direct</p> <p>Indirectly through the need to practise in</p>	<p>No – except through the ANMF Position Statement cl 7. But there is no apparent method by which this is implemented. May warrant further research to determine the nature</p>	<p>No – although there is a requirement to make reports about the health, conduct or performance of fellow practitioners under the National Law http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-</p>

	<p><i>Enrolled Nurse and National Competency Standards for the Nurse Practitioner</i>. These policies were developed under the auspices of the <i>Australian Nursing and Midwifery Council</i> (http://www.anmac.org.au/); <i>Australian College of Nursing</i> (http://www.acn.edu.au/); and the <i>Australian Nursing [and Midwifery] Federation</i> (https://anmf.org.au/)</p> <p>The <i>Australian Nursing and Midwifery Federation</i> Position Statement entitled ‘Child abuse and neglect’ (https://anmf.org.au/pages/anmf-policies) makes the following direct statements about reporting child sexual abuse and about professional education:</p> <p>5. <i>Nurses and midwives have a duty of care to children and, in some states and territories, statutory obligations under relevant state or territory law, to notify any case of suspected child abuse or neglect.</i></p> <p>6. <i>Workplaces must have policies, protocols and guidelines for reporting children at risk of abuse</i></p> <p>7. <i>Employers should provide nurses and midwives with the necessary education in relation to their legislative and organizational obligations in reporting child abuse and/or neglect.</i></p> <p>8. <i>Nurses and midwives must notify any cases of suspected child abuse or neglect, regardless of others’ professional opinions.</i></p>	<p>accordance with legal requirements in the Code of Professional Conduct</p> <p>Directly through the Code of Ethics, but without specific reference to child abuse or child sexual abuse</p> <p>Most directly through the ANMF Position Statement cl 8</p>	<p>and extent of training</p>	<p>Statements/Codes-Guidelines.aspx</p> <p>There is also a position statement on specialist recognition and the nursing profession http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Position-Statements/Specialist-recognition.aspx</p> <p>Could there be a specialist position in child protection?</p>
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Table 2.9(2) – State and territory regulation of practitioners in public hospitals via government health departments’ policies on hospitals

State and territory regulation of practitioners via government hospital policy	State and territory government health department policy on child abuse/child sexual abuse/child protection	Narrow efficacy on key dimensions				
		Which health practitioners are required by legislation to report child sexual abuse?	Does the government department’s policy refer to, support or expand the duty to report child sexual abuse?	Does the policy require professional education in child protection, including relating to child sexual abuse?	Are the departmental policy documents easily accessible?	Does the department’s website contain clear and accessible resources on child sexual abuse?
ACT ACT Health http://health.act.gov.au/	Visit http://health.act.gov.au/research-publications/policy-and-plans , which lists five documents: 1. <i>Child Protection Policy</i> , ‘Fact Sheet 1: Information sharing’ 2. <i>Child Protection Policy</i> , ‘Fact Sheet 2: Prenatal Reporting, Prenatal Information Sharing, Pre-Birth Alerts’ 3. <i>Child Protection Policy</i> , ‘Fact Sheet 3: Making a Child Protection Report to CPS’ 4. <i>Child Protection Policy</i> 5. <i>Child Protection Practice Paper</i>	Doctors Nurses Midwives Dentists	Yes – supports legislation	No 4. <i>Child Protection Policy</i> , p 2 says, ‘It is mandatory for all ACT Health staff to attend child protection training and there is an annual audit of compliance with this requirement’	Yes – includes reporting form Go to ‘Research and Publications’ tab, select ‘Policy and Plans’ and go to ‘C’	Yes – via no 5 ‘Child Protection Practice Paper’
NSW NSW Health http://www.health.nsw.gov.au/Pages/default.aspx	Visit http://www0.health.nsw.gov.au/policies/groups/ps_baby.html) and then select: 1. ‘Child Wellbeing and Child Protection Policies and Procedures for NSW Health’ 2. ‘Suspected Child Abuse and Neglect (SCAN) Medical Protocol’ (Note: Resource 1 is a Policy Directive that brings together in one place the tools and guidance necessary for health professionals to fulfil their responsibilities regarding child protection. It is a substantial and high-quality resource).	All health professionals who deliver care to children	Yes – supports legislation	Policy Directive, p 2, says NSW Health workers have a professional responsibility to participate in mandatory and/or other child protection training	Yes – includes reporting form Go to ‘Policy, directives and guidelines’ link, select ‘Browse by functional group’, and select ‘Clinical/Patient Services – Baby and child’	Yes – via no 1

State and territory regulation of practitioners via government hospital policy	State and territory government health department policy on child abuse/child sexual abuse/child protection	Narrow efficacy on key dimensions				
		Which health practitioners are required by legislation to report child sexual abuse?	Does the government department's policy refer to, support or expand the duty to report child sexual abuse?	Does the policy require professional education in child protection, including relating to child sexual abuse?	Are the departmental policy documents easily accessible?	Does the department's website contain clear and accessible resources on child sexual abuse?
NT NT Department of Health http://www.health.nt.gov.au/	Go to: 'For Professionals' – 'A to Z index' – 'child protection' – 'Child abuse' link on right of page, then open 'Reporting child abuse and neglect' document: http://childrenandfamilies.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/54/35.pdf&siteID=5&str_title=Reporting Child Abuse and Neglect.pdf	All citizens, therefore all health professionals	Yes – supports legislation	No	Difficult to access. Link to 'For Professionals' – 'A to Z index' – 'child protection' – 'Child abuse' is on the right of the page	Brief information in policy
Qld Queensland Health http://www.health.qld.gov.au/	Visit http://www.health.qld.gov.au/qhpolicy/html/index-c.asp , which lists six guidelines: <ol style="list-style-type: none"> 1. 'Care and Treatment Order for a Child' 2. 'Conducting Child Sexual Assault Examinations' 3. 'Consent in Child Protection and Management of Complex Care Cases and End of Life Decision Making' 4. 'Health Professionals Child Safety Capability Requirements' 5. 'Information Sharing in Child Protection' 6. 'Reporting a Reasonable/Reportable Suspicion of Child Abuse and Neglect' 	Doctors Nurses	Yes – no 6 supports legislation for doctors and nurses. For other health professionals, it creates a policy-based duty to report (p 2)	No 4, pp 1–2 requires health professionals to complete the self-directed child abuse and neglect education module, and a separate self-assessment tool annually (pp 2–3)	Yes, with instructions on how to report at no 6, p 5 Under the 'Health system and governance' tab, select 'policies and standards' – 'policies' – 'Child Protection'	Brief information in policy

State and territory regulation of practitioners via government hospital policy	State and territory government health department policy on child abuse/child sexual abuse/child protection	Narrow efficacy on key dimensions				
		Which health practitioners are required by legislation to report child sexual abuse?	Does the government department's policy refer to, support or expand the duty to report child sexual abuse?	Does the policy require professional education in child protection, including relating to child sexual abuse?	Are the departmental policy documents easily accessible?	Does the department's website contain clear and accessible resources on child sexual abuse?
SA Department for Health and Ageing http://www.sahealth.sa.gov.au/wps/wcm/connect/public/content/sa+health+internet/about+us/department+of+health	Go to 'Child Protection – Mandatory Notification of actual or suspected child abuse or neglect (0–18 years) Policy Directive' http://www.sahealth.sa.gov.au/wps/wcm/connect/87403080476852fb1cef322c3ec38c5/Directive_Child+Protection+Mandatory+Notification_Feb2015.pdf?MOD=AJPERES&CACHEID=87403080476852fb1cef322c3ec38c5	Doctors Nurses Dentists Pharmacists Psychologists All other employees in government and non-government organisations providing health services to children (hence, every health professional)	Yes – supports legislation For other non-mandated health professionals, it creates a policy-based duty to report (p 4)	No	Yes – with instructions on how to report at p 6 Under 'Publications and resources', in table at left, select 'Child protection'.	Brief information in policy
Tas Department of Health and Human Services http://www.dhhs.tas.gov.au/	Go to 'Child Protection' document at http://www.dhhs.tas.gov.au/children/child_protection_services	Doctors Nurse Midwives Dentists Psychologists	Yes – supports legislation	No	Not easily accessible compared with other jurisdictions Document includes instructions on how to report at p 1, 'Children and families' – 'child protection services'	Brief information in policy

State and territory regulation of practitioners via government hospital policy	State and territory government health department policy on child abuse/child sexual abuse/child protection	Narrow efficacy on key dimensions				
		Which health practitioners are required by legislation to report child sexual abuse?	Does the government department's policy refer to, support or expand the duty to report child sexual abuse?	Does the policy require professional education in child protection, including relating to child sexual abuse?	Are the departmental policy documents easily accessible?	Does the department's website contain clear and accessible resources on child sexual abuse?
Vic Department of Health and Human Services http://www.health.vic.gov.au/	Visit one of three web pages: 1. 'Child abuse or neglect: neonatal e-handbook' http://www.health.vic.gov.au/neonatalhandbook/assessment/child-abuse-neglect.htm 2. 'Vulnerable babies, children and young people at risk of harm. Best practice framework for acute health services' http://docs.health.vic.gov.au/docs/doc/Vulnerable-babies--children-and-young-people-at-risk-of-harm--Best-practice-framework-for-acute-health-services 3. 'Vulnerable babies, children and young people at risk of harm – An intervention guide' http://health.vic.gov.au/childrenatrisk/documents/vulnerable_children.pdf No 2 is a detailed self-contained guide	Doctors Nurses Midwives All other employees in government-funded agencies providing health services to children	Yes – no 2 supports legislation (p 34) Emphasises that all non-mandated health staff should also make reports: pp 32, 34	No 2, p 32 states that 'Training and education programs are essential for health service staff and should be developed and delivered according to the ongoing needs of the unit and the health service'	Not easily accessible compared with other jurisdictions Nos 2 and 3 contain information on how to report 'How Do I? – access policy and guidelines' – didn't give a result Searched the site using the term 'child abuse'	Yes – via no 2 but not easy to access
WA Department of Health http://ww2.health.wa.gov.au/	View the OD 0606/15 Guidelines for Protecting Children 2015 http://www.health.wa.gov.au/circularsnew/index.cfm This is a detailed self-contained guide	Doctors Nurses Midwives	Yes – Supports legislation (p 3). At p 17, imposes a policy duty for other WA Health staff to report 'reasonable grounds for concerns regarding the immediate safety and wellbeing of a child, or significant harm caused to a child because of child abuse or neglect'	No	Yes – with instructions on how to report 'Health professionals' – 'Operational directives and information circulars'	Yes

PART 3: EVALUATION OF THE EFFICACY OF REGULATORY AND OVERSIGHT SYSTEMS: 'BROAD EFFICACY'

PART 3.1 – INTRODUCTION

3.1.1 Operational definition of 'efficacy' in the broad sense

The Royal Commission required this project to explore the efficacy of oversight and regulatory models, and to use literature review and analysis methods that comply with the PRISMA statement (Preferred Reporting Items for Systematic Reviews and Meta-Analyses).²²⁴

The concept of efficacy is ambiguous. As detailed in Appendix 2, for this report, the concept of efficacy was conceptualised as having two dimensions: 'narrow efficacy' and 'broad efficacy'. This was partly because it was anticipated that there would be very little, if any, literature conducting rigorous empirical analyses of broad efficacy of these oversight and regulatory systems. If this hypothesis was proved, leading to an 'empty review', then the project would not produce meaningful results for the Royal Commission. In addition, it was thought that, based on regulatory theory, the concept of efficacy should usefully include an evaluation of efficacy in the narrow sense adopted in this report.

Narrow efficacy

Accordingly, *narrow efficacy* is conceptualised as exploring the presence and nature of key requirements enabling the protection of children from sexual abuse in institutional contexts. The exploration of narrow efficacy is conducted by synthesis, and conceptual and textual analysis of the nature of the oversight bodies and regulatory frameworks. This sense of narrow efficacy was explored in Part 2 using:

- doctrinal analysis of the legislative and regulatory frameworks
- research into secondary sources for critical analyses of these frameworks
- research of grey literature (most relevantly, agency annual reports) to identify evidence of narrow efficacy.

The dimensions of narrow efficacy considered in Part 1 depend on the nature of the oversight body or regulatory body or framework concerned. However, for oversight bodies, the key dimensions of narrow efficacy that were considered included:

- their nominal presence
- their jurisdiction (its scope of application, that is, government versus non-government bodies; public versus private institutions; and different professions)
- their independence
- their implementation capacity (for example, frequency of use and personnel)

²²⁴ Moher, D., Liberati, A., Tetzlaff, J., Altman, D. & The PRISMA Group. (2009). 'Preferred Reporting Items for Systematic Reviews and Meta-Analyses: The PRISMA Statement.' *PLoS Med*, no 6(7), e1000097. doi:10.1371/journal.pmed.1000097.

- their access to children
- their ability to make determinative findings and/or recommendations.

For regulatory bodies, the key dimensions of narrow efficacy that were considered typically included:

- the nominal presence of the regulatory framework
- the jurisdiction of the regulatory framework (its scope of application, that is, government versus non-government bodies; public versus private institutions; and different professions);
- whether the regulatory framework required criminal history checks
- whether the regulatory framework had other methods of assessing fitness to practise
- whether the regulatory framework required professionals to undertake or receive education in child protection
- whether the regulatory framework required practitioners to report child sexual abuse or supported legislative reporting requirements
- whether they regulatory framework provided practitioners with online access to resources about child sexual abuse
- whether such resources appear to be readily accessible to practitioners.

Broad efficacy

Broad efficacy is conceptualised as the *actual effect in practice* of the oversight or regulatory mechanism in protecting children from sexual abuse in institutional contexts. Regulation is deemed efficacious in its broad sense when it achieves the results envisaged in the regulatory mandate, without producing intolerable costs.²²⁵ In sum, the evaluation of broad efficacy asks: does the oversight body or regulatory framework achieve the policy goal in lived experience of resulting in the *improved protection* of children from sexual abuse in institutional contexts?²²⁶

This question is explored by different means than the evaluation of narrow efficacy. ‘Improved protection’ could be achieved in lived experience in several ways, and arguably should not be limited only to actual reduction of child sexual abuse (the highest form of improved protection). For example, it could include other enhanced conditions to promote protection of children from sexual abuse in institutional contexts (such as enhanced case detection; fewer instances of employees abusing children; provision of widescale training; employees having higher policy awareness and higher knowledge of child sexual abuse; and employees demonstrating better reporting practice and outcomes).

Typically, rigorous empirical evaluations are required to obtain evidence of whether these kinds of policy goals have been achieved. As noted by Freiberg²²⁷, empirical evaluations of this broad dimension of efficacy are difficult to conduct for numerous reasons: poor data sources may limit the capacity to conduct pre- and post-tests; there can be difficulty isolating causal factors influencing change because of the presence of multiple co-existing factors; and undisclosed noncompliance can be a further confounding factor.

As required by the Royal Commission, broad efficacy is explored in this part of the project by conducting a systematic review of literature (complying with the PRISMA statement) on the efficacy of these bodies in

²²⁵ Baldwin, R, Cave, M & Lodge, M. (2012). *Understanding Regulation: Theory, strategy and practice*, Oxford: Oxford University Press, p 69; Freiberg, A. (2010). *The Tools of Regulation*. Sydney: Federation Press, p 260. Such costs are not only economic; and incursion of economic cost may not always be a relevant or weighty consideration: Baldwin, Cave & Lodge, pp 30–31. The concept of ‘efficacy’ therefore contains elements of the concepts of ‘effectiveness’ (achieving an aim) and ‘efficiency’ (doing so without intolerable cost)

²²⁶ Yeung K. (2004). *Securing Compliance*. Hart Publishing: Oxford.

²²⁷ Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney, p 262.

protecting children from sexual abuse in institutional contexts. The dimensions of broad efficacy considered include:

- reducing child sexual abuse in institutional contexts generally
- reducing child sexual abuse, especially by employees or others within the oversight or regulatory agency's jurisdiction
- detecting more cases of child sexual abuse in institutional contexts
- reducing instances of hiring employees who clearly pose a risk to children
- increasing employee knowledge about child sexual abuse, and laws and institutional policies about child sexual abuse, including reporting
- implementing training in the management and/or prevention of child sexual abuse
- improving such training.

Table 1.1 (p 10) depicts a model of how these two dimensions of efficacy interrelate and operate, and what kinds of evidence may be used to evaluate their efficacy. For further clarification, the following are examples of how analysis of narrow and broad efficacy work:

Question evaluating narrow efficacy:

Does a particular regulatory body (for example, a department of health) have a policy requirement that staff attend child protection training?

(Method: explore narrow efficacy through synthesis and document analysis of policy)

Question evaluating broad efficacy:

To what extent is this training actually provided, and what is the quality and the outcome?

(Method: explore broad efficacy through literature review, searching for empirical studies and other relevant evidence)

The report then details the literature review method and outcomes, including a statement reporting against the PRISMA checklist and using the PRISMA flow diagram. This systematic review searched multiple law, social science, health and medical databases, using narrow and broad search strategies to identify published studies that explored the broad efficacy of oversight and regulatory bodies in protecting children from sexual abuse in institutional contexts.

Based on initial searches early in the project, and on the parameters of the oversight and regulatory bodies synthesised and analysed in Part 1, it was anticipated that the review of broad efficacy would be 'empty'; that is, that it would not yield any studies that rigorously empirically evaluate or explore the broad efficacy of these bodies in protecting children from sexual abuse in institutional contexts, even with the expansive understanding of broad efficacy adopted for this project. This expectation was confirmed after execution of the systematic review.

However, the review identified a small number of sources relating to some aspects of broad efficacy; namely, the general extent of professional training in relation to child sexual abuse, and professionals' knowledge and reporting in relation to child sexual abuse. These provide insights into aspects of the regulatory context for this project. The full methodology for the literature review and its outcomes is detailed in Appendix 3.

3.1.2 Summary of studies' findings regarding broad efficacy

The review identified a small number of empirical studies relevant to an evaluation of broad efficacy in relation to four different professional groups: nurses, in-service teachers, pre-service teachers and school

counsellors. These studies explored issues concerning the general extent of professional training in relation to child sexual abuse, and professionals' knowledge and reporting in relation to child sexual abuse.

Nurses

A study of 930 Queensland nurses explored (a) knowledge about legal reporting duties; (b) attitudes towards those duties; and (c) factors influencing nurses' recognition and reporting of child abuse and neglect. In relation to this study and findings regarding child sexual abuse, Mathews et al. found that:

- Nurses had positive attitudes towards the duty to report, based on the child's best interests;
- Nurses had a significant level of fear regarding reprisals and litigation for reporting;
- Nurses sometimes felt that if they were uncertain about the evidence in the case, they would be less likely to report;
- Nurses lacked knowledge about key legal protections provided to them in their capacity as reporters of child sexual abuse.²²⁸

Fraser et al. found that:

- In the context of the introduction in 2005 of a new legislative reporting duty regarding all forms of child abuse and neglect, 58.3% of the sample had received training specifically related to child abuse and neglect;
- Nurses were generally confident and relatively knowledgeable about their duty to report child sexual abuse;
- Positive attitudes towards mandatory reporting influenced better recognition of child sexual abuse and the likelihood of reporting child sexual abuse.²²⁹

In-service teachers

In 2006–08, a study of primary school teachers in Queensland, New South Wales and Western Australia explored: (a) the nature of legislation and policy in government and Catholic schools in the three states regarding the duty of teachers to report child sexual abuse; (b) teacher training about child sexual abuse, including duties in law and policy to report it; (c) teacher knowledge about legislative and policy duties; and (d) teachers' attitudes towards the duty to report child sexual abuse.²³⁰ The study involved participants from non-government schools in each state (as well as teachers from government schools in Queensland and Western Australia). In relation to this study, Walsh et al. found that:

- over the entire sample (n=468):
 - 26.5 per cent had never received training in child sexual abuse
 - 44.4 per cent had received in-service training only
 - 19.4 per cent had received both in-service and pre-service training
 - 9.7 per cent had received pre-service training only
- only 53.4 per cent of teachers said they had sufficient knowledge of their legislative duty to answer questions about it
- levels of knowledge about legislation were low (47.9 per cent); moderate (27.4 per cent) and high (24.7 per cent)

²²⁸ Mathews, B., Fraser, J., Walsh, K., Dunne, M., Kilby, S. & Chen, L. (2008). 'Queensland nurses' attitudes towards and knowledge of the legislative duty to report child abuse and neglect: Results of a State-wide Survey.' *Journal of Law and Medicine*, no 16, p 288.

²²⁹ Fraser, J., Mathews, B., Walsh, K., Chen, L. & Dunne, M. (2010). 'Factors influencing child abuse and neglect recognition and reporting by nurses: A multivariate analysis.' *International Journal of Nursing Studies*, vol 47(20), pp 146–153.

²³⁰ Walsh, K., Mathews, B., Rassafiani, M., Farrell, A. & Butler, D. (2013). 'Elementary Teachers' Knowledge of Legislative and Policy Duties for Reporting Child Sexual Abuse.' *Elementary School Journal*, vol 114(2), pp 178–199; see also Mathews, B., Walsh, K., Rassafiani, M., Butler, D. & Farrell, A. (2009). 'Teachers Reporting Suspected Child Sexual Abuse: Results of a Three-state Study'. *University of New South Wales Law Journal*, vol 32, pp 772–813.

- only 41.1 per cent of teachers said they had sufficient knowledge of their school policy about child sexual abuse to answer questions about it
- levels of policy knowledge were found to be low (56.0 per cent); moderate (15.5 per cent) and high (28.5 per cent)
- teachers from New South Wales non-government schools had significantly higher levels of knowledge about legislation than those in Queensland
- teachers from New South Wales non-government schools had significantly higher levels of policy knowledge than those in Queensland and Western Australia
- key factors associated with higher levels of teacher knowledge of reporting duties were:
 - having had both pre-service training and in-service training about child sexual abuse
 - having more positive attitudes towards reporting child sexual abuse
 - being in a school administration position
 - having reported child sexual abuse at least once during their career
 - being in the New South Wales jurisdiction (this may be because the state has had reporting duties for a longer time, and the culture in this respect is more developed).²³¹

Mathews found that:

- the proportions of teachers who had received pre-service training were generally low (22 per cent in Western Australia and 37 per cent in Queensland), but higher in New South Wales (42 per cent)
- more teachers received in-service training than pre-service training, but the proportions were lowest in Western Australia (23 per cent), and equal in New South Wales and Queensland (64 per cent)
- self-reported satisfaction with the adequacy of pre-service training in all jurisdictions indicated there was much potential for improvement in delivery and content (for example, indicators of child sexual abuse and reporting processes)
- self-reported satisfaction with in-service training was low, indicating a need to devote more time to it, as well as to improving delivery and content (for example, indicators of child sexual abuse and reporting processes).²³²

Pre-service teachers

Walsh et al. analysed pre-service teacher curriculums in Queensland, South Australia and Victoria, and found that:

- only South Australia required child protection induction training prior to employment as a teacher
- only South Australia required ongoing child protection training (every three years) during employment as a teacher to maintain professional registration.²³³

Goldman & Grimbeek explored the professional information and training accessed by final-year student teachers (primary) in a Queensland University (n=56) to enable them to report child sexual abuse.²³⁴ They concluded that:

²³¹ Walsh, K., Mathews, B., Rassafiani, M., Farrell, A. & Butler, D. (2013). 'Elementary Teachers' Knowledge of Legislative and Policy Duties for Reporting Child Sexual Abuse.' *Elementary School Journal*, vol 114(2), pp 178–199; see also Mathews, B., Walsh, K., Rassafiani, M., Butler, D. & Farrell, A. (2009). 'Teachers Reporting Suspected Child Sexual Abuse: Results of a Three-state Study.' *University of New South Wales Law Journal*, vol 32, pp 772–813.

²³² Mathews, B. (2011). 'Teacher Education to Meet the Challenges Posed by Child Sexual Abuse.' *Australian Journal of Teacher Education*, vol 36(11), pp 13–32; see also Mathews, B., Walsh, K., Rassafiani, M., Butler, D. & Farrell, A. (2009). 'Teachers Reporting Suspected Child Sexual Abuse: Results of a Three-state Study.' *University of New South Wales Law Journal*, vol 32, pp 772–813.

²³³ Walsh, K., Laskey, L., McInnes, E., Farrell, A., Mathews, B. & Briggs, F. (2011). 'Locating child protection in preservice teacher education.' *Australian Journal of Teacher Education*, vol 36(7).

- a substantial majority of respondents reported they had not received any pre-service training on key topics relating to child sexual abuse, including strategies for responding to suspicions, and mandatory reporting
- university curriculum designers need to include comprehensive pre-service training that develops and enhances student-teachers' professional competence as reporters of child sexual abuse.

School counsellors

Goldman & Padayachi surveyed 122 school counsellors in government schools in Queensland.²³⁵ They found that:

- there was a tendency in vignette-based responses for school counsellors to fail to report suspicions of child sexual abuse
- 84 per cent of school counsellors had little or no confidence that their knowledge of indicators of child sexual abuse equipped them to deal with it
- virtually all school counsellors demonstrated a desire for further professional training.

²³⁴ Goldman, J. & Grimbeek, P. (2009). 'How university student-teachers for primary school learn about Department of Education Policy on child sexual abuse, and mandatory reporting: the sources of their professional information.' *Higher Education*, vol 58, pp 221–239.

²³⁵ Goldman, J. & Padayachi, U. (2005). 'Child Sexual Abuse Reporting Behaviour by School Counsellors and Their Need for Further Education.' *Health Education Journal*, vol 64(4), pp 302–322.

Table 3.1 – Model of dimensions of efficacy and evaluation methods

	Example of oversight body: ombudsman	Type of evidence that may evaluate and demonstrate efficacy	Example of regulatory body: non-state schools' accreditation board	Type of evidence that may demonstrate and evaluate efficacy
Narrow sense of efficacy	<p>Does the <i>oversight body</i> (for example, legislation establishing the office of an ombudsman or children's ombudsman (O/CO)) <i>include face/nominal requirements</i> enabling the protection of children from sexual abuse in institutional contexts? For example, does the legislation establishing the O/CO:</p> <ul style="list-style-type: none"> • enable complaints to be made by children or others on their behalf about child sexual abuse? • enable it to institute investigations of child sexual abuse on its own motion/of its own volition, or is it limited in this respect? • limit investigations to certain types of institution? • make findings or recommendations binding or only persuasive? 	<p>At the simplest level, synthesis of the nature of the body and its regulatory mechanism will show whether the <i>face/nominal requirements</i> exist, and their nature and limitations</p> <p>At a higher level, there may be evidence (either scholarly literature or other sources such as grey literature) about whether key features meet optimal required dimensions of narrow efficacy as measured against orthodox regulatory theory requirements; for example:</p> <ul style="list-style-type: none"> • accessibility • clarity • accuracy • implementation 	<p>At the institutional level, does the <i>regulatory mechanism</i> (for example, legislation setting standards for accreditation of a non-state school) <i>include face/nominal requirements</i> for the protection of children from sexual abuse in institutional contexts? For example, to qualify for accreditation (or registration or a licence), is the school required by the regulatory mechanism to:</p> <ul style="list-style-type: none"> • have a policy about reporting suspected child sexual abuse? • conduct training about child sexual abuse, including how to comply with the policy? • conduct criminal history checks for employees? • otherwise ensure employees are fit and proper persons for the profession? 	<p>At the simplest level, synthesis of the nature of the body and its regulatory mechanism will show whether these <i>face/nominal requirements</i> exist, and their nature and limitations</p> <p>At a higher level, there may be evidence (either scholarly literature or other sources such as grey literature) of the <i>actual presence or absence</i> of the required components at either cross-sector levels or individual schools</p> <p>At an even higher level, there may be evidence (either scholarly literature or other sources such as grey literature) at the sector/school level, about whether key features meet optimal required dimensions of narrow efficacy as measured against orthodox regulatory theory requirements; for example:</p> <ul style="list-style-type: none"> • accessibility • clarity • accuracy • implementation
Broad sense of efficacy	<p>To what extent <i>does the oversight body achieve the policy goal</i> of better protecting children from sexual abuse in institutional contexts?</p>	<p>Evidence of the nature and consequences of agency practice (could be empirical studies and other scholarly analysis, but could also be grey literature, such as annual reports or data/analysis of agency practice regarding numbers of investigations/inquiries, and outcomes at the individual case level and the broader systemic level)</p>	<p>At the institutional level, to what extent <i>does the regulatory mechanism achieve the policy goal</i> of better protecting children from sexual abuse in institutional contexts?</p>	<p>Evidence (typically empirical studies, but could also be grey literature), whether at the institutional sector/school level or at the individual practitioner level, of the effects of the presence or absence of these components, exploring issues such as:</p> <ul style="list-style-type: none"> • policy awareness and correlation with reporting practice and outcomes • knowledge of child sexual abuse and correlation with reporting practice and outcomes • impact on hiring individuals with criminal histories and impact on adverse events

Part 3.2 – Compliance with PRISMA statement

The approach to the literature review and analysis in this project required adaptation of the standard systematic review under the PRISMA model. This was required due to: (a) PRISMA being a tool designed for conventional evaluation of a specific type of study of the benefits and harms of a healthcare intervention; (b) the different nature of this context (involving disciplines, regulatory frameworks and phenomena beyond the normal types of health interventions and social science phenomena explored in empirical studies; and the multiple questions being asked in this study about many different agencies and stakeholder groups); (c) the lack of quantitative empirical studies in this field; and (d) the conduct of this report (for example, it was conducted by one author, not by a team of authors who could share roles in the systematic review).

Accordingly, many of the items in the PRISMA checklist do not directly apply to the research questions arising in the context of regulatory and oversight bodies, and the kinds of studies and analyses performed in this field.

Nevertheless, the PRISMA approach provided structure and rigour for identifying reliable studies in this field, so that relevant studies were analysed. To the extent possible, the author has followed both the PRISMA approach²³⁶, and the *Explanation and Elaboration* statement for reporting against PRISMA.²³⁷ The full methodology is detailed in Appendix 3: Methodology: systematic literature review for parts 1–4.

3.2.1 S1 Reporting against PRISMA checklist

TITLE

- (1) Title: Oversight and regulatory mechanisms aimed at protecting children from sexual abuse: Understanding current evidence of efficacy

ABSTRACT

- (2) Structured summary:

Context: the efficacy of eight key Australian oversight and regulatory bodies in protecting children from sexual abuse in institutional contexts is not known.

Objective: to explore evidence of the efficacy of these bodies in protecting children from sexual abuse in institutional contexts.

Data sources: a systematic review of peer-reviewed literature using databases from multiple disciplines (law, social science, medicine and health). Multiple search strategies were adopted, as required and necessary.

Study selection: scholarly articles that evaluate any relevant aspect of broad efficacy of any of the eight oversight and regulatory bodies.

Data extraction: conducted by the author, based on eligibility criteria and dimensions of broad efficacy, as defined in this report.

Data synthesis: not applicable in the strict PRISMA sense for this type of review in this context.

Conclusions: this review identified no rigorous empirical studies of broad efficacy of any of these oversight and regulatory bodies. A small number of studies were identified that focused on

²³⁶ Moher, D., Liberati, A., Tetzlaff, J., Altman, D. & the PRISMA Group. (2009). 'Preferred Reporting Items for Systematic Reviews and Meta-Analyses: The PRISMA Statement.' *PLoS Med*, vol 6(7), e1000097. doi:10.1371/journal.pmed.1000097.

²³⁷ Liberati, A., Altman, D., Tetzlaff, J., Mulrow, C., Gotzsche, P., Ionnadis, J., Clarke, M., Devereaux, P., Kleijnen, J. & Moher, D. (2009). 'The PRISMA Statement for Reporting Systematic Reviews and Meta-Analyses of Studies That Evaluate Health Care Interventions: Explanation and Elaboration.' *Annals of Internal Medicine*, vol 151(4), W-65-W-94.

aspects of efficacy of regulatory bodies; namely, the extent to which some professions receive child protection training generally. Findings indicate a need for further research into multiple questions about the broad efficacy of these oversight and regulatory bodies.

INTRODUCTION

- (3) **Rationale:** Multiple oversight and regulatory agencies and mechanisms exist in Australia. Some of these have the express purpose of protecting children, while the scope of authority of other agencies extends, or may extend, to overseeing the safety of children in institutions. When viewed through a public health model or as an enforceable right to individual safety, children have a right to be protected from sexual abuse in institutional contexts. The powers and functions of these oversight and regulatory bodies offer the prospect of assisting in the protection of children from sexual abuse in institutional contexts. However, little is known about the efficacy of Australian oversight and regulatory mechanisms in protecting children from sexual abuse in institutional contexts. The purpose of this review was to systematically explore the literature to identify rigorous evidence about the efficacy of these bodies in protecting children. For this review, a relatively expansive concept of broad efficacy was adopted, as defined in Appendix 2.
- (4) **Objective:** To identify evidence about the efficacy of the following regulatory mechanisms in protecting children from sexual abuse in institutional contexts: ombudsmen; reportable conduct schemes; children's commissions; community visitors; children's advocates and guardians; crime and corruption commissions; non-state schools' accreditation boards; early childhood education regulatory agencies; and medical sector agencies.

METHODS

- (5) Protocol and registration: Not applicable
- (6) Eligibility criteria:

Inclusion criteria: peer-reviewed articles; articles relating to child sexual abuse, including in institutional contexts; articles relating to efficacy of an oversight/regulatory system as defined by the Royal Commission for the purpose of this report and in the sense of broad efficacy evidence (which ideally is empirical, but may be of other clearly relevant and persuasive kinds) about whether and to what extent it works or does not work and the reasons for this.

Exclusion criteria: non-peer reviewed articles; articles solely relating to non-institutional abuse; for example, familial abuse or other types of child abuse and neglect; articles solely on specific programs/policies (for example, NTER) that are not 'Australian oversight and regulatory systems' (although these may be included in another part of this project); articles focused on other systemic issues; for example, criminal justice/procedures and family court procedures; articles that are purely abstract or theoretical critiques of government strategies/discourses; articles on health and other effects of child sexual abuse generally and in institutional contexts; articles devoted to optimal clinical practice or theoretical models or proposals for prevention; articles solely on the nature of, or factors influencing, reporting practice; articles on other concepts of 'efficacy'; for example, the constitutional legitimacy of a system; articles on general prevention of child sexual abuse; and articles on incidence and prevalence.

- (7) Information sources: these are detailed in the tables in Appendix 3.
- (8) Search: search strategies had to be modified to suit different databases. A range of narrow and broader searches were conducted, which are detailed in the tables in Appendix 3.
- (9) Study selection: the author screened the total list of identified studies, and determined their eligibility against the stated criteria by analysing the title and abstract (at a minimum) and often

the full text. Full-text analysis determined inclusion in qualitative synthesis. Due to the nature of the studies, quantitative analysis was not possible. Where studies were judged to be potentially relevant for other parts of the study, these were recorded and tabulated in a separate column. In Appendix 3, as recommended by the *PRISMA Explanation and Elaboration Document* (Liberati et al., 2009), the author has provided details for each database searched, which include:

- total results (number of records identified after conducting the search)
- number of studies that are potentially relevant to the question
- number of included studies (studies that are directly relevant to the question).

For the purposes of the PRISMA flow diagram, the author has combined all results from all searches across all databases.

- (10) Data collection process: not applicable
- (11) Data items: not applicable
- (12) Risk of bias in individual studies: not applicable
- (13) Summary measures: not applicable
- (14) Synthesis of results: not applicable
- (15) Risk of bias across studies: not applicable
- (16) Additional analyses: not applicable

RESULTS

- (17) Study selection: this is detailed in the PRISMA flow diagram and Appendix 3: Methodology: systematic literature review for parts 1–4.
- (18) Study characteristics: not applicable
- (19) Risk of bias within individual studies: not applicable
- (20) Results of individual studies: not applicable according to strict PRISMA guidelines. Results of included studies have been integrated within the relevant part of the report.²³⁸
- (21) Synthesis of results: not applicable
- (22) Risk of bias across studies: not applicable
- (23) Additional analysis: not applicable

DISCUSSION

- (24) Summary of evidence: overall, for both oversight and regulatory bodies in Australia, there are no rigorous studies of the broad efficacy of how well they protect children from sexual abuse in institutional contexts. Regarding the oversight bodies, there were no studies of dimensions of broad efficacy, such as actual reduction of child sexual abuse in institutional contexts; fewer

²³⁸ The studies included were:

On nurses: Fraser, J., Mathews, B., Walsh, K., Chen, L. & Dunne, M. (2010). 'Factors influencing child abuse and neglect recognition and reporting by nurses: A multivariate analysis.' *International Journal of Nursing Studies*, vol 47(2), pp 146–153.

Mathews, B., Fraser, J., Walsh, K., Dunne, M., Kilby, S. & Chen, L. (2008). 'Queensland nurses' attitudes towards and knowledge of the legislative duty to report child abuse and neglect: Results of a State-wide Survey.' *Journal of Law and Medicine*, vol 16, p 288.

On school counsellors: Goldman, J. & Padayachi, U. (2005). 'Child Sexual Abuse Reporting Behaviour by School Counsellors and Their Need for Further Education.' *Health Education Journal*, vol 64(4), pp 302–322.

On pre-service teachers: Goldman, J. & Grimbeek, P. (2009). 'How university student-teachers for primary school learn about Department of Education Policy on child sexual abuse, and mandatory reporting: the sources of their professional information.' *Higher Education*, vol 58, pp 221–239; Walsh, K., Laskey, L., McInnes, E., Farrell, A., Mathews, B. & Briggs, F. (2011). 'Locating child protection in preservice teacher education.' *Australian Journal of Teacher Education*, vol 36, p 7.

On in-service teachers: Mathews, B. (2011). 'Teacher Education to Meet the Challenges Posed by Child Sexual Abuse.' *Australian Journal of Teacher Education*, vol 36(11), pp 13–32; Mathews, B., Walsh, K., Rassafiani, M., Butler, D. & Farrell, A. (2009).

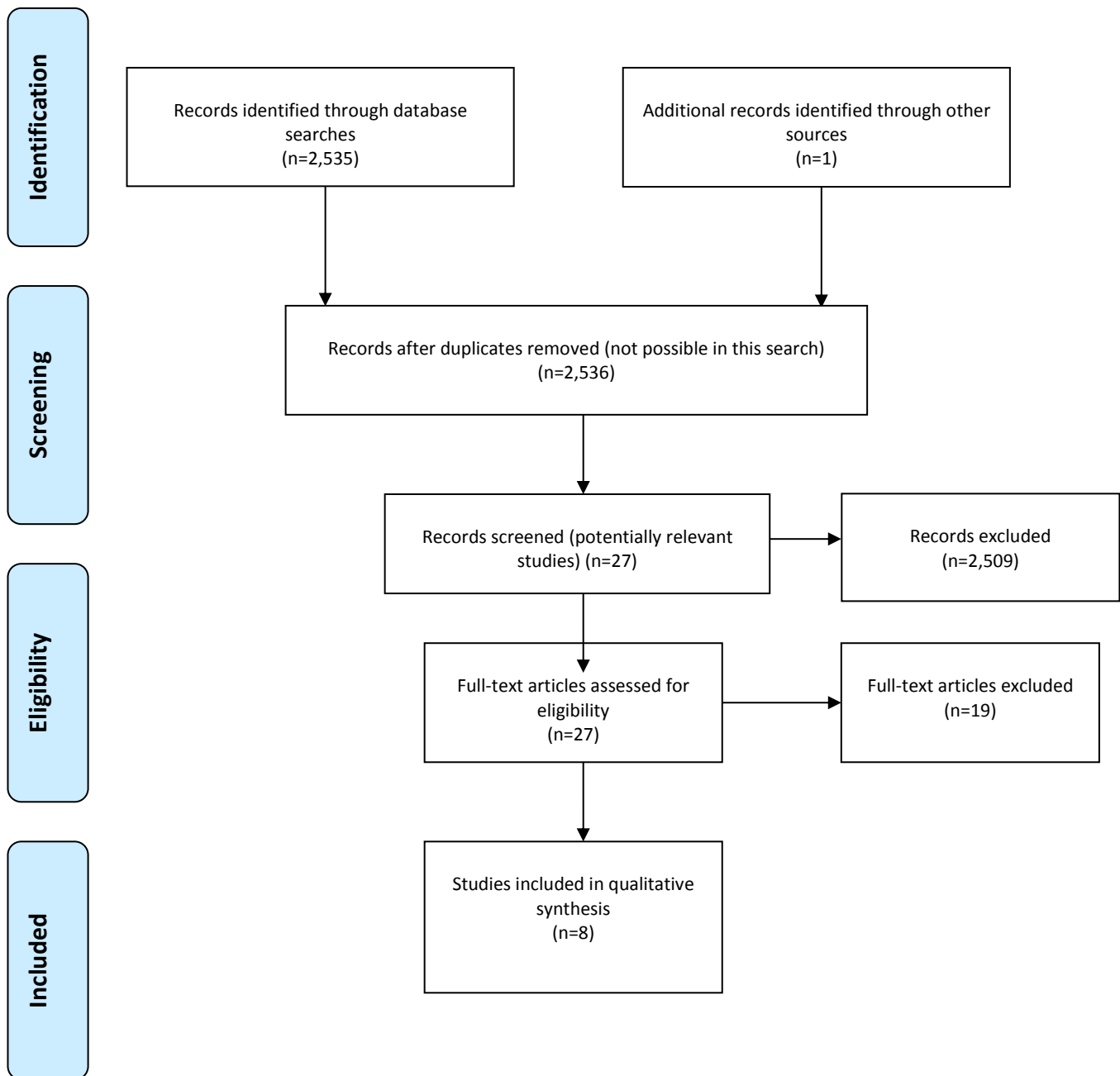
'Teachers Reporting Suspected Child Sexual Abuse: Results of a Three-state Study.' *University of New South Wales Law Journal*, vol 32, pp 772–813; Walsh, K., Mathews, B., Rassafiani, M., Farrell, A. & Butler, D. (2013). 'Elementary Teachers' Knowledge of Legislative and Policy Duties for Reporting Child Sexual Abuse.' *Elementary School Journal*, vol 114(2), pp 178–199.

instances of child sexual abuse by employees or other persons within the oversight body's jurisdiction; detection of more cases of child sexual abuse in institutional contexts; and fewer instances of employment of persons who clearly pose a risk to children.

Regarding the regulatory bodies, there was also a lack of research into similar key dimensions of broad efficacy: actual reduction of institutional child sexual abuse; fewer instances of child sexual abuse by employees or other persons within the regulatory body's jurisdiction; detection of more cases of child sexual abuse in institutional contexts; and fewer instances of employment of persons who clearly pose a risk to children. There was also a lack of rigorous research into other aspects of broad efficacy, such as the extent and quality of implementation of professional training in child protection, and the consequences of such training on professionals' knowledge, reporting practice and ability to manage child sexual matters generally. For some key professions, such as doctors and police, the review identified no research into any dimension of efficacy. However, several studies were identified that are relevant to a finer aspect of broad efficacy; namely, the extent to which members of various professional groups, such as nurses, teachers and school counsellors, receive training about their policy requirements relating to child sexual abuse or in child protection generally, and in some cases there were partial assessments of the self-reported adequacy of training, and of the effect of training on reporting generally (although not with express consideration of child sexual abuse in institutional contexts). Notably, all these studies concluded that training was inadequate. These studies were generally limited to one jurisdiction, did not always involve large samples, and were limited to self-reported adequacy of training rather than objective assessment.

- (25) Limitations: appraisal was conducted by the author alone rather than multiple investigators.
- (26) Conclusions: a systematic review yielded no rigorous empirical studies of the broad efficacy of any of the Australian oversight and regulatory bodies in protecting children from sexual abuse in institutional contexts. For regulatory bodies, several studies explored some finer aspects of broad efficacy, which indicate avenues for useful further research at the micro level (that is, aspects of broad efficacy such as the extent to which professionals receive training in child protection, and its adequacy and outcomes). At the macro level of broader efficacy, there is a need for carefully designed research into the efficacy of both oversight and regulatory bodies, and their contribution to protecting children from sexual abuse in institutional contexts. At the micro level of broad efficacy, there is also a need for research into key issues such as the nature, extent and adequacy of professionals' training in relation to child sexual abuse, and the adequacy of resources made available to assist them in their role.

Part 3.3 – PRISMA flow diagram: All results



PART 4: OTHER REGULATORY MODELS

Part 4.1 – Evidence about the efficacy of other innovative models for protecting children from sexual abuse in institutional contexts

This part of the project was required to consider evidence on the efficacy of other innovative models for protecting children from sexual abuse in institutional contexts (Part 4.1). It also considered regulatory models from other fields that may be applicable or adaptable for protecting children from sexual abuse in institutional contexts (Part 4.2).

A leading authority on child sexual abuse prevention has noted that there is a paucity of evidence not only about effective models for preventing child sexual abuse in institutional contexts, but also for preventing child sexual abuse generally.²³⁹ This is borne out by searches of the literature and of organisational sites including the RAND Promising Practices Network²⁴⁰, the Coalition for Evidence-Based Policy and its list of programs proved to be top-tier²⁴¹, and the Child Welfare Information Gateway's catalogue of evidence-based programs.²⁴² However, evidence demonstrates the efficacy of some measures, including school-based sexual abuse prevention programs, as shown by Walsh et al. and as recognised by Finkelhor.²⁴³

This absence of evidence does not mean that the adoption of specific measures is not effective in enhancing the protection of children from child sexual abuse in institutional contexts; it may simply mean that rigorous research designs have not been undertaken into their efficacy. This is likely part of the explanation for the absence of evidence, given the relative youth of the field of child sexual abuse generally, the specific subset of sexual abuse in institutional contexts being even more recently recognised, and the complexities involved in conducting rigorous research into responsive and preventive strategies.

4.1.1 Wurtele's model

Sandy Wurtele is one of the leading scholars in the field of child sexual abuse prevention, and specifically in the prevention of child sexual abuse in institutional contexts. Informed by an ecological perspective, Wurtele has systematically described a detailed multi-layered approach to preventing child sexual abuse in institutional contexts.²⁴⁴ This approach includes responses at the macro and micro levels.

²³⁹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

²⁴⁰ RAND Promising Practices Network operated from 1997–2014. See <http://www.promisingpractices.net/>.

²⁴¹ Coalition for Evidence-Based Policy. See website at <http://toptierevidence.org/>.

²⁴² United States Department of Health and Human Services, Child Welfare Information Gateway. Retrieved 5 February 2016 from <https://www.childwelfare.gov/topics/preventing/evidence/>.

²⁴³ Walsh, K.M., Zwi, K., Woolfenden, S. & Shlonsky, A. (2015). *School-based Education Programmes for the Prevention of Child Sexual Abuse: A Systematic Review*, Cochrane Database of Systematic Reviews, pp 1–123; Finkelhor, D. (2009). 'The Prevention of Child Sexual Abuse.' *Future of Children*, vol 19(2), pp 169–194. There is also a body of literature about efforts with known offenders, and other preventive efforts to prevent the likelihood of individuals offending in the first place, although this literature is beyond the scope of this part of the report.

²⁴⁴ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

At the *macro level*, Wurtele suggests national law and policy can be designed to implement measures such as:

- creating specific criminal offences for child sexual abuse in institutional contexts
- creating common approaches to employee criminal history screening
- introducing compulsory employee education about child sexual abuse
- establishing a national centre or clearinghouse that sets standards for institutions, collects and publishes data, and provides leadership and resources to assist in educational and prevention efforts.²⁴⁵

At the *organisational level*, Wurtele suggests adopting a variety of measures to improve situational contexts and ameliorate risk factors. These include:

- addressing *situational factors*, such as features of the physical environment, to reduce opportunities for child sexual abuse in private spaces
- developing an *agency culture* to promote children's safety through the key dimensions of:
 - decision-making processes
 - organisational openness
 - healthy relationships between staff members, and between staff members and students
 - language
 - dress
 - recruitment processes
 - zero tolerance of any form of abuse of children
- introducing *risk-management strategies*, such as:
 - employee screening (which must move beyond criminal record checks, and extend to properly informed personal interview strategies)
 - child protection policies (which, for example, can include limits on one-on-one interactions between children and adults – especially in high-risk environments such as private accommodation, showering and sleeping arrangements on trips – even in closed classrooms)
 - adequate supervisory policies for staff, including regular professional supervision sessions
 - robust approaches to electronic and social media interaction between staff members and students
 - a code of conduct or ethics clearly establishing acceptable and unacceptable behaviour
 - education about child sexual abuse for staff, children's parents and children
 - ongoing staff training, including about sexual boundary violations (physical, emotional and via diverse kinds of communication).²⁴⁶

Wurtele's model is a comprehensive strategic approach to preventing child sexual abuse in institutional contexts. Currently, there is no evidence that the entire model has been trialled and subjected to rigorous evaluation. However, Wurtele provides a practical model, which is informed by the literature and an ecological framework. The model offers concrete operational guidance on multiple dimensions of law, policy, education and organisational practice. Detailed strategies are provided to improve organisational contexts and reduce institutional and individual risk through: (a) securing situational factors (such as

²⁴⁵ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

²⁴⁶ Wurtele, S. (2012). Preventing the sexual exploitation of minors in youth-serving organizations. *Children and Youth Services Review*, vol 34, pp 2442–2453.

features of the physical environment); (b) creating a healthy agency culture to promote children's safety (including sound decision-making processes, organisational openness and healthy interpersonal relationships); and (c) implementing risk management strategies through robust policy (on child protection generally; staff interaction with students, including through social media and electronic communications; professional staff supervision; and employee screening), education (for staff, children and parents) and practice.²⁴⁷

4.1.2 Additional insights from overseas legislative models

In the course of conducting the research for this project, overseas legislative models for regulating comparable sectors were consulted. In particular, notable features were observed in relation to non-government schools, which may have relevance for developing new principles or approaches for aspects of Australian regulatory models. These features align with some of the recommendations in Wurtele's model.

Quebec

The legislative model in Quebec imposes specific obligations on non-government schools to create detailed plans to prevent and stop violence, thereby promoting children's rights to key aspects of safety and security. The legislative scheme also requires schools to establish a cooperative framework with other law enforcement, health and social services agencies when responding to events. The Act Respecting Private Education 2015 includes the following features:

- Under, section 63.1, schools 'must provide a healthy and secure learning environment that allows every student to develop his or her full potential, free from any form of bullying or violence. To that end, the institution must adopt an anti-bullying and anti-violence plan'.
- Under section 9, 'violence' is defined as 'any intentional demonstration of verbal, written, physical, psychological or sexual force which causes distress and injures, hurts or oppresses a person by attacking their psychological or physical integrity or well-being, or their rights or property'.
- Under section 63.3, schools must have a code of conduct that accompanies their anti-bullying and anti-violence plan.
- Under sections 63.9 and 63.10, schools must enter into agreements with police, health and social services authorities to determine measures for responding to events and emergencies.
- Under section 63.1, schools must include the following in their anti-bullying and anti-violence plan:
 - (1) an analysis of the situation prevailing at the institution with respect to bullying and violence;
 - (2) prevention measures to put an end to all forms of bullying and violence, in particular those motivated by racism or homophobia or targeting sexual orientation, sexual identity, a handicap or a physical characteristic;
 - (3) measures to encourage parents to collaborate in preventing and stopping bullying and violence and in creating a healthy and secure learning environment;
 - (4) procedures for reporting, or registering a complaint concerning, an act of bullying or violence and, more particularly, procedures for reporting the use of social media or communication technologies for cyberbullying purposes;
 - (5) the actions to be taken when a student, teacher or other personnel member or any other person observes an act of bullying or violence;
 - (6) measures to protect the confidentiality of any report or complaint concerning an act of bullying or violence;

²⁴⁷ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

- (7) supervisory or support measures for any student who is a victim of bullying or violence, for witnesses and for the perpetrator;
- (8) specific disciplinary sanctions for acts of bullying or violence, according to their severity or repetitive nature; and
- (9) the required follow-up on any report or complaint concerning an act of bullying or violence. A document explaining the anti-bullying and anti-violence plan must be distributed to the parents. The institution shall see to it that the wording of the document is clear and accessible. The anti-bullying and anti-violence plan must be reviewed each year, and updated if necessary.²⁴⁸

Norway

The legislative model in Norway provides children with rights which are embedded in legislation to key aspects of safety and security, and school management and openness in governance. The Act relating to Primary and Secondary Education and Training (the Education Act) confers the following rights:

- necessary supervision while waiting for classes to start each day and when classes are finished at the end of the day.²⁴⁹
- a psychosocial environment where the school 'shall make active and systematic efforts to promote a good psychosocial environment, where individual pupils can experience security and social belonging. If any school employee learns or suspects that a pupil is being subjected to offensive language or acts such as bullying, discrimination, violence or racism, he or she shall investigate the matter as soon as possible and notify the school leaders and, if necessary and possible, intervene directly'.²⁵⁰
- the school 'shall actively make continuous and systematic efforts to promote the health, environment and safety of the pupils in order to meet the requirements laid down in or pursuant to this chapter ... Such efforts shall apply to both the physical and the psychosocial environment'.²⁵¹
- if the school 'becomes aware of circumstances regarding the school environment that may have negative consequences for the health of the pupils, the pupils and their parents or guardians shall be notified at the earliest opportunity'.²⁵²

²⁴⁸ An Act Respecting Private Education 2015 (Quebec) s 63.1.

²⁴⁹ The Act relating to Primary and Secondary Education and Training (the Education Act) (Norway) s 7-4.

²⁵⁰ The Act relating to Primary and Secondary Education and Training (the Education Act) (Norway) ss 9a-3, 9a-7.

²⁵¹ The Act relating to Primary and Secondary Education and Training (the Education Act) (Norway) ss 9a-4, 9a-7.

²⁵² The Act relating to Primary and Secondary Education and Training (the Education Act) (Norway) s 9a-6.

Part 4.2 – What models of regulation from other fields may be suitable for protecting children from sexual abuse in institutional contexts

4.2.1 Regulation and responsive regulation

A substantial body of literature has developed concerning regulation generally, and responsive regulation.²⁵³ The theory of *responsive regulation* prioritises the nurturing of voluntary compliance through self-regulation and persuasive, informal enforcement measures. This is in contrast to a traditional command and control approach to regulation, where a formal directive is backed by the deterrent threat of a punitive sanction. Based primarily on the work of Braithwaite and Ayres, responsive regulation extends traditional regulatory theory. It has influenced a variety of fields including taxation, competition policy, occupational health and safety law, environmental law, and aspects of public health such as the regulation of food and alcohol.²⁵⁴

In pursuing the fundamental challenge of how best to obtain compliance with regulatory goals, responsive regulation encourages the customisation of regulatory strategies and enforcement measures to industry characteristics, motivation to comply and capacity to meet regulatory requirements. Responsive regulation is often depicted graphically as two complementary pyramids; the regulatory pyramid (Figure 1) details the measures regulators can use; and the enforcement pyramid (Figure 2) details the mechanisms and enforcement measures available to regulators, featuring differential levels of flexibility, formality and coercion.²⁵⁵

The key principle in responsive regulation is that regulators should prefer less coercive and more persuasive measures, escalating to coercion only if other methods fail. This assumes that regulated parties normally will comply due to normative and ethical motivations, but the presence of sanctions is still required to respond to those who do not or cannot comply. Self-regulation in the context of responsive regulation ultimately relies upon the regulated actors' desire for social legitimacy and reputational esteem, with

²⁵³ On regulation generally, see Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney; Baldwin, R., Cave, M. & Lodge, M. (2012). *Understanding Regulation: Theory, strategy and practice*, Oxford University Press: Oxford; Yeung, K. (2004). *Securing Compliance*. Hart Publishing: Oxford; Gunningham, N. & Johnstone, R. (1999). *Regulating Workplace Safety: Systems and Sanctions*. Oxford University Press, New York; Yeung, K. (2004). *Securing Compliance*. Hart Publishing: Oxford; Black, J. (2008). 'Constructing and contesting legitimacy and accountability in polycentric regulatory regimes.' *Regulation & Governance*, vol 2, pp 137–164; Black, J. & Baldwin, R. (2012). 'When risk-based regulation aims low: A strategic framework.' *Regulation & Governance*, vol 6, pp 131–148.

On responsive regulation, see Ayres, I. & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Regulation Debate*. Oxford University Press: New York; Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford University Press: New York; Grabosky, P. (2013). 'Beyond Responsive Regulation: The expanding role of non-state actors in the regulatory process.' *Regulation & Governance*, vol 7, pp 114–123; Braithwaite, J., Coglianese, C. & Levi-Faur, D. (2007). 'Can regulation and governance make a difference?' *Regulation & Governance*, vol 1(1), pp 2–13; Parker, C. (2004). 'Restorative justice in business regulation? The Australian Competition and Consumer Commission's use of enforceable undertakings.' *The Modern Law Review*, vol 67(2) pp 209–246.

²⁵⁴ For a concise explanation of the provenance, development and challenges facing responsive regulation, see Parker, C. (2013). 'Twenty years of responsive regulation: An appreciation and appraisal.' *Regulation & Governance*, vol 7(1) pp 2–13. See also Feld, L. & Frey, B. (2007). 'Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation.' *Law & Policy*, vol 29; Gunningham, N. & Johnstone, R. (1999). *Regulating Workplace Safety: Systems and Sanctions*. Oxford University Press: New York.

²⁵⁵ Ayres, I. & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Regulation Debate*. Oxford University Press: New York, p 39.

optimal examples leading to the internalisation of regulatory norms and the development of trust between regulators and regulatees.²⁵⁶

If possible and effective, self-regulation is advantageous for stakeholders on both sides of the regulatory divide because it is more cost-effective and reduces regulatory burdens.²⁵⁷ However, self-regulation is not always possible, and if a regulatory context is characterised by noncompliance, weak self-regulatory schemes or enforcement mechanisms, governments will need to adopt more forceful and direct measures.

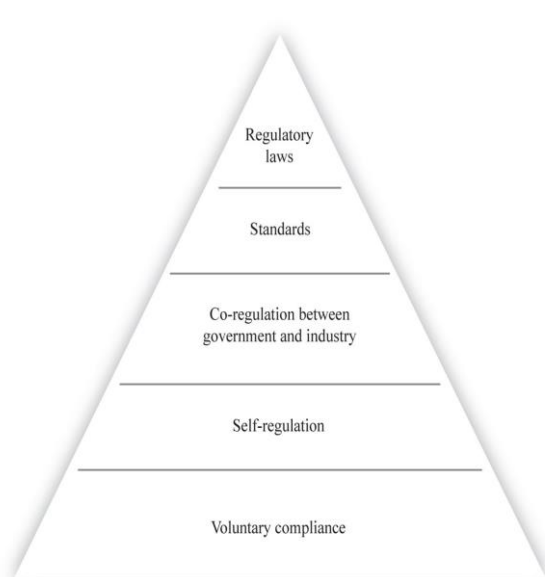


Figure 1: The regulatory pyramid²⁵⁸

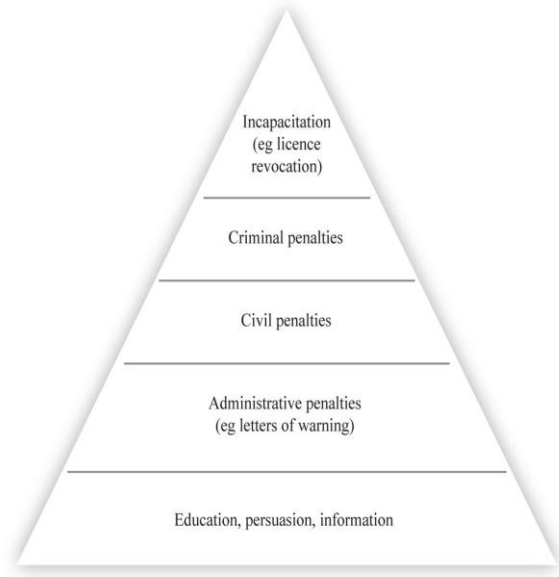


Figure 2: The enforcement pyramid²⁵⁹

There are benefits and disadvantages of different regulatory models such as self-regulation (where an industry creates its own rules and has sole power to enforce these), co-regulation (industry-developed arrangements backed by government legislation to enable enforcement of these), quasi-regulation (where the government imposes a level of pressure to behave in a certain way but without legislative backing), and direct government regulation via legislative schemes. In general, as outlined in various general works on regulation and the Australian Government's former Best Practice Regulation Handbook..²⁶⁰

- Self-regulation is deemed preferable where the subject matter is low risk, does not involve a strong public interest concern, including any major health and safety concerns, and can be remedied by the market. Self-regulation will likely be effective where the industry is cohesive, rather than fragmented, with similarly minded individuals who share a commitment to specific goals.

²⁵⁶ Parker, C. (2000). 'Reinventing Regulation Within the Corporation: Compliance-oriented Regulatory Innovation.' *Administration & Society*, vol 32, p 359.

²⁵⁷ Ayres, I. & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Regulation Debate*. Oxford University Press: New York, p 38.

²⁵⁸ Adapted from Ayres, I. & Braithwaite, J. (1992). *Responsive Regulation: Transcending the Regulation Debate*. Oxford University Press: New York; as depicted in Reeve, B. (2011). 'The regulatory pyramid meets the food pyramid: Can regulatory theory improve controls on television food advertising to Australian children?' *Journal of Law and Medicine*, vol 19(1), pp 128–146.

²⁵⁹

²⁶⁰ See Freiberg, A. (2010). *The Tools of Regulation*, Federation Press: Sydney; Cave, M. & Baldwin, R. (1999). *Understanding Regulation*. Oxford University Press: Oxford, pp 34–62; Council of Australian Governments. (2007). *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*. Retrieved February 5, 2016 5 February 2016 from https://www.coag.gov.au/sites/default/files/coag_documents/coag_best_practice_guide_2007.pdf, pp 95–104.

- Quasi-regulation is deemed preferable where the subject matter involves public interest; less formal approaches are adequate to deal with the regulatory challenge; the regulation may only involve one sector of an industry; and it is appropriate for the industry to have ownership of the nature of the scheme.
- Direct government regulation is deemed preferable when the subject matter is inherently high risk and/or high impact, or significant, such as involving a major public health or safety issue; when the government desires certainty; when universal application to an industry is needed; and when existing regulatory bodies may not have the capacity or commitment to respond to a particular problem.

Challenges in compliance

A fundamental challenge faced by any regulatory regime is the question of which strategy – whether singly or in combination with encouragement, education, incentives, attitude-formation or direct demands – will best produce the broadest and highest levels of compliance that can reasonably be expected. Related to this, some contexts may be more amenable to ‘softer’ regulation, and other contexts may be more amenable to ‘harder’ regulation. According to Kagan et al.²⁶¹, theoretical understandings of compliance suggest that, in general, three broad motivational factors influence organisational or individual compliance with regulatory requirements: fear of detection of noncompliance and associated sanctions; adverse reputational consequences; and a desire to conform with an internal norm about the right thing to do. Yet, Kagan et al. refer to empirical studies to show that it is difficult to infer that the weight of influence of any one factor in one context will apply equally to different contexts; what might be influential in one situation may have less bearing in another.²⁶²

Parker has pointed out that responsive regulation offers the promise of heightened compliance, compared with a simple command and control approach, because it promotes the development of a genuine moral commitment to the subject of the law.²⁶³ In this way, responsive regulation – delivered through a mixture of approaches instead of by the simple threat of a deterrent – aims to improve compliance, with preference given to less intrusive methods (those at the base of the pyramid), while retaining the capacity to impose the ultimate penalty (the lever at the apex of the pyramid). Theoretically, responsive regulation is less hostile and more efficient and effective. In principle, it is preferable because it aims to create compliance through the regulated organisations and individuals developing an authentic internal commitment to the principles in the regulatory regime. However, Parker’s ‘compliance trap’ thesis suggests that if the regulated parties do not show genuine commitment to the substance of the law, compliance is compromised by their perception of the law as being inherently unfair – this flows through to an adverse perception of the regulator itself. For Parker, the consequence of this is that the regulator seeks to minimise conflict by ineffective enforcement. Therefore, a condition for successful regulatory regimes is the presence of robust political and moral support.

This indicates some of the complexities of the compliance context. Haines notes the ongoing challenges for compliance presented by other forces, such as economic pressures, cultural norms, and the presence of

²⁶¹ Kagan, R., Gunningham, N. & Thornton, D. (2011). ‘Fear, Duty, and Regulatory Compliance: Lessons from Three Research Projects.’ In Nielsen, V. & Parker, C. (2011). *Explaining Compliance*. Edward Elgar Publishing: Cheltenham, pp 37–58.

²⁶² Kagan, R., Gunningham, N. & Thornton, D. (2011). ‘Fear, Duty, and Regulatory Compliance: Lessons from Three Research Projects.’ In Nielsen, V. & Parker, C. (2011). *Explaining Compliance*. Edward Elgar Publishing: Cheltenham, pp 37–58.

²⁶³ Parker, C. (2006). ‘The “compliance” trap: the moral message in responsive regulatory enforcement.’ *Law and Society Review*, vol 40(3), pp 591–622. See also Parker, C. (2000). ‘Reinventing Regulation Within the Corporation: Compliance-oriented Regulatory Innovation.’ *Administration & Society*, vol 32, p 359.

multiple and sometimes conflicting regulatory burdens.²⁶⁴ Hutter draws on a body of socio-legal research and warns that compliance occurs at an extraordinarily complex nexus of legal, economic, social and political environments, which create multiple sites of tension and risk.²⁶⁵ A key point is that considerable variability can exist within an organisation regarding regulatory and risk management demands and compliance with them; fragmentation of an organisation – which can be worsened by geographical spread, the presence of related but different professional groups, different levels of knowledge of regulatory frameworks and obligations, and cultural differences – can present a considerable challenge for effective compliance.²⁶⁶ Another point is that regulation and compliance should be seen not as a short-term goal involving isolated individuals, but as a long-term strategy involving an entire diversified organisation. Even procedural factors can have an impact. A higher level of procedural justice – the individual’s perception of the fairness of the procedures in decision-making and of the treatment by the decision-maker – can enhance compliance when people are sceptical about the legitimacy of the law. However, it will have less impact when the law is well received.²⁶⁷ Bloor et al. observe the additional challenges created when a workforce is characterised by employees who may not have high levels of skills required to observe the regulatory mandate, especially when co-existing with an industry’s urgent need for more employees.²⁶⁸ In some contexts, soft regulation alone will not be sufficient to create compliance. Koutalakis et al. note that soft policy can only be effective if, at a minimum, the context is characterised by very strong cognitive, material and political capacities of both the state regulators and industrial actors.²⁶⁹

Baldwin and Black’s theory of ‘really responsive regulation’ emphasises the multiple factors influencing compliance: (a) behaviour, attitudes and cultures of the actors; (b) the institutional setting; (c) the different approaches of the regulatory strategies; (d) the success over time of the overall regime; and (e) fluctuation in these elements.²⁷⁰ Braithwaite and Hong argue that a useful strategy in implementing responsive regulation is to embed a ‘regulatory ambassador’ to overcome the problem of infrequent direct interaction between the regulator and those who are regulated.²⁷¹ Such persons may in effect be a vehicle for a ‘strategy of indirect reciprocity’, offering more frequent ‘surges’ of interaction, which can better inculcate the regulated sector with the required information, motivation and attitudinal characteristics to discharge their desired role.

May’s study of compliance in the building industry found that a normative sense of duty was a more influential factor in compliance than fear of punishment.²⁷² May concluded that affirmative motivations to comply differ from negative motivations in important senses. Affirmative motivations flow from an individual’s genuine positive intentions and a civic sense of duty to comply (a social contract model, with the implication that this is a superior approach, and this type of motivation is influenced by an individual’s attitudes, beliefs, knowledge of the rules and shared expectations of conduct among peers. In contrast,

²⁶⁴ Haines, F. (2011). ‘Facing the compliance challenge: Hercules, Houdini or the Charge of the Light Brigade?’ In Nielsen, V. & Parker, C. (2011). *Explaining Compliance*. Edward Elgar Publishing: Cheltenham, pp 287–303.

²⁶⁵ Hutter, B. (2011). ‘Negotiating social, economic and political environments: compliance with regulation within and beyond the state.’ In Nielsen, V. & Parker, C. (2011). *Explaining Compliance*. Edward Elgar Publishing: Cheltenham, pp 305–321.

²⁶⁶ Hutter, B. (2011). Negotiating social, economic and political environments: compliance with regulation within and beyond the state. In Nielsen, V. & Parker, C. (2011). *Explaining Compliance*. Cheltenham: Edward Elgar, pp 305, 314.

²⁶⁷ Murphy, K., et al. (2009). ‘Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?’ *Regulation & Governance*, vol 3, pp 1–26.

²⁶⁸ Bloor, M., et al. (2014). ‘Global governance of training standards in an outsourced labor force: The training double bind in seafarer license and certification assessments.’ *Regulation & Governance*, vol 8(4), pp 455–471.

²⁶⁹ Koutalakis, C., et al. (2010). ‘When soft regulation is not enough: The integrated pollution prevention and control directive of the European Union.’ *Regulation & Governance*, vol 4, pp 329–344.

²⁷⁰ Baldwin, R. & Black, J. (2010). ‘Really responsive regulation.’ *Modern Law Review*, vol 71, pp 59–94.

²⁷¹ Braithwaite, J. & Hong, S. (2015). ‘The iteration deficit in responsive regulation: Are regulatory ambassadors an answer?’ *Regulation & Governance*, vol 9(1), pp 16–29.

²⁷² May, P. (2004). ‘Compliance motivations: affirmative and negative bases.’ *Law and Society Review*, vol 38(1), pp 41–68.

negative motivations are simply a product of fear of adverse consequences for noncompliance. Similar findings are present in other studies.²⁷³ This then raises the complex question of what produces this sense of normative duty? While this may vary depending on the subject matter, regulated sector and overall regulatory context, Nielsen and Parker found in a study of business firms that responsive regulation embedding restorative justice principles had an impact on producing positive effects on attitudes (but not behaviour), while an approach involving ‘tit for tat’ responsive regulation was associated with increased behavioural compliance but not attitudinal development.²⁷⁴

In a study of hybrid regulatory approaches (involving both ‘hard law’ and ‘soft law’) as a means of implementing Baldwin and Black’s theory of ‘really responsive regulation’, Dorbeck-Jung et al. theorised that optimal regulatory performance requires:

- (1) regulatees’ ability and willingness to obey the rules
- (2) sufficient overlap between private and public interests, in self-regulation
- (3) a small number of actors in an organised and homogenous sector
- (4) a high level of social responsibility in the regulated sector
- (5) a high level of oversight of employees
- (6) a high level of enforcement or pressure to respond to noncompliance
- (7) standards covering all essential matters
- (8) consistent regulatory strategies
- (9) a high level of oversight of system performance
- (10) corrective responses to counterproductive system performance.²⁷⁵

In a similar manner, albeit in a context of regulation of state actors in an international domain, Karlsson-Vinkhuyzen et al. propose a theoretical framework aimed at enhancing the legitimacy of regulatory norms, and hence their implementation. They suggest that there are three components of legitimacy, each with subcomponents. These are:

- source-based (input legitimacy) – expertise, tradition and discourse
- procedural (input legitimacy) – governmental participation, non-governmental participation, accountability and transparency
- substantial (output legitimacy) – effectiveness and equity.²⁷⁶

Compliance and smart regulation

The concept of ‘smart regulation’ refers to a system of self-regulation and co-regulation designed by distinct professional industries to overcome the inherent limits of pure external accountability to the public, or to external oversight bodies.²⁷⁷ This mode of regulation aims to overcome the limits of command and control regulation, and offers the benefits of maintaining an individual’s sense of intrinsic motivation to behave responsibly. This generates superior performance metrics for a complex context in contrast to what

²⁷³ Kagan, R., Gunningham, N. & Thornton, D. (2011). ‘Fear, Duty, and Regulatory Compliance: Lessons from Three Research Projects.’ In Nielsen, V. & Parker, C. (2011) *Explaining Compliance*. Edward Elgar Publishing: Cheltenham, pp 37–58.

²⁷⁴ Nielsen, V & Parker, C. (2009). ‘Testing responsive regulation in regulatory enforcement.’ *Regulation & Governance*, vol 3, pp 376–399.

²⁷⁵ Dorbeck-Jung, B., et al. (2010). ‘Contested hybridization of regulation: Failure of the Dutch regulatory system to protect minors from harmful media.’ *Regulation & Governance*, vol 4, pp 154, 159.

²⁷⁶ Karlsson-Vinkhuyzen, S. & Vihma, A. (2009). ‘Comparing the legitimacy and effectiveness of global hard and soft law: An analytical framework.’ *Regulation & Governance*, vol 3, pp 400, 410.

²⁷⁷ Gunningham, N. (2010). ‘Enforcement and Compliance Strategies.’ In Baldwin, R., Cave, M. & Lodge, M. (Eds). (2010). *The Oxford Handbook of Regulation*, pp 120, 131–135.

could be designed by bureaucrats, promoting individual and organisational adaptive learning through a dynamic and organic system of professional growth.

Cummings asserted that, in the context of the benefit corporations established to promote the public interest, a legislative regulatory approach based only on a transparency-based accountability model was insufficient.²⁷⁸ Transparency-based accountability aims to enhance the methods of securing accountability from for-profit and not-for-profit organisations in endeavours as diverse as social, corporate and environmental performance. It includes measures such as (a) external or third-party auditing; (b) transparency via annual reporting; (c) the presence of performance-based sanctions; and (d) objective, standardised performance metrics. The approach is animated by an assumption that the most efficient enforcement tool for private codes of conduct is a reputational threat that can be created by publicly announced evaluations of performance. Cummings argues that this transparency model is insufficient because:

- exclusive accountability to third parties undermines a more genuine sense of accountability to one's own self, one's colleagues, and the individuals one is employed to serve
- this focus on 'upward accountability' can lead to perverse outcomes, such as the under-reporting of adverse incidents, rather than ensuring internal practices were optimal.²⁷⁹

Instead, Cummings argues that the transparency model should be augmented by an accountability framework that 'emphasizes organisational learning and adaptability and that complements external accountability to oversight bodies with internal accountability and accountability to professional peers and stakeholders'. An 'adaptive learning framework' offers more sustained beneficial outcomes, and includes focuses on:

- internal accountability (accountability to one's own sense of responsibility)
- professional accountability (accountability to one's profession)
- downward accountability (accountability to stakeholders).²⁸⁰

Others have noted that, especially for specific contexts that may not be conducive to voluntary regulation, a strong enforcement regime must be a component of the regulatory model. There are strong views that in some fields, voluntary compliance simply will not be effective and that there must be compulsory regulatory requirements.²⁸¹ Environmental regulation is one of these fields. De Marco & Vigod noted a correlation between decreased regulation and increased water pollution over a five-year period, followed by a correlation between increased regulation and decreased water pollution over a subsequent four-year period.²⁸² Simpson et al. analysed the effectiveness of different regulatory strategies in responding to crime control in corporate environmental contexts. They concluded that the most effective approaches were credible legal sanctions, and the certainty and severity of informal corporate sanctions (perceived likelihood and cost of losing one's job, damaging one's career prospects and losing the esteem of peers).²⁸³

²⁷⁸ Cummings, B. (2012). 'Benefit Corporations: How to enforce a mandate to promote the public interest.' *Columbia Law Review*, vol 112(3), pp 578–627.

²⁷⁹ Cummings, B. (2012). Benefit Corporations: How to enforce a mandate to promote the public interest. *Columbia Law Review*, pp 578, 580, 610–611.

²⁸⁰ Cummings, B. (2012). Benefit Corporations: How to enforce a mandate to promote the public interest. *Columbia Law Review*, 112(3), pp 578, 613–619.

²⁸¹ DeMarco, J. & Vigod, T. (2007). 'Smarter Regulation: The case for enforcement and transparency.' *Journal of Environmental Law and Practice*, vol 17(2), pp 85–113.

²⁸² DeMarco, J & Vigod, T. (2007). 'Smarter Regulation: The case for enforcement and transparency.' *Journal of Environmental Law and Practice*, 17(2), 85-113.

²⁸³ Simpson, S., et al. (2013). 'An empirical assessment of corporate environmental crime-control strategies.' *Journal of Criminal Law and Criminology*, pp 103, 231.

Both informal sanctions and traditional command and control approaches reduced the probability of corporate crime. In contrast, the likelihood of offending was elevated in the absence of credible legal sanctions and 'when one's own duty to behave ethically is not reinforced by colleagues or through fear of informal sanctions'.²⁸⁴ In addition, individuals were less likely to breach the law if the act was perceived as dangerous to humans and the environment, and if it was perceived as undesirable.

Australian Government guidelines on regulation

Finally, the current national approach to regulatory guidelines should be noted, as this has implications for potential responses. The Australian Government publishes guidelines on preferred regulatory approaches and methods of attaining regulatory quality. Its current guide, *The Australian Government Guide to Regulation*, emphasises sound regulation allied with a strong focus on reducing regulatory burdens.²⁸⁵ The overall focus on regulatory quality is in principle consistent with the former guidance in its *Best Practice Regulation Handbook*, where the government emphasised that in all situations, fundamental regulatory objectives include administrative simplicity, flexibility, efficiency, equity and appropriate consultation with stakeholders.²⁸⁶ The Australian Government's Office of Best Practice Regulation aims to assist departments and agencies in achieving best practice in regulation.²⁸⁷

Summary

In general, different models of regulation have advantages and disadvantages. Some regulatory models are clearly more appropriate than others for contexts displaying specific features. As applied to the regulatory systems covered in this project, current regulatory approaches to protecting children from sexual abuse in institutional contexts combine:

- hard law or direct government regulation (traditional command and control regulation), exemplified by criminal history screening processes for employees
- co-regulation (industry responsibility for an activity, backed by soft legislative support), exemplified by instances where organisations are required by legislation to have a policy on reporting child sexual abuse, or to train employees about child sexual abuse, but the industry itself creates the policy or designs and delivers the training
- self-regulation (absence of government involvement), exemplified by disparate approaches to educational requirements and activities across and within sectors.

Regulatory theory, supported by studies, suggests that a stronger, more centralised form of direct regulation and program delivery is required when a regulated context is characterised by features such as those which exist in the context of institutional child sexual abuse, namely:

- (1) the presence of high risk
- (2) the involvement of a major public health issue

²⁸⁴ Simpson, S, et al. (2013). 'An empirical assessment of corporate environmental crime-control strategies'. *Journal of Criminal Law and Criminology*, pp 103, 231, 267.

²⁸⁵ Australian Government. (2014). *The Australian Government Guide to Regulation*. Department of the Prime Minister and Cabinet. Retrieved 5 February 2016 from <http://cuttingredtape.gov.au/handbook/australian-government-guide-regulation>. See also Council of Australian Governments. (2007). *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*. Retrieved 5 February 2016 from https://www.coag.gov.au/sites/default/files/coag_documents/coag_best_practice_guide_2007.pdf.

²⁸⁶ Council of Australian Governments. (2007). *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*. Retrieved 5 February 2016 from https://www.coag.gov.au/sites/default/files/coag_documents/coag_best_practice_guide_2007.pdf, p 96.

²⁸⁷ The Office of Best Practice Regulation website can be accessed at <http://ris.dpmc.gov.au/>. This site includes regulatory impact statements and consultation mechanisms.

- (3) the involvement of multiple industries (for example, schools, early childhood education and care settings, medical institutions)
- (4) further fragmentation within those industries (different school types and sectors; different early childhood education and care settings; and different medical professions and settings)
- (5) wide geographical spread of these industries
- (6) highly specialised subject matter and skills required (for example, in professional educational efforts)
- (7) the desirability of policy having universal application
- (8) the desirability of certainty
- (9) economic pressures confronting the regulated industries
- (10) conflicting organisational interests and cultural values, which may not align with the ideal form and content of regulation
- (11) insufficient industry capacity and/or commitment to respond to the problem
- (12) the risk of noncompliance or active subversion.

However, while stronger than a conventional co-regulatory approach, such direct regulation will still require substantial cooperation between the relevant authorities and individuals. This cooperation will be required to not only heighten the likelihood of organisational and individual compliance, but to foster long-term cultural change, organisational adaptation and growth, and to achieve regulatory goals. Genuine compliance that is sustained over time, itself creating an improved culture and a self-perpetuating cycle of desired behaviour and attitudes, is contingent upon:

- receiving cooperative and coordinated support from major government and non-government actors for major regulatory initiatives
- building genuine organisational and individual commitment to the policy measures and practices through attitudinal factors that underpin an internalised normative duty
- having a small number of actors in an organised and homogenous environment
- having simple, streamlined procedural structures
- having a robust enforcement regime.

PART 5: OCCUPATIONAL HEALTH AND SAFETY

Part 5.1 – The nature of occupational health and safety schemes in Australia

5.1.1 Introduction

The overall research question explored in Part 5 is:

How could components, structures and mechanisms for implementation from occupational health and safety regulatory models in Australia inform a regulatory approach to protecting children from sexual abuse in institutional contexts?

Australian occupational health and safety (OHS) schemes, also known as work health and safety schemes, are extensive regulatory frameworks that aim to promote the health and safety of workers and others in workplaces. It is significant that there is now a uniform National Law, which harmonises the state and territory legislative frameworks, although two jurisdictions are yet to adopt this approach.²⁸⁸ The main objects provision of the National Law states that: ‘The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces’.²⁸⁹ A ‘worker’ is defined to include volunteers.²⁹⁰ In addition, a key policy goal in section 3(1)(a) is to protect not only *workers*, but *other persons*, from being harmed by eliminating or minimising risks arising from work. Under section 17, the central duty imposed on those conducting a business or undertaking is to eliminate and minimise risks to health and safety. Significantly, violence is one of the risks covered by the law.

This section of the report will first synthesise the key elements of the OHS framework, with reference to the legislative principles (Part 5.1.2). Where legislative provisions are cited, references are to the New South Wales legislation, comprising the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW). The New South Wales scheme is substantively duplicated in other jurisdictions, although Victoria and Western Australia have not yet adopted the National Law.²⁹¹ Secondary sources are cited when necessary to interpret the nature, scope or operation of the principles.²⁹²

²⁸⁸ *Work Health and Safety Act 2011* (Cth).

²⁸⁹ *Work Health and Safety Act 2011* (Cth) s 3(1).

²⁹⁰ *Work Health and Safety Act 2011* (Cth) s 7(1)(h).

²⁹¹ *Work Health and Safety Act 2011* (ACT), *Work Health and Safety Regulation 2011* (ACT); *Work Health and Safety (National Uniform Legislation) Act* (NT); *Work Health and Safety Act 2011* (Qld), *Work Health and Safety Regulation 2011* (Qld), *Work Health and Safety (Codes of Practice) Notice 2011* (Qld); *Work Health and Safety Act 2012* (SA), *Work Health and Safety Regulations 2012* (SA); *Work Health and Safety Act 2012* (Tas), *Work Health and Safety Regulations 2012* (Tas). See also the *Work Health and Safety Act 2011* (Cth), *Work Health and Safety Regulations 2011* (Cth) and the *Safe Work Australia Act 2008* (Cth). In Victoria, see the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2007* (Vic); and in Western Australia, see the *Occupational Safety and Health Act 1984* (WA) and *Occupational Safety and Health Regulations 1996* (WA).

²⁹² Key secondary sources include Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney; Johnstone, R. & Tooma, M. (2012). *Work Health And Safety Regulation in Australia*. Federation Press: Sydney; Johnstone, R., Bluff, E. & Clayton, A. (2012). *Work Health And Safety Law And Policy* (3rd ed). Thomson

Part 5.1.3 synthesises how OHS schemes apply to different types of organisations and different levels of risk. Part 5.2 focuses on how OHS schemes emphasise and ensure compliance with obligations. Part 5.3 covers how OHS schemes emphasise and ensure continuous improvement to workplace health and safety. In Part 5.4, the project explores evidence of the efficacy, strengths and weaknesses of OHS schemes in ensuring workplace health and safety. Part 5.5 draws conclusions about how components, structures and mechanisms from OHS models could inform a regulatory approach to protecting children from sexual abuse in institutional contexts.

5.1.2 Key principles

Objects of OHS scheme

Occupational health and safety schemes provide legislative frameworks for the regulation of occupational environments. As set out in the objects provision of the National Law, the overarching aim of these schemes is to protect workers and others ‘against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work’.²⁹³ Other objects are associated with this and section 3(2) contains the practicability dimension. The provision states:

3 Object

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:
 - (a) protecting workers **and other persons** against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, and
 - (b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety, and
 - (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment, and
 - (d) promoting the provision of advice, information, education and training in relation to work health and safety, and
 - (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures, and
 - (f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act, and
 - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety, and

Reuters: Sydney; Marks, F., Dinnen, D. & Fieldus, L. (2013). *The New Work Health And Safety Legislation: A Practical Guide*. Federation Press: Sydney. See also Gunningham, N. & Sinclair, D. (2014). ‘Regulation by stealth: Codes of practice under harmonised Work Health and Safety legislation.’ *Australian Journal of Labour Law*, vol 27, pp 163–187; Windholz, E. (2013). ‘The harmonisation of Australia’s occupational health and safety laws: Much ado about nothing?’ *Australian Journal of Labour Law*, vol 26, pp 185–213; Bluff, E. & Gunningham, N. (2012). ‘Harmonising work health and safety regulatory regimes.’ *Australian Journal of Labour Law*, vol 25, pp 85–106; Bluff, E., Johnstone, R., McNamara, M. & Quinlan, M. (2012). ‘Enforcing Upstream: Australian Health and Safety Inspectors and Upstream Duty Holders.’ *Australian Journal of Labour Law*, vol 25, pp 23–42; Reeve, B. & McCallum, R. (2011). ‘The Scope of Employers’ Responsibilities under Australian Occupational Health and Safety Legislation.’ *Australian Journal of Labour Law*, vol 24, pp 189–213; Dyck, D. (2007). *Occupational Health & Safety: Theory, Strategy & Industry Practice*. LexisNexis Canada: Ontario.

²⁹³ *Work Health and Safety Act 2011* (Cth) s 3(1).

- (h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.
- (2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of substances or plant as is reasonably practicable.

Person conducting a business or undertaking

A 'person conducting a business or undertaking' (PCBU) is defined broadly to include all types of contemporary working arrangements.²⁹⁴ A 'person' is an organisation or an individual. Under section 5(1)(a), a PCBU includes conduct of a business or undertaking whether the person conducts it alone or with others, and whether or not it is conducted for profit or gain. It includes a business or undertaking conducted by a partnership or an unincorporated association.²⁹⁵

The concepts of 'business' and 'undertaking' are not defined, but are broad concepts. Businesses are enterprises normally conducted to make a profit, and possess a degree of organisation, systems and continuity. Undertakings may have these elements but usually are not directed towards making a profit.²⁹⁶ A purely volunteer-based organisation is likely not a PCBU.

Duty to ensure health and safety

The general duty to ensure health and safety is set out in section 17 as requiring the person:

- (a) to eliminate risks to health and safety, so far as is reasonably practicable, and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.²⁹⁷

Primary duty of care

The primary duty of care of a PCBU is set out in section 19 as requiring the PCBU to ensure, as far as is reasonably practicable, the health and safety of: (a) workers engaged, or caused to be engaged by the person; and (b) workers whose activities are influenced or directed by the person, while at work in the business or undertaking. Section 19(2) requires a PCBU to 'ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking'. Section 19(3) then enumerates the core applications of this duty:

- (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:
 - (a) the provision and maintenance of a work environment without risks to health and safety, and
 - (b) the provision and maintenance of safe plant and structures, and
 - (c) the provision and maintenance of safe systems of work, and
 - (d) the safe use, handling, and storage of plant, structures and substances, and

²⁹⁴ *Work Health and Safety Act 2011* (Cth) s 5.

²⁹⁵ *Work Health and Safety Act 2011* (Cth) s 5(2).

²⁹⁶ Safe Work Australia. (2011). 'Interpretive Guideline – Model Work Health and Safety Act: The meaning of "person conducting a business or undertaking".' Retrieved 2 February 2016, from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/interpretive%20guideline-pcbu>.

²⁹⁷ *Work Health and Safety Act 2011* (Cth) s 17.

- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities, and
- (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking, and
- (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

‘Reasonably practicable’

The concept of ‘reasonably practicable’, in relation to the duty to ensure health and safety, is defined as meaning:

that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring, and
- (b) the degree of harm that might result from the hazard or the risk, and
- (c) what the person concerned knows, or ought reasonably to know, about:
 - i. the hazard or the risk, and
 - ii. ways of eliminating or minimising the risk, and
- (d) the availability and suitability of ways to eliminate or minimise the risk, and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.²⁹⁸

Workers’ duties

Under section 28, workers must comply with any reasonable instruction given by the PCBU to allow compliance with the Act, and cooperate with any reasonable policy of the PCBU. Workers must also take reasonable care that their acts and omissions do not adversely affect the health and safety of other persons.²⁹⁹

The duties of others

Under section 29(c), other persons must comply with any reasonable instruction given by the PCBU to allow compliance with the Act. Under section 29(b), other persons must also take reasonable care that their acts and omissions do not adversely affect the health and safety of other persons.

The duty of officers

Under section 27, where the PCBU has a duty or obligation under the Act, an ‘officer’ of the PCBU ‘must exercise due diligence to ensure that’ the PCBU complies with that duty or obligation. ‘Officer’ is defined under section 4 to include company directors, officers of the Crown under section 247, and officers of a public authority under section 252. This is a positive and ongoing obligation that applies

²⁹⁸ *Work Health and Safety Act 2011* (Cth) s 18.

²⁹⁹ *Work Health and Safety Act 2011* (Cth) s 28(b).

to each officer.³⁰⁰ The test is whether the officer has exercised due diligence; it is not whether the PCBU has complied with its obligations.³⁰¹

Under section 27(5)³⁰², this duty of due diligence requires the officer:

- (a) to acquire and keep up-to-date knowledge of work health and safety matters;
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations;
- (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking;
- (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information;
- (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c)–(e).

Offences and penalties are set out in Division 5.³⁰³

Do occupational health and safety laws already apply to child sexual abuse in institutional contexts?

Based on conventional approaches to statutory interpretation³⁰⁴, the genesis and purpose of the OHS laws, and the nature of the key legislative provisions imposing duties, this analysis concludes that the more persuasive view is that the OHS schemes do not create a general duty on PCBUs to protect children from sexual abuse occurring in the workplace. The key reasons for this are:

- The primary function of the OHS laws is to secure the health and safety of workers and workplaces (sections 3(1)(a) and 19(1)).
- This duty has as its object the protection of ‘workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant’ (section 3(1)(a)), rather than harm from any source whatsoever.

³⁰⁰ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney.

³⁰¹ Johnstone, R. & Tooma, M. (2012). *Work Health And Safety Regulation in Australia*. Federation Press: Sydney.

³⁰² *Work Health and Safety Act 2011* (Cth).

³⁰³ *Work Health and Safety Act 2011* (Cth) ss 30–34.

³⁰⁴ The starting point in statutory interpretation is to determine and give effect to the intention of Parliament as indicated by the language in the statute, and to use accepted rules of statutory interpretation, both legislative and common law, to do so (*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355). Applying rules of construction involves identifying the statutory purpose, which can appear from express statements in the statute, by inference from its terms, and by reference to extrinsic materials (*Lacey v Attorney-General* (Qld) (2011) 242 CLR 573). Interpretation Acts in every state require that an interpretation gives effect to the statute’s purpose (for example, *Interpretation of Legislation Act 1984* (Vic) s 35(a); *Mills v Meeking* (1990) 169 CLR 214). Other general common law rules include that the Act must be read as a whole (that is, the words of a statute must be read in their context and not in isolation: *K & S Lake City Freighters Pty Ltd v Gordon and Gotch Ltd* (1985) 60 ALR 509, with ‘context’ including the mischief the statute was intended to remedy: *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 141 ALR 618 – this embodies the syntactical presumption of *noscitur a sociis* (the meaning of a word or phrase is to be derived from its context).

- The duty in section 19(1) to ensure, as far as reasonably practicable, the health and safety of workers while at work extends to physical violence against workers, including sexual harassment; however, the duty in section 19(2) to protect others is not expressed in similarly broad terms.
- While the law does contain a secondary function of protecting others in the workplace (sections 3(1(a)) and 19(2)), this aspect of the primary duty of care is not connected to risks from any source whatsoever, but to risks arising ‘from work carried out as part of the conduct of the business or undertaking’ (section 19(2)).
- While the term ‘work’ is not defined, other parts and provisions of the legislation indicate that the kinds of risks contemplated as being the focus of the duties are those arising from the work environment; plant, structures and substances; and systems of work. In addition, applying conventional principles of statutory interpretation would likely lead to an interpretation that the concept of ‘work carried out as part of the conduct of the business or undertaking’ does not extend so broadly as to encompass the infliction of child sexual abuse.

If this conclusion is correct, then a related question arises of whether the OHS laws could be amended to apply to child sexual abuse in institutional contexts. This is a complex question, but it would appear that, at a minimum, such an extension would require substantial legislative change, and consensus from multiple stakeholders at national, state and territory government levels and across major industrial sectors. Generating such broad consensus could be more difficult than other methods of creating a new, specialised framework to regulate institutions for the purpose of protecting children from sexual abuse.

5.1.3 How OHS schemes apply to different types of organisations and to different levels of risk

Different types of organisations

In general, the OHS legislation and subordinate legislation applies to all relevant organisations that constitute a PCBU, and the fundamental principles in the Act apply to all levels of risk. The Regulations provide detailed information on implementing principles established in the Act.³⁰⁵ Chapter 3 of the Regulations sets out the core principles for all PCBUs to manage risks to health and safety (general risk and workplace management). The key duties that are most relevant to this project are to:

- identify reasonably foreseeable hazards that could give rise to risks to health and safety³⁰⁶
- eliminate risks to health and safety, as is reasonably practicable, and, if it is not reasonably practicable to eliminate risks, to minimise them as is reasonably practicable³⁰⁷
- implement risk control measures for risks that cannot be eliminated³⁰⁸
- provide, in a way that is readily understandable, information, training and instruction to workers about their work, risks associated with the work, and control measures implemented³⁰⁹
- provide facilities with adequate spaces where work can be conducted without risk to health and safety.³¹⁰

³⁰⁵ Work Health and Safety Regulations 2011 (Cth).

³⁰⁶ Work Health and Safety Regulations 2011 (Cth) reg 34.

³⁰⁷ Work Health and Safety Regulations 2011 (Cth) reg 35.

³⁰⁸ Work Health and Safety Regulations 2011 (Cth) reg 36.

³⁰⁹ Work Health and Safety Regulations 2011 (Cth) reg 39.

Different levels of risk

Specific parts of the Regulations extend to designated organisations and levels of risk, to accommodate particular activities and contexts. Examples include Chapter 6 (construction work); Chapter 7 (hazardous chemicals); Chapter 8 (asbestos) and Chapter 9 (major hazard facilities). Some parts focus on specific activities or substances that pose particularly high risk. 'High-risk work' is defined as any of a list of types of work in Schedule 3, which are within the scope of a high-risk work licence. Other concepts are defined, such as 'hazardous area', 'hazardous chemical', 'hazardous manual task' and 'major hazard facilities', to draw the parameters of selected activities that attract particular regulatory controls.³¹¹

Hazardous work

Chapter 4 of the Regulations sets out principles for hazardous work. The chapter deals with subsets of hazardous activity, such as noise³¹², hazardous manual tasks³¹³, confined spaces³¹⁴, falls³¹⁵ and high-risk work.³¹⁶ Each of these subsets of hazardous activity is subject to multiple provisions under the Regulations, to promote the objects of the legislation. For example:

- In dealing with noise, Part 4.1:
 - requires a PCBU to ensure a worker is not exposed to noise exceeding the defined standard
 - requires a PCBU to ensure workers received regular hearing tests
 - makes it an offence to breach these requirements³¹⁷
- In dealing with hazardous manual tasks, Part 4.2 requires a PCBU to manage risks of musculoskeletal injuries, and in doing so, to consider
 - the postures and movements required
 - the duration and frequency of the task
 - workplace environmental conditions that may affect the task or the worker performing the task
 - the design of the work area
 - the layout of the workplace
 - the systems of work used
 - the nature of the persons performing the task³¹⁸
- High risk work – Part 4.5 deals with high-risk work and is particularly relevant. It contains several strategies for regulating these types of work to fulfil the objects of the legislative scheme. Key aspects are:
 - a requirement to be licensed to carry out high-risk work³¹⁹

³¹⁰ Work Health and Safety Regulations 2011 (Cth) reg 40.

³¹¹ Work Health and Safety Regulations 2011 (Cth) reg 5.

³¹² Work Health and Safety Regulations 2011 (Cth) regs 56–59.

³¹³ Work Health and Safety Regulations 2011 (Cth) regs 60–61.

³¹⁴ Work Health and Safety Regulations 2011 (Cth) regs 62–77.

³¹⁵ Work Health and Safety Regulations 2011 (Cth) regs 78–80.

³¹⁶ Work Health and Safety Regulations 2011 (Cth) regs 81–112.

³¹⁷ Work Health and Safety Regulations 2011 (Cth) regs 57–58.

³¹⁸ Work Health and Safety Regulations 2011 (Cth) reg 60.

³¹⁹ Work Health and Safety Regulations 2011 (Cth) regs 81–85.

- a detailed process for applying for a licence, the granting of a licence, its amendment, renewal, suspension and cancellation³²⁰
- the requirement that assessors of licence applications are accredited assessors³²¹
- schedules that complement these provisions, providing further detail about their operation.³²²

Major hazard facilities

Chapter 9 of the Regulations sets out principles for major hazard facilities, which are defined as facilities at which Schedule 15 chemicals are present or likely to be present at a specified level.³²³ The Regulations provide that:

- a facility must be licensed under Part 9.7³²⁴
- the operator of a facility must be licensed³²⁵
- under Part 9.4, ‘Licensed major hazard facilities – risk management’, the operator of a facility must:
 - identify all major incidents that could occur³²⁶
 - conduct a safety assessment³²⁷
 - implement risk control measures that eliminate so far as is reasonably practicable the risk of a major incident occurring³²⁸
 - keep an emergency plan³²⁹
 - implement a safety management system³³⁰
 - ensure visitors to the facility are informed about hazards and instructed in safety precautions and emergency actions³³¹
 - provide the regulator with a safety case for the facility, in accordance with regulation 561, within two years of being determined to be a major hazard facility.³³² The safety case must show that the facility’s safety management system will control risks arising from major incidents, and has adequate measures to control the potential occurrence of major incidents.³³³ Under regulations 561(2)-(5) it must contain:
 - a summary of the identification conducted under regulation 554
 - a summary of the safety assessment conducted under regulation 555
 - a summary of the emergency plan
 - a summary of the safety management system
 - a description of arrangements about security
 - a description of consultation with workers in preparing the safety case

³²⁰ Work Health and Safety Regulations 2011 (Cth) regs 81–112.

³²¹ Work Health and Safety Regulations 2011 (Cth) pt 4.5.

³²² Work Health and Safety Regulations 2011 (Cth) Schedule 3 sets out high–risk work licences and classes of high-risk work (for example, a high–risk work licence is needed to operate a tower crane). Schedule 4 sets out the types of high-risk work that require a licence, the type of licence required, competency requirements, and the VET course that qualifies the individual to be licensed.

³²³ Work Health and Safety Regulations 2011 (Cth) reg 5.

³²⁴ Work Health and Safety Regulations 2011 (Cth) reg 535(1).

³²⁵ Work Health and Safety Regulations 2011 (Cth) reg 535.

³²⁶ Work Health and Safety Regulations 2011 (Cth) reg 564.

³²⁷ Work Health and Safety Regulations 2011 (Cth) regs 555, 565.

³²⁸ Work Health and Safety Regulations 2011 (Cth) reg 566.

³²⁹ Work Health and Safety Regulations 2011 (Cth) reg 567.

³³⁰ Work Health and Safety Regulations 2011 (Cth) regs 558, 568.

³³¹ Work Health and Safety Regulations 2011 (Cth) reg 571.

³³² Work Health and Safety Regulations 2011 (Cth) regs 560-561.

³³³ Work Health and Safety Regulations 2011 (Cth) reg 561(4).

- a signed statement that:
 - the information is accurate and up to date
 - the operator has a detailed understanding of all aspects of risks to health and safety associated with potential major incidents
 - the control measures will eliminate the risk of a major incident as far as is reasonably practicable, will otherwise minimise the risk as far as is reasonably practicable, and if a major event occurs will minimise its magnitude and severity as far as is reasonably practicable
 - all persons involved in implementing the safety management system have the knowledge and skills to enable them to perform their role.

Part 5.2 – How occupational health and safety schemes emphasise and ensure compliance with obligations

5.2.1 Methods of emphasising occupational health and safety obligations

The legislative framework embeds OHS obligations by:

- setting conditions that must be met to authorise a PCBU; it authorises individuals to conduct the relevant work through licences, permits, registration or other qualification.³³⁴ For example, as shown in Part 5.1.3, only licensed persons can carry out high-risk work and conduct work at major hazard facilities
- requiring that the PCBU comply with conditions for licence renewal or other authorisation
- requiring that the PCBU consult with workers and other duty holders;³³⁵ during the consultation process, workers must be given relevant information, a chance to state their views and discuss issues, and an opportunity to participate in decision-making. The PCBU must consider workers' views and establish a communication process in which workers are advised of the outcome of the consultation³³⁶
- setting out education and training processes the PCBU must adopt for workers
- ensuring the regulators (at national, and state and territory levels) provide information, resources, guidance material, fact sheets, advice, model codes of practice and national standards
- ensuring inspectors are formally appointed by the regulator
- setting out the PCBU's reporting requirements.

The regulator

A regulator is established under Part 8 of the Act. Under Schedule 2 of the New South Wales legislation, the regulator is the Secretary of the Department of Finance, Services and Innovation. In some jurisdictions, some industries, such as the mining industry, have their own regulators. However, in general, in the states and territories, the regulators for all industries are:

- WorkSafe ACT
- SafeWork NSW
- NT WorkSafe
- Workplace Health and Safety Queensland
- SafeWork SA
- WorkSafe Tasmania
- WorkSafe Victoria
- WorkSafe WA.

There is also a national agency which oversees these regulators. Under the *Safe Work Australia Act 2008* (Cth), Safe Work Australia:

- coordinates and develops national policy and strategies for compliance and enforcement
- prepares model codes of practice

³³⁴ *Work Health and Safety Act 2011* (Cth) ss 40, 43–44.

³³⁵ *Work Health and Safety Act 2011* (Cth) ss 46–47.

³³⁶ *Work Health and Safety Act 2011* (Cth) s 48.

- assists with the implementation of model work health and safety legislation
- monitors implementation of national legislation
- develops and promotes national strategies to raise awareness of OHS
- assists with necessary reform of the legislative framework
- conducts research
- collects, analyses and reports on data.³³⁷

Under the National Law, the regulator has power to do all things necessary or convenient to perform its functions³³⁸, which include:

- monitoring and enforcing compliance
- providing advice and information on work health and safety to duty holders and the community
- collecting, analysing and publishing statistics on work health and safety
- fostering a cooperative, consultative relationship between duty holders and the persons to whom they owe duties
- promoting and supporting education and training on matters relating to work health and safety
- engaging in, promoting and coordinating the sharing of information to achieve the object of this Act
- conducting and defending proceedings under this Act.³³⁹

Safe Work Australia: The national statutory agency

Safe Work Australia is an Australian Government statutory agency. It is responsible for improving work health and safety across the country. It is jointly funded by the Commonwealth, state and territory governments through an Intergovernmental Agreement endorsed in 2008. It is not itself a regulator and does not administer work health and safety laws for any Australian jurisdiction. But, its function is to develop policy dealing with compliance and enforcement of the model work health and safety laws, and to ensure a nationally consistent approach is taken by regulators nationwide.³⁴⁰

5.2.2 Methods of ensuring compliance with OHS obligations

Incident notifications. Under Part 3 of the Act, a ‘notifiable incident’ is defined to include a serious injury and a dangerous incident.³⁴¹ A PCBU must inform the regulator immediately after becoming aware of any notifiable incidents.³⁴² In practice, this is the main way in which workplaces have more formal, direct contact with OHS regulators.³⁴³

Part 9: Securing Compliance

Part 9 of the Act contains a range of provisions about securing compliance. These provisions focus on ensuring compliance with legislative obligations, but because of the nature and range of measures – and the significance of potential penalties – they are also important in providing the context that

³³⁷ *Safe Work Australia Act 2008* (Cth) s 6.

³³⁸ *Safe Work Australia Act 2008* (Cth) s 153.

³³⁹ *Safe Work Australia Act 2008* (Cth) s 152.

³⁴⁰ See Safe Work Australia. (2011). *The National Compliance and Enforcement Policy*. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/national-compliance-enforcement-policy>. This policy was endorsed by Safe Work Australia members on 29 July 2011 and by the Workplace Relations Ministers’ Council on 10 August 2011.

³⁴¹ *Work Health and Safety Act 2011* (Cth) s 35.

³⁴² *Work Health and Safety Act 2011* (Cth) s 38.

³⁴³ Johnstone, R. & Tooma, M. (2012). *Work Health And Safety Regulation in Australia*. Federation Press: Sydney, p 207.

emphasises their importance. Measures span less intrusive and more intrusive strategies, from providing advice resulting from inspections to administrative notices intended to produce desired conduct and prosecutions for breaches of duties.

Inspectors

Inspectors are appointed by the regulator and are subject to directions by the regulator.³⁴⁴ Inspectors have a range of powers and functions, as set out in Division 2. Their functions and powers include:

- (a) to provide information and advice about compliance with this Act,
- (b) to assist in the resolution of work health and safety issues at workplaces,
- (c) to review disputed provisional improvement notices,
- (d) to require compliance with this Act through the issuing of notices,
- (e) to investigate contraventions of this Act and assist in the prosecution of offences,
- (f) to attend coronial inquests in relation to work-related deaths and examine witnesses.³⁴⁵

Inspectors are authorised to enter workplaces³⁴⁶, and have a range of general powers on entry, which include to:

- (a) inspect, examine and make inquiries at the workplace,
- (b) inspect and examine anything (including a document) at the workplace,
- (c) bring to the workplace and use any equipment or materials that may be required,
- (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings),
- (e) take and remove for analysis a sample of any substance or thing without paying for it,
- (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e),
- (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.³⁴⁷

Other specific powers on entry include the ability to:

- require production of documents and to answer questions³⁴⁸
- copy documents³⁴⁹
- require the provision of names and addresses³⁵⁰
- take affidavits³⁵¹
- obtain a search warrant.³⁵²

³⁴⁴ *Work Health and Safety Act 2011* (Cth) ss 156, 162.

³⁴⁵ *Work Health and Safety Act 2011* (Cth) s 160.

³⁴⁶ *Work Health and Safety Act 2011* (Cth) s 163.

³⁴⁷ *Work Health and Safety Act 2011* (Cth) s 165.

³⁴⁸ *Work Health and Safety Act 2011* (Cth) s 171.

³⁴⁹ *Work Health and Safety Act 2011* (Cth) s 174.

³⁵⁰ *Work Health and Safety Act 2011* (Cth) s 185.

³⁵¹ *Work Health and Safety Act 2011* (Cth) s 186.

³⁵² *Work Health and Safety Act 2011* (Cth) s 167.

It is an offence to hinder or obstruct an inspector³⁵³, and it is also an offence to assault, threaten or intimidate an inspector.³⁵⁴

Enforcement

Part 10 contains provisions about enforcement measures. A range of enforcement mechanisms are included in the legislation. These are aimed at both encouraging, and ensuring, compliance. The list below focuses on the most relevant methods, including less intrusive methods and more severe penalties:

- Division 1: improvement notices enable an inspector to issue a notice compelling the PCBU to remedy the contravention of a provision of the Act, or to prevent a likely contravention, within a specified time period; this notice can also contain directions about what measures must be taken.³⁵⁵ Of the administrative notices, these are the most frequently used³⁵⁶; noncompliance is an offence.³⁵⁷
- Division 2: prohibition notices enable an inspector to issue a notice compelling the cessation of an activity at a workplace that involves or will involve a serious risk to health or safety of a person from an immediate or imminent exposure to a hazard; this notice can also contain directions about what measures must be taken; noncompliance is an offence.³⁵⁸
- Division 3: non-disturbance notices enable an inspector to issue a notice compelling a workplace manager to preserve the site at which a notifiable incident has occurred.³⁵⁹
- Division 6: injunctions enable an inspector to obtain a court order compelling compliance with an improvement notice, prohibition notice, or a non-disturbance notice; noncompliance is an offence.³⁶⁰
- Part 11: makes provision for enforceable undertakings, which are written undertakings made by a person in connection with a contravention of the Act.³⁶¹ Such undertakings can be accepted by the regulator, and they are then enforceable in court. They can be accompanied by substantial penalties for breach of the undertaking, as well as other orders such as directions to comply with the undertaking.
- Part 13: covers legal proceedings for prosecutions. Division 2 has a range of sentencing options, including monetary penalties³⁶², adverse publicity orders³⁶³, work health and safety project orders³⁶⁴, release on the giving of an undertaking³⁶⁵, injunctions³⁶⁶ and training orders.³⁶⁷

³⁵³ *Work Health and Safety Act 2011* (Cth) s 188.

³⁵⁴ *Work Health and Safety Act 2011* (Cth) s 190.

³⁵⁵ *Work Health and Safety Act 2011* (Cth) ss 191–194.

³⁵⁶ Johnstone, R. & Tooma, M. (2012). *Work Health And Safety Regulation in Australia*. Federation Press: Sydney, p 206.

³⁵⁷ *Work Health and Safety Act 2011* (Cth) s 193.

³⁵⁸ *Work Health and Safety Act 2011* (Cth) ss 195–197.

³⁵⁹ *Work Health and Safety Act 2011* (Cth) ss 198–201.

³⁶⁰ *Work Health and Safety Act 2011* (Cth) ss 214–215.

³⁶¹ *Work Health and Safety Act 2011* (Cth) ss 216–222.

³⁶² *Work Health and Safety Act 2011* (Cth) s 235.

³⁶³ *Work Health and Safety Act 2011* (Cth) s 236.

³⁶⁴ *Work Health and Safety Act 2011* (Cth) s 238.

³⁶⁵ *Work Health and Safety Act 2011* (Cth) s 239.

³⁶⁶ *Work Health and Safety Act 2011* (Cth) s 240.

³⁶⁷ *Work Health and Safety Act 2011* (Cth) s 241.

Part 5.3 – How occupational health and safety schemes emphasise and ensure continuous improvement to workplace health and safety

Assuming that the main pillars of effective regulation are designed and implemented, a challenge remains to not only maintain best practice, but to engage in continuous improvement. This section addresses how OHS schemes aim to engage in this process.

5.3.1 Methods of emphasising and ensuring continuous improvement to workplace health and safety

While only embedded in the legislative framework to a modest extent, two integral activities constitute the main methods of emphasising and ensuring continuous improvement to workplace health and safety. These are training and evaluation.³⁶⁸

Training

As will also be seen in Part 6, education and training of personnel in the regulated subject matter is essential, and is arguably the foundation for a robust approach. Dunn and Thakorlal note that the lack of sufficient training has been identified as the fundamental defect in many prosecutions.³⁶⁹ The Act is not very specific about the nature, form, content and evaluation of training. However, it clearly imposes a positive duty on all PCBUs to provide training. Section 19 provides the legislative requirement for a PCBU to ensure, so far as is reasonably practicable, that they provide the information, training and instruction required to protect all persons from risks to their safety arising from work.³⁷⁰

The Regulation provides slightly more detail, although only in the abstract, by setting a standard of 'suitability' and 'adequacy' in the context.³⁷¹ Regulation 39 provides as follows:

39 Provision of information, training and instruction

- (1) This clause applies for the purposes of section 19 of the Act to a person conducting a business or undertaking.
- (2) The person must ensure that information, training and instruction provided to a worker is suitable and adequate having regard to:
 - (a) the nature of the work carried out by the worker, and
 - (b) the nature of the risks associated with the work at the time the information, training or instruction is provided, and
 - (c) the control measures implemented.

³⁶⁸ Other aspects are also very important and central to best practice, such as documentation, and would be part of training and evaluation. However, this section focuses on methods of continuous improvement, and training and evaluation are the key dimensions. On documentation, see Chapter 19 of Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney.

³⁶⁹ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney.

Chapter 13 provides detailed coverage of strategies and frameworks for training. See also the overview of health and safety management systems, pp 31–34.

³⁷⁰ *Work Health and Safety Act 2011* (Cth) s 19.

³⁷¹ *Work Health and Safety Regulations 2011* (Cth).

Aligned with this, workers have a duty to comply with reasonable instructions given by the PCBU.³⁷² This extends to a duty to comply with reasonable instructions to participate in training.

In sum, the legislative framework establishes a positive duty for workers to receive education and training. However, the legislation itself does not set down further detailed requirements about its nature, quality, quality assurance and other processes that would be directed towards continuous improvement. Searching Safe Work Australia's website did not reveal further guidance or codes of practice devoted to the nature, content or frequency of training, optimal delivery mechanisms, or methods of continuous improvement. While codes of practice are neither formal law nor mandatory, they do constitute a central plank of the three-tiered strategy of workplace health and safety regulation in Australia in generating compliance, and guiding inspectors on what is required to meet legislative duties.³⁷³ In the absence of the material above, the secondary literature provides guidance that assists in thinking about optimal methods of training. Dyck provides detailed coverage about the importance of training, its optimal design and nature, and best-practice strategies for implementation.³⁷⁴ The key principles include:

- training must be coordinated and integrated with the general worker training programs
- workers should be educated, not simply trained
- new and young workers should receive additional training
- a training matrix should be developed and implemented to ensure all training needs are met
- training should include orientation, on-the-job training and refresher training
- detailed monitoring and measurement of the effectiveness of training is essential
- there should be a focus on continuous improvement of the quality of the training.³⁷⁵

However, the extent to which organisations observe best practice in training appears unknown.

Evaluation

Evaluation or auditing of an organisation's approach is an essential aspect of promoting continuous improvement. There is no legislative requirement in the model law for systematic evaluation or auditing. Inspections possess an evaluative element, but are not implemented with sufficient universality, timeliness or frequency to constitute a systematic method of continuous improvement. While under regulation 37, the PCBU does have an obligation to review control measures that have been implemented to ensure they remain fit for purpose³⁷⁶, the absence of any requirement to rigorously employ methods of continuous improvement in a structured way appears to be a weakness in current approaches. It has been observed that the approaches to enforcement in the model law focus too heavily on advice and persuasion³⁷⁷, and that there is 'no requirement for PCBUs to engage in a proactive and systematic process of identifying, assessing, controlling and monitoring risks and hazards'.³⁷⁸

³⁷² *Work Health and Safety Act 2011* (Cth) s 28.

³⁷³ Gunningham, N. & Sinclair, D. (2014). 'Regulation by stealth: Codes of practice under harmonised Work Health and Safety legislation.' *Australian Journal of Labour Law*, vol 27, pp 163–187.

³⁷⁴ Dyck, D. (2007). *Occupational Health & Safety: Theory, Strategy & Industry Practice*. LexisNexis Canada: Ontario, pp 345–386.

³⁷⁵ Dyck, D. (2007). *Occupational Health & Safety: Theory, Strategy & Industry Practice*. LexisNexis Canada: Ontario p 573.

³⁷⁶ *Work and Health Safety Regulations 2011* (Cth).

³⁷⁷ Johnstone, R. & Tooma, M. (2012). *Work Health And Safety Regulation in Australia*. Federation Press: Sydney, p 258.

³⁷⁸ Windholz, E. (2013). 'The harmonisation of Australia's occupational health and safety laws: Much ado about nothing?' *Australian Journal of Labour Law*, vol 26, pp 185–213. Note also that Johnstone & Tooma (2012, p 259) suggest adding an innovative sanction akin to Victoria's risk control plan. While this is not an entirely autonomous continuous improvement

Dunn and Thakorlal provide detailed guidance on how to evaluate the effectiveness of a health and safety management system (HSMS), including processes for continuous improvement.³⁷⁹ Dunn and Thakorlal refer to an Australian Standard to suggest that essential elements for an effective HSMS are:

- a broad work health and safety policy, endorsed by senior management, with a clear commitment to safety performance and continuous improvement
- planning
- implementation
- measurement and evaluation
- improvement through continuous review and updating of the system and its elements.³⁸⁰

Dunn and Thakorlal emphasise the following:

Measurement and evaluation of the effectiveness of an HSMS require valid and reliable measures of system performance. WHS outcomes and the performance of an HSMS are not easily measured due to the limitation and difficulties associated with measuring performance. It is important to test the actual level of implementation of the HSMS ... Regular inspection, audit and review programs that look at the whole HSMS and how it is applied within an organisation assist to evaluate the effectiveness of the organisation's HSMS. Evaluation of the safety program may occur through internal or external audit. Safety auditing is provided in part by some of the [formal, legislated] attributes of the HSMS, such as incident reporting and investigation. However, safety assurance and auditing programs need to proactively seek out potential hazards based on available data, as well as evaluate the organisation's safety program. One of the chief drivers of an effective HSMS [it] is that is subject to auditing to evaluate its effectiveness. An HSMS that has the outcomes of audits reviewed and actions taken to update the management systems provides assurance that the system constantly improves.³⁸¹

Further detailed guidance on the nature, scope, frequency and mechanisms of evaluation are also provided.³⁸²

strategy, it is an enforcement mechanism one level higher than an improvement notice. It aims to respond to multiple high-priority hazards that do not pose immediate risk.

³⁷⁹ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney.

³⁸⁰ Dunn, C., & Thakorlal, S. (2014). *Australian Master Work Health And Safety Guide* (2nd ed). CCH Australia: Sydney, p 32.

³⁸¹ Dunn, C., & Thakorlal, S. (2014). *Australian Master Work Health And Safety Guide* (2nd ed). CCH Australia: Sydney, p 43.

³⁸² Dunn, C., & Thakorlal, S. (2014). *Australian Master Work Health And Safety Guide* (2nd ed). CCH Australia: Sydney, pp 467–490.

Part 5.4 – Evidence about the efficacy, strengths and weaknesses of occupational health and safety schemes in ensuring workplace health and safety

As seen in Part 4.2, a range of factors are required for an organisation to achieve satisfactory compliance with the subject matter of regulations. Organisations must also have the required knowledge and skills to enable compliance, and these must be embodied in the relevant policies and processes. The commitment and skill must also be underpinned by an internalised value-based drive to enhance compliance and engage autonomously in self-assessment and continuous improvement. To enhance compliance, organisations must have the necessary commitment to compliance, embodied through intrinsic motives, complemented by effective incentives and deterrents, and with effective monitoring by the organisation and external agencies.

The history of OHS identifies problems and pitfalls to avoid, including:

- inconsistent coverage across workplaces
- fragmented administrative jurisdictions
- poor enforcement and implementation (typically through a poorly resourced inspectorate and over-reliance on persuasion and information)
- overwhelming and complex legal regulation
- unduly strict regulation, reducing autonomy and innovation
- too much dependence on external state regulation, leading to compromised development of intrinsic responsibility and genuine workplace initiative.³⁸³

The next three sections present the key strengths and weaknesses of Australian OHS schemes and discuss evidence of their efficacy.

5.4.1 Strengths

The strengths of the current approach are that it:

- is a comprehensive model of regulatory principles that are embedded in a centralised national legislative framework
- has the capacity for centralised approaches to training
- offers innovative flexible options for implementation and support.

*Comprehensive model of regulatory principles embedded in a centralised national legislative framework*³⁸⁴

Evidence that it is a comprehensive model includes:

- the multi-limbed primary duty of care, which includes the PCBU's duty to protect not only workers, but others against harm to their health, safety and welfare from hazards and risks arising from work³⁸⁵
- the broad definition of a PCBU³⁸⁶

³⁸³ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney, p 57.

³⁸⁴ With the exception of the two jurisdictions yet to adopt the model.

³⁸⁵ *Work Health and Safety Act 2011* (Cth) ss 3(1)(a), p 19.

³⁸⁶ *Work Health and Safety Act 2011* (Cth) s 5.

- the application of the duty not only to circumstances such as accidental injury, but also to intentional injury such as violence and sexual assault³⁸⁷
- the imposition of due diligence duties on officers of organisations, which include the duty to ensure the PCBU has and uses appropriate resources and processes to comply with its duty to eliminate or minimise risks³⁸⁸
- the imposition on every PCBU of a duty to provide information, training, instruction or supervision necessary to protect all persons from risks to their health and safety³⁸⁹
- in particular, the duty to train workers³⁹⁰
- the presence of workers' duties to comply with reasonable instructions
- the retention of the reasonable practicability parameter
- the specific requirements for high-risk work, such as the requirement to be licensed, and for the accreditation of assessors of licence applications³⁹¹
- the extensive powers conferred on inspectors
- a range of enforcement mechanisms.

Capacity for centralised approaches to training

The capacity to adopt nationwide approaches to training and licensing is shown by the nature of the current approach. An example of this is the centralised and quality-assured training to regulate licensing for high-risk work. Before applying for a high-risk work licence, a Registered Training Organisation (RTO) must assess the person's training, skills and knowledge.³⁹² Only accredited organisations are empowered to both conduct assessments for these licences and provide training for them. SafeWork NSW states that, 'Only Registered Training Organisations (RTOs) listed on the National Register of Vocational Education and Training (VET), and that have also entered into an agreement with us, can deliver training and conduct assessments for high risk work licences in NSW'.³⁹³

Under regulation 118, an organisation seeking to be accredited as an assessor must be qualified to conduct the competency assessment.³⁹⁴ Under regulation 118(6), this qualification is shown if: (a) the applicant's competencies, skills and knowledge meet the *Standards for NVR Registered Training Organisations 2011* published by the Commonwealth, and (b) the applicant holds a current high-risk work licence for the class of high-risk work to which the competency assessment relates.³⁹⁵

³⁸⁷ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed). CCH Australia: Sydney, pp 514–535.

³⁸⁸ *Work Health and Safety Act 2011* (Cth) s 27.

³⁸⁹ *Work Health and Safety Act 2011* (Cth) s 3(1)(f).

³⁹⁰ *Work Health and Safety Regulations 2011* (Cth) reg 39.

³⁹¹ *Work Health and Safety Regulations 2011* (Cth) pt 4.

³⁹² For general information on national registered training organisations, see Training.gov.au at <http://training.gov.au/Home/About>. This is the national register for training in Australia and contains authoritative information about Registered Training Organisations (RTOs), Nationally Recognised Training (NRT) and the approved scope of each RTO to deliver NRT as required in legislation.

³⁹³ SafeWork NSW. High Risk Work RTOs. Retrieved 2 February 2016, from <http://www.workcover.nsw.gov.au/licences-and-registrations/registered-training-organisations/high-risk-work-rtos>.

³⁹⁴ *Work Health and Safety Regulations 2011* (Cth) r 118(2)(a)(i).

³⁹⁵ Note that the federal legislative framework provides the context for registration of training organisations. The Standards for NVR Registered Training Organisations 2012 and Standards for Registered Training Organisations 2015 are key governing documents. As detailed in the Explanatory Statement to the Standards for NVR Registered Training Organisations 2012, s 185(1) of the *National Vocational Education and Training Regulator Act 2011* (Cth) empowers the Minister to make standards for NVR-registered training organisations with the agreement of the Ministerial Council. Section 185(2) states that the agreed standards are to be known as the 'Standards for NVR Registered Training Organisations'. The purpose of the Standards is to make the Standards, which must be complied with by persons seeking registration under the Act. The

Innovative flexible options of implementation and support

A range of innovative and flexible strategies can be adopted to assist the regulator in performing its duties and, therefore, in supporting the achievement of OHS objectives. For example, SafeWork NSW provides innovative options including:

- free safety and advisory visits for small business with up to 50 full-time employees
- online webinars about a range of essential workplace health and safety issues, to provide easily accessible and low-cost resources and education
- incentives, such as rebates for purchase of equipment that improves workplace safety
- guidance, advice and presentations on request
- recognition, such as through awards for making positive changes.³⁹⁶

In addition, at the nationwide level, Safe Work Australia provides a range of implementation and support measures. As stated in the *Annual Report 2014-15*, Safe Work Australia:

- published 59 new and revised model Codes of Practice and guidance materials
- delivered training, and convened meetings and committees
- hosted *The Virtual Seminar Series*, a free online event over Safety Month, in October 2014. This used a variety of delivery formats including web-based content; streaming to mobile devices and workstations; and a dedicated YouTube channel to disseminate 39 live panel discussions, videos, reports and infographics.³⁹⁷

5.4.2 Weaknesses

The following are weaknesses in the current approach:

- Most, but not all, jurisdictions have adopted the national model, indicating difficulty in obtaining nationwide consensus.
- The independent monitoring and evaluation mechanisms are weak.³⁹⁸
- It is unclear how effective different OHS methods are, both generally, and as applied to different organisations or industries.
- It is unclear whether the frequency of inspections is sufficient and their nature is effective.
- In practice, interaction with inspectors after recording a notifiable incident is the main way in which workplaces have more formal, direct interaction with OHS regulatory activity³⁹⁹, suggesting too much emphasis on reactive regulation rather than proactive regulation.
- It is unclear whether organisations are engaged in a process of continuous improvement, and where it does exist, its quality is uncertain.
- The extent and adequacy of training is not readily apparent.

objectives of the Standards are 'to ensure nationally consistent, high-quality training and assessment services for the clients of Australia's vocational education and training (VET) system'. The Standards form part of the VET Quality Framework, which is made up of the Standards for NVR-registered Training Organisations, the Australian Qualifications Framework, the Fit and Proper Person Requirements, the Financial Viability Risk Assessment Requirements and the Data Provision Requirements. The Standards are based on the Australian Quality Training Framework (AQTF) Standards used by training organisations for initial and continuing registration, and have adopted parts of the existing AQTF Standards for initial and continuing registration for training organisations.

³⁹⁶ See for example SafeWork NSW. 'How We Can Help.' Retrieved 2 February 2016 from <http://www.workcover.nsw.gov.au/health-and-safety/how-we-can-help>.

³⁹⁷ Safe Work Australia. (2015). *Annual Report 2014-15*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/annual-report-2014-15>.

³⁹⁸ Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes.' *Australian Journal of Labour Law*, vol 25, pp 85–106.

³⁹⁹ Johnstone, R. & Tooma, M. (2012). *Work Health and Safety Regulation in Australia*. Federation Press: Sydney, p 207.

- Financial incentives and coercive measures are needed for harmonisation⁴⁰⁰, but their adequacy is doubtful.
- There do not appear to be reporting requirements imposed on PCBUs about their activity in OHS
- There is no legislative requirement in the model law for systematic evaluation or auditing. Inspections have an evaluative element, but do not appear to be implemented with sufficient universality, timeliness or frequency to constitute a systematic method of continuous improvement.
- There is no requirement for PCBUs to have a systematic process of identifying, assessing, controlling and monitoring risks.
- Regulators do not monitor trends comprehensively; for example, trend data will not record all incidents, but will be limited to reported incidents, hospitalisations and the like.

5.4.3 Evidence of efficacy

There are many ways in which to measure efficacy of the current approach. One method is to analyse the nature and scope of the legislative framework, which has, in essence, been performed above in the synthesis of the law, and the identification of strengths and weaknesses. At the individual organisational level, there is ample guidance, as well as methods, for evaluating or auditing health and safety plans for all kinds of organisations – with minimal, modest or substantial resources.⁴⁰¹ But these are not robust studies of efficacy in the empirical sense.

More reliable methods for evaluating evidence of efficacy require empirical measures of key dimensions of the framework. There are numerous ways of doing this, and to explore such complex phenomena in a rigorous way would require multi-method research projects.⁴⁰² As has been observed, even these studies would face challenges, and would not necessarily be able to be generalised, because of multiple factors including:

- variance across industries
- variance across jurisdictions
- variance over time
- problems identifying causal factors
- the need for rigorous research of discrete questions, for example, accident frequency, injury frequency, violence incidence, knowledge post-training and attitudes post-training
- variance in, and incompleteness of, trend data on inspectors, inspections and outcomes of inspections.⁴⁰³

Absence of empirical research: The Safe Work Australia study

Safe Work Australia was established by the *Safe Work Australia Act 2008* (Cth). It is the national statutory agency, leading the development of national policy on work health and safety across the country. Safe Work Australia is funded by the Commonwealth, state and territory governments. Its

⁴⁰⁰ Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes.' *Australian Journal of Labour Law*, vol 25, pp 85–106.

⁴⁰¹ Dyck, D. (2007). *Occupational Health & Safety: Theory, Strategy & Industry Practice*. LexisNexis Canada: Ontario, pp 77–130; Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed), CCH Australia: Sydney, pp 43–46.

⁴⁰² See Shannon, H., Robson, L. & Guastello, S. (1999). 'Methodological criteria for evaluating occupational safety intervention research.' *Safety Science*, vol 31, pp 161–179.

⁴⁰³ See for example Johnstone, R. & Tooma, M. (2012). *Work Health and Safety Regulation in Australia*. Federation Press: Sydney, pp 204–206.

key functions are set out in section 6 of the Act, and include collaboration with the major regulators in each state and territory⁴⁰⁴ to promote cooperation 'on policy development, research and evaluation, implementation, compliance, data collection and analysis and communication activities'.⁴⁰⁵

Safe Work Australia has identified that relatively little research has been conducted to determine the effectiveness of interventions used by work health and safety regulators. In an attempt to contribute to the evidence base, in 2013, Safe Work Australia published *Effectiveness of work health and safety interventions by regulators: A literature review*.⁴⁰⁶ It was concluded that the primary limitation of the study was 'the paucity of available research on intervention effectiveness within the work health and safety domain. This is particularly the case in Australia where for most of the interventions discussed there is currently no published research available ... The other major limitation of the body of research is the shortage of evidence about the impact of circumstances on the effectiveness of regulatory interventions'.⁴⁰⁷ Safe Work Australia concluded that, 'Almost no information is currently available on the effectiveness of work health and safety interventions in Australia'.⁴⁰⁸ It also concluded that:

We do not know whether many of the strategies used on a regular basis by work health and safety regulators, such as introducing regulations, conducting inspections, imposing penalties for non-compliance and running industry campaigns are effective in achieving the desired policy outcome of reducing work related deaths, injuries and disease. To enable them to develop and use evidence-based policy work health and safety regulators need to know what works. The strategies that work health and safety regulators use can be regarded as ways of intervening in the workplace to achieve policy outcomes. Specifically these strategies provide businesses, managers and workers with resources, incentives and punishments with the aim of changing their behaviour. The outcome of interventions such as this depends on the choices that businesses, managers and workers make in response to the resources, incentives and punishments provided. Because the choices that businesses, managers and workers make are dependent on a large, complex and variable set of factors in practice interventions by regulators will usually be effective for

⁴⁰⁴ In addition to Safe Work Australia, the major organisational or regulatory bodies in each state and territory are: WorkSafe ACT: www.worksafe.act.gov.au; SafeWork NSW: <http://www.safework.nsw.gov.au/>; NT WorkSafe: www.worksafe.nt.gov.au; Workplace Health and Safety Queensland: www.worksafe.qld.gov.au; SafeWork SA: www.safework.sa.gov.au; WorkSafe Tasmania: www.worksafe.tas.gov.au; WorkSafe Victoria: www.worksafe.vic.gov.au; WorkSafe WA: www.commerce.wa.gov.au/WorkSafe.

⁴⁰⁵ Safe Work Australia. (2015). *Annual Report 2014-15*. Canberra: Safe Work Australia. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/annual-report-2014-15>, p 8.

⁴⁰⁶ Safe Work Australia. (2013). *Effectiveness of work health and safety interventions by regulators: A literature review*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/the-effectiveness-of-whs-interventions>.

⁴⁰⁷ Safe Work Australia. (2013). *Effectiveness of work health and safety interventions by regulators: A literature review*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/the-effectiveness-of-whs-interventions>, p 45.

⁴⁰⁸ Safe Work Australia. (2013). *Effectiveness of work health and safety interventions by regulators: A literature review*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/the-effectiveness-of-whs-interventions>, p 9.

some members of the target industry in some situations but not others (Pawson 2006).⁴⁰⁹

This report noted that there was some research into discrete aspects of regulation, although much of this was from other jurisdictions, was of variable quality, and produced inconsistent findings. The research included studies evaluating the impacts of incentives, guidance materials, industry campaigns, inspections and enforceable undertakings.⁴¹⁰

The Gunningham and Bluff review of codes of practice and guidelines

Gunningham and Bluff conducted a comprehensive review of studies of the efficacy of codes of practice and guidelines.⁴¹¹ Its key findings were:

- OHS instruments need to be designed as policy interventions, accompanied by a clear understanding of their rationale, how they are intended to work and who or what is intended to change. In addition, there needs to be an overall understanding informed by a contextual analysis of the characteristics of the intended target audience, the industry sector, culture and other relevant issues.
- Appropriate knowledge, skills and experience must underpin the processes regarding subject matter, legislation and the development of standards. There must also be a sound practical understanding of the sectors, workplaces and work processes that are the subject of the instruments.
- There must be sufficient engagement with those required to implement the code.
- Efficacy is compromised by sub-optimal design, development, promulgation, monitoring and enforcement.
- OHS regulators should use codes and guidance strategically to provide advice, monitoring and enforcement, including through inspectors alerting duty holders to particular issues and working with duty holders to ensure they understand the advice and solutions contained in the instruments.
- Effective dissemination is essential, requiring a more proactive approach than relying too much on websites and newsletters.
- Plain language drafting and user-friendly presentation are essential (including providing clear and concise information; 'how to' advice and solutions; simple drawings, diagrams, photos or other illustrations to support advice/solutions; checklists and tools for implementation; reference to other resources and contacts; free print copies; and avoidance of long, complex or repetitive material.⁴¹²

A search of secondary literature revealed very little additional new research of high quality and direct relevance to this context. However, additional searches identified two studies with relevant findings.

⁴⁰⁹ Safe Work Australia. (2013). *Effectiveness of work health and safety interventions by regulators: A literature review*. Canberra: Safe Work Australia. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/the-effectiveness-of-whs-interventions>, p 10.

⁴¹⁰ See for example Johnstone, R. & King, M. (2008). 'A Responsive Sanction to Promote Systematic Compliance? Enforceable Undertakings in Occupational Health and Safety Regulation.' *Australian Journal of Labour Law*, vol 21(3), pp 280–315.

⁴¹¹ Gunningham, N. & Bluff, E. (2008). *A Review of Key Characteristics that Determine the Efficacy of OHS Instruments*. Australian Safety and Compensation Council: Canberra.

⁴¹² Gunningham, N. & Bluff, E. (2008). *A Review of Key Characteristics that Determine the Efficacy of OHS Instruments*. Canberra: Australian Safety and Compensation Council, pp 2–5. See also Gunningham, N. & Bluff, L. (2009). 'What determines efficacy? The roles of codes and guidance materials in occupational safety and health regulation.' *Policy and Practice in Health and Safety*, vol 7(2), pp 3–29.

First, Gunningham found from a substantial qualitative study of large businesses operating across multiple jurisdictions that:

- the substantial majority of respondents endorsed the model WHS Act in its contribution to (a) reduction of the regulatory burden for PCBUs operating in more than one jurisdiction, and (b) achieving significant and continual reductions in work-related deaths, injuries and disease
- the substantial majority (more than 80 per cent) of respondents perceived the Act as beneficial in its impact on compliance and regulatory burdens, with only a very small minority being seriously concerned about adverse impacts upon them
- the overall response was that the Act has or will achieve significant and continual reductions in the incidence of workplace death, injury and disease.⁴¹³

Second, Bahn and Barratt-Pugh found in a small qualitative study that stakeholders generally believed greater emphasis on safety training had produced positive cultural results.⁴¹⁴ However, there was a general lack of robust empirical evidence about the effect of safety training on actual performance. As well, some stakeholders were concerned about the content of safety training, quality of delivery and expertise of instructors.

Trend data on injuries and workers' compensation

Trend data can indicate, although cannot prove, efficacy of new approaches. The latest version of the systematic data collection on workers' compensation statistics for non-fatal injury was published in 2015.⁴¹⁵ *Australian Workers' Compensation Statistics, 2012–13* reported trends in serious claims from 2000–01 to 2012–13. Overall, it was found that in this period:

- the number of serious claims decreased by 6 per cent from 133,125 to 125,015 claims. Over the same period, the incidence of serious claims fell by 26 per cent from 16.3 claims per 1,000 employees in 2000–01 to 12.0 per 1,000 employees in 2011–12.
- the claims made appear to be about more serious incidents. Between 2000–01 and 2011–12, the median time lost from work for serious claims rose by 29 per cent from 4.2 working weeks in 2000–01 to 5.4 working weeks in 2011–12
- claims for mental disorders increased by 22 per cent⁴¹⁶
- there was a 114 per cent increase in the number of serious claims caused by assaults⁴¹⁷
- there was a 17 per cent increase in the number of serious claims caused by mental stress⁴¹⁸
- mental disorders accounted for the fourth-highest category of claims for women (almost 10 per cent) in 2012–13.

⁴¹³ Gunningham, N. (2015). 'Impacts of work health and safety harmonisation on very large businesses.' *Australian Journal of Labour Law*, vol 28, pp 33–56.

⁴¹⁴ Bahn, S. & Barratt-Pugh, L. (2014). 'Health and safety legislation in Australia: Complexity for training remains.' *International Journal of Training Research*, vol 12(1), pp 57–70.

⁴¹⁵ Safe Work Australia. (2015). *Australian Workers' Compensation Statistics, 2012–13*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/australian-workers-compensation-statistics-2012-13>.

⁴¹⁶ Safe Work Australia. (2015). *Australian Workers' Compensation Statistics, 2012–13*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/australian-workers-compensation-statistics-2012-13>, p 30.

⁴¹⁷ Safe Work Australia. (2015). *Australian Workers' Compensation Statistics, 2012–13*. Canberra: Safe Work Australia. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/australian-workers-compensation-statistics-2012-13>, p 32.

⁴¹⁸ Safe Work Australia. (2015). *Australian Workers' Compensation Statistics, 2012–13*. Safe Work Australia: Canberra. Retrieved 2 February 2016 from <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/australian-workers-compensation-statistics-2012-13>, p. 32.

Among these positive and negative trends, it is perhaps significant to note that rates of violence have increased substantially, and claims for mental stress and disorders have also increased. Analogies with child sexual abuse in institutions may be perceived through the common theme of one worker inflicting violence on another person in a workplace, and the challenges this presents. In this context, Dunn and Thakorlal have concluded that:

The highest priority may be given to interventions that 'design out' the risk through utilising the 'hierarchy of control' approach. Eliminating the reasons for workplace violence is the best method of protecting workers and others from the risk of workplace violence. This occurs through changing the system of work or the workplace so as to eliminate any risk of workplace violence. Such approaches generally require an audit of the worksite and process and subsequent alterations to building design, furniture and fittings ...

Any comprehensive [internal form of workplace violence including bullying] also requires a range of administrative elements to help control the risks, including the development of codes of conduct, bullying/grievance procedures, leadership training and support, effective reporting and investigation mechanisms and worker awareness and training. Thus the prevention of violence and bullying requires the implementation of multi-faceted strategies that are tailored to organisation-specific risks.⁴¹⁹

These points align neatly with the challenges facing a range of different kinds of organisations serving children, in designing and implementing methods of prevention, and responding with effective, practical regulatory methods. These issues are addressed in Part 6.

⁴¹⁹ Dunn, C. & Thakorlal, S. (2014). *Australian Master Work Health and Safety Guide* (2nd ed), CCH Australia: Sydney, p 534.

Part 5.5 – Conclusions about how occupational health and safety components, structures and implementation mechanisms could inform a regulatory approach to protecting children from sexual abuse in an institutional context

5.5.1 Introduction

Occupational health and safety laws are concerned with protecting workers and others in all workplaces, with particularly stringent measures where the nature of the work creates situations of high risk. Australian laws are notable for their generally centralised nature, broad applicability across industries, and diverse methods of achieving key objectives including approaches to compliance, enforcement, education, and efforts to continuously improve the workplace environment. For these reasons, OHS schemes provide an interesting comparative model from which principles may be applied or adapted for the context of child sexual abuse in institutional contexts and the protection of children.

Part 5 has explored the overall research question: *How could components, structures and mechanisms for implementation from occupational health and safety regulatory models in Australia inform a regulatory approach to protecting children from sexual abuse in institutional contexts?* The coverage of the nature of OHS schemes, and exploration of the literature about the schemes, informs conclusions about their strengths, weaknesses and efficacy. It also underpins proposals about useful features, principles and methods that could inform a regulatory approach to protecting children from sexual abuse in institutional contexts.

Strengths of the current regulatory approach to OHS include:

- the comprehensive model of regulatory principles embedded in a centralised national legislative framework
- the imposition of duties to protect not only workers, but others
- more stringent licensing requirements for high-risk work
- stringent duties imposed on officers of organisations, including the duty to educate employees
- the requirement for employees to comply with directions about education and training
- the inclusion of violence as a workplace risk (at least between employees)
- the capacity for centralised and innovative approaches to training, guidance, support and monitoring, including through online mechanisms
- the presence of innovative, flexible, efficient options of implementation and support
- a theoretically broad range of enforcement powers conferred on inspectors.

Weaknesses of the current approach include:

- the independent monitoring and evaluation mechanisms are weak
- there is no general requirement for a PCBU to have a systematic process for identifying, assessing, controlling and monitoring risks, or to report on their activity
- there is no legislative requirement for systematic evaluation or auditing

- interaction with inspectors after a notifiable incident is the typical mechanism that triggers contact with an OHS regulatory body, suggesting that too much emphasis is placed on reactive rather than proactive regulation
- while there appears to be strong theoretical knowledge about best practice in regulation, there is scarce empirical evidence about the effectiveness of work health and safety interventions in Australia generally, and for particular regulatory measures.

Bluff and Gunningham suggested a 10-factor model to strengthen harmonisation and enforcement.⁴²⁰ Bluff and Gunningham propose that the government regulatory authorities 'cooperatively develop and implement programs for administration and enforcement of WHS legislation, which are consistent with regard to 10 elements'.⁴²¹ The elements are:

- proportionate organisation and allocation of resources
- setting strategic priorities and targets
- principles of administration and enforcement
- balancing proactive and reactive interventions
- agreeing on how to achieve self-regulation, substantive compliance and rule compliance
- when and how to make strategic use of regulatory mechanisms and approaches
- protocols and procedures for regulators' core functions; for example, registrations, licences, approval of training providers, inspections, and triaging requests for resources and assistance
- guidelines, materials and other compliance support
- training of inspectors and other regulatory staff
- IT systems for recording and managing information.⁴²²

5.5.2 Proposals

The findings about the nature, strengths and weaknesses of OHS schemes underpin proposals relating to the first major research question in this project: namely, how components from OHS schemes could inform a regulatory approach for protecting children from sexual abuse in institutional contexts. The proposals also complement, and are consistent with, findings made in the first report about optimal regulatory approaches for child sexual abuse in institutional contexts; it was shown in Part 4.2 that there are five key requirements for implementing the subject matter of regulation, and these have been built into the proposals. The key requirements are:

- receiving cooperative and coordinated support by major government and non-government actors for major regulatory initiatives
- having a small number of actors in an organised and homogenous environment
- having simple, streamlined procedural structures
- building genuine organisational and individual commitment to the policy measures and practices through attitudinal factors that underpin an internalised normative duty
- having a robust enforcement regime.

⁴²⁰ Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes.' *Australian Journal of Labour Law*, vol 25, pp 85–106.

⁴²¹ Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes.' *Australian Journal of Labour Law*, vol 25, pp 85–106.

⁴²² Bluff, E. & Gunningham, N. (2012). 'Harmonising work health and safety regulatory regimes.' *Australian Journal of Labour Law*, vol 25, pp 85–106.

There are *seven overarching proposals* for how components from OHS schemes could inform a regulatory approach for protecting children from sexual abuse in institutional contexts:

- (1) A single, centralised national regulatory body⁴²³ could be made responsible for as many dimensions as possible.
- (2) National, state and territory governments (and, if desirable, relevant government child protection bodies such as children's commissions) could provide support, but duplication and fragmentation must be avoided.
- (3) This body could have considerable strength in its regulatory actions; it could be supported by a legislative scheme (if this is not possible, it could at least have the power to compel certain acts via organisations' accreditation or registration requirements).
- (4) In developing harmonised, common approaches to as many of the relevant aspects of the regulated subject matter as possible, this body could consult and cooperate with representatives of major child-serving institutions (and where peak organisations do not exist, it could consult with the relevant bodies), but ultimate decision-making power would rest with the regulatory body.
- (5) Mechanisms for providing key components of the regulated subject matter could be simple, streamlined, cost-efficient and easily accessible (for example, online education, training and resources; online distribution of codes of conduct, policies and forms; online administration of accreditation; and centralised data collection and analysis).
- (6) Quality assurance and periodic review could be conducted by either one body or a small number of auditing bodies, which are overseen by the central agency to ensure quality.
- (7) The strength of the centralised regulatory body is necessary but could be balanced with strategies to (a) enhance stakeholder adoption of the ideals underlying the regulated context, and (b) develop intrinsic organisational and individual attitudes to heighten the likelihood of compliance and sustained cultural change and commitment. Therefore, several key dimensions of the subject matter of regulation could receive special attention, with education and training being the cornerstone. Cooperation between government regulators, and provision of support by the regulator to the organisations (in policy materials, training programs and other parts of the model) could assist this. Under the recommended approach, the central regulator could also provide assistance, relieving pressure on existing organisations to develop initiatives, and protect children and themselves.

Consistency with OHS frameworks and objectives

These seven overarching proposals are consistent with OHS frameworks and objectives (see Table 5.1). The overarching aim of the National Law is to 'provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work' (section 3(1)). The key objects relate to risk elimination and minimisation; consultation and cooperation; encouraging organisations to promote improvements and assisting them in that regard; promoting provision of information and training; securing compliance; ensuring appropriate scrutiny; providing a framework for continuous improvement; maintaining and strengthening the national approach; and practicability.

⁴²³ See the note on the next page regarding an alternative to a single centralised national regulatory body.

A note on an alternative to a single centralised body

It may be that for political, practical or other reasons, the development of a single, centralised body is not possible. It may be possible to use an alternative approach, which could still be consistent with the five key requirements for implementing the subject matter of regulation. This would include the need for a small number of actors in an organised and homogenous environment, and cooperative and coordinated support by major government and non-government actors. One example of such an alternative approach could be the implementation of a nationally consistent regulatory approach by state and territory agencies, which would have specific responsibility for protecting children from sexual abuse in institutional contexts. Ideally, such an approach would come under the umbrella of a national coordinating agency. This type of hub-and-spoke approach is similar to the OHS framework (see Part 5.2). The group of coordinated agencies operating under this kind of approach would need to meet the requirements outlined in the seven overarching proposals.

Table 5.1: Comparative mapping of the seven overarching proposals with OHS objectives

Seven overarching proposals	Overarching proposals mapped to OHS objectives
1. A single, centralised national regulatory body is responsible for as many dimensions as possible	Provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces: section 3(1) Maintain and strengthen the national harmonisation of OHS laws and facilitate a consistent national approach: section 3(1)(h)
2. National, state and territory governments (and possibly government-run child protection bodies such as children’s commissions) provide financial and logistics support	Provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces: section 3(1) Maintain and strengthen the national harmonisation of OHS laws and facilitate a consistent national approach: section 3(1)(h)
3. This centralised body has considerable strength in its regulatory actions; it is supported by a legislative scheme (if this is not possible, it could at least have the power to compel certain acts via organisations’ accreditation or registration requirements)	Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces: section 3(1) Maintain and strengthen the national harmonisation of OHS laws and facilitate a consistent national approach: section 3(1)(h)
4. In developing harmonised, common approaches to as many aspects of the regulated subject matter as possible, this body could consult and cooperate with peak organisations while retaining ultimate authority	Provide for fair and effective workplace representation, consultation and cooperation: section 3(1)(b) Encourage organisations to take a constructive role in promoting improvements: section 3(1)(c) Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Practicability: section 3(2)
5. Mechanisms for providing subject matter be simple, streamlined and easily accessible	Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Practicability: section 3(2)
6. Quality assurance and periodic reviews are conducted by either one body or a small number of auditing bodies, which are overseen by the central agency to ensure quality	Provide a framework for continuous improvement and progressively higher standards: section 3(1)(g) Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Ensure appropriate scrutiny of persons performing functions under the Act: section 3(1)(f) Maintain harmonisation of national approach: section 3(1)(h) Practicability: section 3(2)
7. Strategies to heighten likelihood of compliance, enhance stakeholder	Assist PCBUs and workers to achieve a healthier and safer work environment: section 3(1)(c)

Seven overarching proposals	Overarching proposals mapped to OHS objectives
adoption of ideals, and develop intrinsic organisational and individual attitudes. Education and training receive special focus, and are strongly and centrally supported	Promote provision of advice, information, education and training: section 3(1)(d) Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Practicability: section 3(2)

5.5.3 Expanding overarching proposals to more detailed approaches, accommodating organisations with different levels of risk

Some of these proposals can be further expanded to accommodate different kinds of institutions, just as OHS schemes have heightened obligations for particularly hazardous environments. These suggestions are consistent with the results of the analysis of OHS schemes and the literature about them, including Bluff and Gunningham's 10-point plan discussed above.⁴²⁴ For example:

- (1) Institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities undertaken, could be made subject to:
 - (a) more stringent accreditation conditions
 - (b) more frequent and/or more rigorous auditing (including auditing of the organisation's policy and code of conduct)
 - (c) more frequent inspection, conducted independently of incident notification
 - (d) heightened requirements for education and training of organisational officers
 - (e) heightened requirements for education and training of staff
 - (f) more rigorous requirements to demonstrate compliance
 - (g) more rigorous requirements to demonstrate continuous improvement
- (2) Officers of institutions, and especially those where there is greater risk of child sexual abuse, could be made subject to due diligence duties similar to those imposed on officers of organisations under the OHS scheme (see Part 5.1.3).

These proposals are made in relation to the first research question explored in this project, which covers all kinds of institutions. They will be returned to in Part 6 to inform analysis and conclusions about the second major research question in this project; namely, how can smaller child-serving organisations could be regulated to prevent and respond to child sexual abuse, including considerations of how to require compliance, require or encourage continuous improvement, and manage organisational burden.

⁴²⁴ Bluff, E. & Gunningham, N. 'Harmonising work health and safety regulatory regimes', *Australian Journal of Labour Law*, no 25, 2012, p 101.

PART 6 – MODELS FOR REGULATION OF SPORTING, CULTURAL, ARTS AND RECREATIONAL GROUPS TO PROTECT CHILDREN FROM SEXUAL ABUSE

Part 6.1 – Sporting, cultural, arts and recreational groups, and child sexual abuse

6.1.1 Introduction

The overall purpose of Part 6 of the project is to explore the following question:

What regulatory models and approaches could be employed to ensure that smaller organisations with limited resources (namely sporting, cultural, arts and recreational groups) are not overburdened with regulation, while still keeping children safe from sexual abuse?

To explore this question, it is necessary to situate the analysis within several dimensions of the context. These are the broad picture of children's involvement in these kinds of organisations; literature about the nature of child sexual abuse in youth-serving institutions; evidence about optimal methods of preventing and responding to child sexual abuse in these contexts; and current regulatory models used in major child-serving institutions of these types. Together with the material covered earlier in this report about regulatory theory and models generally, it was necessary to marshal this evidence to inform the analysis that produces conclusions and recommendations in Part 6.3 about optimal regulatory models for smaller institutions that provide organised sporting, cultural, artistic or recreational activities. In sum, it is necessary to bear in mind not only the *kinds* of groups that are being regulated, but *what* exactly is being regulated within those groups, before an assessment can be made about *how* that regulation could best occur.

Accordingly, Part 6 has three sections. Part 6.1 sets out the general context of these organisations and children's engagement with them; the phenomenon of child sexual abuse within these organisations; and the dimensions of these organisations that can be regulated to protect children from sexual abuse. Part 6.1.2 first sets out some background information on children's involvement in key sporting, cultural, arts and recreational groups. Part 6.1.3 synthesises key information about the nature of child sexual abuse in youth-serving institutions generally. Part 6.1.4 provides further information about child sexual abuse in sporting organisations, in particular. The final two sections of Part 6.1 synthesise literature on *the subject matter of what is being regulated* (or what needs to be regulated) in these organisations. Part 6.1.5 provides an overview of the situational crime prevention literature, focusing on situational crime prevention of child sexual abuse in institutional contexts. Part 6.1.6 synthesises models of prevention and response, which have been created and recommended to reduce the likelihood of offending, and respond optimally when cases occur.

Part 6.2 explores regulatory models and approaches currently used in these kinds of child-serving and youth-serving organisations. This part includes coverage of the broad nature of these groups, including the nature of staffing, governance and regulation. Part 6.2.2 provides examples of larger, more centralised

organisations with well-developed management structures. Part 6.2.3 provides examples of smaller, less centralised organisations that do not have well-developed management structures. Part 6.2.4 then summarises current methods of self-regulation and external soft regulation that characterise these organisations.

Part 6.3 makes proposals informed by parts 6.1 and 6.2, and by the earlier coverage and conclusions of regulatory theory in Part 4.2. It suggests regulatory models and approaches that could be employed for these kinds of organisations to ensure smaller organisations with limited resources are not overburdened with regulation, while keeping children safe from sexual abuse. Proposing answers to this broad question requires answers to the following narrower questions:

- What is the best regulatory model and approach to implementation for these organisations?
- What is the subject matter of regulation?
- How could organisations be required to comply with the regulatory method?
- How could organisations be required or encouraged to engage in a process of continuous improvement?

The proposed regulatory approaches are informed by a large body of evidence. However, these proposals are being made in an important, unique and largely untested context. Therefore, to add a further degree of rigour, they should be subjected to further appropriate and practicable testing to confirm their soundness. This could be done through a small qualitative study with stakeholders and experts in the field, or through a Policy Delphi study.⁴²⁵

6.1.2 Children’s involvement in key sporting, cultural, arts and recreational groups

The Australian Bureau of Statistics collects data on children’s participation in organised sporting and selected cultural activities. The data was most recently collected in 2012 and provides guidance on the level of children’s involvement in different kinds of groups under consideration in this report. It is important to note that the data collected is limited to children aged 5–14, and may not include all kinds of activities. In some instances, information available from the organisations at national level may further inform an understanding of children’s involvement in these activities, and the nature of the organisations themselves.

Sporting groups

Summary data about children’s involvement in sport in Australia indicates a high level of involvement, especially in swimming and soccer. Overall, in 2012, there were 1,676,000 children aged 5–14 participating in at least one organised sport, which was a rate of 60.2 per cent. Table 6.1 shows how many children aged 5–14 participate in the top eight sporting activities.⁴²⁶

⁴²⁵ A Policy Delphi is not simply focused on generating consensus on a policy issue, but is primarily ‘a systematic method for obtaining, exchanging, and developing informed opinion on an issue’ and can also measure shifts in opinion: Rayens, M. & Hahn, E. (2000). ‘Building Consensus Using the Policy Delphi Method.’ *Policy, Politics & Nursing Practice*, vol 1(4), pp 308–315. See also Turoff, M. (1970). ‘The Design of a Policy Delphi.’ *Technological Forecasting and Social Change*, vol 2(2). Turoff explains that ‘the Policy Delphi also rests on the premise that the decision maker is not interested in having a group generate his decision; but rather, have an informed group present all the options and supporting evidence for his consideration. The Policy Delphi is therefore a tool for the analysis of policy issues and not a mechanism for making a decision’.

⁴²⁶ Australian Bureau of Statistics, *Children’s Participation in Cultural and Leisure Activities* (Table 1), cat no 4901.0, ABS, Canberra, 2012. Retrieved 2 February 2016 from <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4901.0>.

Table 6.1 – Number and participation rate of children aged 5–14 in the top eight sporting activities

Sport	Number of child participants aged 5–14	Child participation rate aged 5–14 (%)
Swimming and diving	492,100	17.7
Soccer (outdoor)	397,600	14.3
Australian rules football	226,500	8.1
Netball	222,700	8.0
Basketball	220,200	7.9
Tennis	205,200	7.4
Martial arts	161,000	5.8
Gymnastics	134,500	4.8

Cultural and artistic groups

Data about children’s involvement in cultural and artistic activities in Australia indicates a substantial level of involvement, especially in music and dancing. Overall, in 2012, 980,700 children aged 5–14 participated in at least one organised cultural activity, which was a rate of 35.2 per cent. Table 6.2 shows how many children aged 5–14 participated in the top five cultural activities.

Table 6.2 – Number and participation rate of children aged 5–14 in the top five cultural activities

Cultural activity	Number of child participants aged 5–14	Child participation rate aged 5–14 (%)
Playing a musical instrument	490,200	17.6
Dancing	418,100	15.0
Organised art and craft	189,900	6.8
Singing	143,200	5.1
Drama	130,300	4.7

Recreational groups

These groups are less numerous than sporting and cultural groups and involve lower levels of child participation. However, the following are instructive examples of key recreational groups:

- *Scouts Australia* is part of the World Organization of the Scout Movement, which has more than 40 million members in more than 1 million scout groups. In Australia, there are 1,411 scout groups, with 54,545 youth members, including 5,951 Joeys (aged 6–7); 21,575 Cubs (aged 8–10); 18,895 Scouts (aged 11–14); and 5,282 Venturers (aged 15–17).⁴²⁷
- The *YMCA* conducts a diverse range of children’s services, engaging almost 3 million participants in kindergartens, early learning centres, and outside school hours and vacation care. However, because it caters to children and young adults, it is not clear what proportion of participants are children. In the recreational context, the YMCA manages 73 recreation centres and a range of other facilities. In addition, across Australia, it manages 19 camps for more than 1 million participants annually, although the extent of children’s participation is not clear. Each year, more than 1 million participants participate in a youth program, which includes its Youth Parliament and Indigenous Youth Parliament, which it runs in conjunction with the Australian Electoral Commission.⁴²⁸

⁴²⁷ Scouts Australia. 2015. *Annual Report to the Nation 2015*. Retrieved 2 February 2016 from <http://www.scouts.com.au/about-us/annual-report>.

⁴²⁸ YMCA. (2014). Youth Services. Retrieved 2 February 2016 from <http://ymca.org.au/what-we-do/Pages/Youth-Services.aspx>.

6.1.3 The nature of child sexual abuse in youth-serving institutions generally

Features of youth-serving institutions that create opportunities for child sexual abuse

Several features of institutions and organisations where children attend create opportunities for sexual abuse – both by adults who work or volunteer at the organisation, and by other children and youths who attend. There are features at the *child, offender, organisation* and *broader societal levels*.

As recognised by Wurtele, one feature relates to the natural vulnerability of *children* themselves.⁴²⁹ Adolescent children often have an inherent vulnerability, due to their natural sexual curiosity, need for intimacy and romantic connections, and still-developing skills of impulse control and self-regulation.⁴³⁰ In a related sense, *pre-pubertal children* are generally vulnerable to predation for slightly different reasons. However, these reasons also relate to their emotional needs and vulnerability, their early cognitive development, physical vulnerability, and other components of their personality that contribute to a profound imbalance of power between the child and the adult offender, or the older or more powerful child offender. Some children have heightened vulnerability, particularly those with a history of victimisation, low self-esteem, loneliness, those from single-parent homes and/or those with low parental supervision, those with disabilities and those with minority sexuality.⁴³¹

A second feature relates to the *offender*. Some offenders purposely seek employment in environments with vulnerable children to execute a premeditated plan of action⁴³². Other adult offenders exploit advantages and opportunities to offend based on environmental characteristics and personal attributes.⁴³³ In both cases, and especially in some types of organisations where the adult occupies a position of substantial power, the offender's status magnifies the opportunity to exploit the power imbalance. Especially where the offender is a particularly trusted adult, because of the nature of institutional abuse, the trauma is often magnified beyond the level that would have been reached were the abuse inflicted in another context.⁴³⁴

Impediments to disclosure by the child are well-known in all contexts of sexual abuse, including organisational contexts.⁴³⁵ Some of these impediments derive from the child's attributes (for example, not knowing that what is being done to them is wrong); others relate to the offender (for example, where threats are made to the child). However, the organisational context may present particularly powerful barriers to disclosure.⁴³⁶ Connected to this, toxic organisational environments may have powerful cultural factors that also discourage reporting by employees or volunteers who suspect or even know of child sexual

⁴²⁹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴³⁰ See also Lanning, K. & Dietz, P. (2014). 'Acquaintance Molestation and Youth-Serving Organizations.' *Journal of Interpersonal Violence*, vol 29(15), pp 2815–2838.

⁴³¹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴³² Sullivan, J. & Beech, A. (2004). 'A comparative study of demographic data relating to intra- and extra-familial child sexual abusers and professional perpetrators.' *Journal of Sexual Aggression*, vol 10(1), pp 39–50.

⁴³³ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453; Lanning, K. & Dietz, P. (2014). 'Acquaintance Molestation and Youth-Serving Organizations.' *Journal of Interpersonal Violence*, vol 29(15), pp 2815–2838.

⁴³⁴ Smith, C. & Freyd, J. (2013). 'Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma.' *Journal of Traumatic Stress*, vol 26, pp 119–124.

⁴³⁵ On cultural and other impediments to disclosure of child sexual abuse, see Collin-Vézina, D., De La Sablonniere-Griffin, M., Palmer, A. & Milne, L. (2015). 'A preliminary mapping of individual, relational and social factors that impede disclosure of childhood sexual abuse.' *Child Abuse & Neglect*, vol 43, pp 123–134; Fontes, L. & Plummer, C. (2010). 'Cultural Issues in Disclosures of Child Sexual Abuse.' *Journal of Child Sexual Abuse*, vol 19(5), pp 491–518; Cromer, L. & Goldsmith, R. (2010). 'Child Sexual Abuse Myths: Attitudes, Beliefs, and Individual Differences.' *Journal of Child Sexual Abuse*, vol 19(6), pp 618–647.

⁴³⁶ Collin-Vézina, D., De La Sablonniere-Griffin, M., Palmer, A. & Milne, L. (2015). 'A preliminary mapping of individual, relational and social factors that impede disclosure of childhood sexual abuse.' *Child Abuse & Neglect*, vol 43, pp 123–134.

abuse. These situations have been uncovered in multiple jurisdictions and in numerous organisational contexts.⁴³⁷ Because reporting of unethical conduct by employees requires strong ethical leadership and trust in the organisation's leaders, as well as a culture of ethical behaviour at the employee level⁴³⁸, efforts to prevent and neutralise such cultural postures likely require systematic multi-stage interventions, sustained over time.

In addition, there are features that relate to the *organisation*. Some of these features concern the physical environment, aspects of which can facilitate or reduce the perpetration of sexual abuse.⁴³⁹ These features include structural materials and design: do offices and other rooms have closed doors, windows and sightlines; are there surveillance cameras; and is there sufficient privacy in bathroom facilities while also providing security.

Other organisational features are perhaps even more powerful, even if more subtle. Most prominent among these is the organisation's culture, which has multiple dimensions. Smith and Freyd observe that certain characteristics are more likely to provide an environment within which child sexual abuse can both occur, and be inadequately treated. The characteristics of the institution can include:

- strict membership requirements (with a high level of institutional or societal value placed on membership)
- prestigious position in society – this can include the institution and/or its leaders
- prestige and reputation (and public image) have greater value than the welfare of the children it provides for
- strict hierarchies, without viable reporting pathways
- power imbalances in relationships
- relationships that are based on trust and dependency
- prestige or high value is placed on the abused child remaining in the organisation, despite the experience
- prestige or high value is placed on the abused child remaining connected to the abuser, despite the experience
- fear of the consequences for the organisation of child sexual abuse
- lack of an organisational strategy to deal with child sexual abuse (including lack of a lexicon around the issue; ignorance of the issue; outright denial of the issue – all characterised by acts and omissions such as the absence of adequate screening; absence of adequate reporting mechanisms and recording systems; absence of staff training/education; absence of policy; overt cover-ups; use of rhetoric and euphemisms to describe allegations, individuals and events; and reprisals and adverse consequences for victims and whistleblowers).⁴⁴⁰

Lanning et al. and Wurtele also identified many of these organisational features.⁴⁴¹ In addition, Wurtele noted:

⁴³⁷ Smith, C. & Freyd, J. (2014). 'Institutional Betrayal.' *American Psychologist*, vol 69(6), pp 575–587; Menzies, K. & Stoker, L. (2015). 'When "Culture Trumped Safety", Developing a Protective Weave in Child Welfare Organisations: A Case Study.' *Children Australia*, vol 40, pp 260–268.

⁴³⁸ See generally Mayer, D., Nurmohamed, S., Treviño, L., Shapiro, D. & Schminke, M. (2013). 'Encouraging employees to report unethical conduct internally: It takes a village.' *Organizational Behavior and Human Decision Processes*, vol 121, pp 89–103.

⁴³⁹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴⁴⁰ Smith, C. & Freyd, J. (2014). 'Institutional Betrayal.' *American Psychologist*, vol 69(6), pp. 580–583.

⁴⁴¹ Lanning, K. & Dietz, P. (2014). 'Acquaintance Molestation and Youth-Serving Organizations.' *Journal of Interpersonal Violence*, vol 29(15), pp 2815–2838; Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

- centralised power in strict hierarchies
- lack of transparent and shared responsibility for decision-making (leaders making decisions secretly and internally, with an emphasis on protecting the institutional reputation rather than acting in the child's best interests)
- a sexualised work environment (for example, characterised by language, dress, behaviour and other sexualised material)
- lack of a 'zero tolerance' culture.⁴⁴²

The final dimension is the *broader societal* level, which requires attention to legislative schemes and policy structures at state and national level, and public education.⁴⁴³

All these aspects are important for decisions about the most appropriate regulatory methods for preventing and responding to child sexual abuse in institutional contexts. Methods will need to address different kinds of organisations, of different sizes, geographical diffusion, employee/volunteer composition and child clientele. In addition, both the general type of activity in which the organisation is engaged and the ways in which this activity is conducted will need to be taken into account; for example, whether there are trips away from home; the level and type of supervision provided; the degree of control the adult exercises over the child (for example, whether it extends to training, diet, medical treatment and social activity; the presence of physical touch; whether there are ongoing relationships; the presence of alcohol; and rewards systems), which is relative to the level of vulnerability.

6.1.4 Child sexual abuse in sporting organisations

Sporting groups may possess several features that create particular risks; therefore, indicating the need for certain kinds of regulatory models and approaches. The nature of sports presents multiple factors, creating a substantial enterprise risk of child sexual abuse. Training often requires direct physical instruction, such as in athletics, swimming, martial arts, gymnastics and ball sports. Travel to competitive events can create further opportunities for offending. Many sports may require that the child athlete receive physical treatment, such as massage. Many sports require specialised attire and in some instances, such as swimming and gymnastics, this attire is brief. Many sports require changing and bathing facilities. Sporting organisations typically are characterised by highly competitive hierarchies in which children compete for status, representative selection, awards and career progression. This can increase the closeness and dependency that often accompanies the relationship of coach and pupil. Other related aspects create an atmosphere in which a relationship of dependence, trust and confidence can solidify between child and coach: the intensely competitive nature of sports can produce emotional highs and shared celebrations, while also producing emotional lows and crises.

It is worth observing that because of these factors, the United Kingdom established the world's first dedicated Child Protection in Sport Unit in 2001. However, few sports organisations appear to have embedded strategies for prevention. Along with Celia Brackenridge⁴⁴⁴, Sylvie Parent is arguably the leading researcher in sexual abuse in sport.⁴⁴⁵ Informed by earlier work that found a dearth of strategies and

⁴⁴² Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴⁴³ Wurtele, S. (2012). Preventing the sexual exploitation of minors in youth-serving organizations. *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴⁴⁴ Brackenridge, C. & Fasting, K. (2002). 'Sexual harassment and abuse in sport: The research context.' *Journal of Sexual Aggression*, vol 8(2), pp 3–15.

⁴⁴⁵ See for example Parent, S. (2011). 'Disclosure of Sexual Abuse in Sport Organizations: A Case Study.' *Journal of Child Sexual Abuse*, vol 20, pp 322–337; Parent, S. & Bannon, J. (2012). 'Sexual abuse in sport: What about boys?' *Children and Youth Services Review*, vol 34, pp 354–359.

substantial individual and organisational impediments to effective prevention and response – and by a study of sports administrators, coaches, athletes and parents – Parent and Demers developed a model to respond to major identified needs.⁴⁴⁶ The model contains many of the same dimensions as recommended by Wurtele and the other exemplars mentioned above.

Other groups – cultural, arts and recreational – may share some of the above features. In addition, the literature on child sexual abuse in religious contexts suggests that some key themes about child sexual abuse in that context may have parallels in some sporting, cultural, arts and recreational groups. For example, Terry and Ackerman (2008) and Smallbone and Wortley (2000) independently found that a substantial proportion of offending is committed in the offender's residence (41 per cent of religious offenders in the Terry and Ackerman study; and 68.9 per cent in the Smallbone and Wortley study of non-religious offenders).⁴⁴⁷ Terry and Ackerman (2008) found that a further 17.8 per cent of offending was committed during travel. Similarly, Smallbone and Wortley (2000) found 20 per cent of abuse was committed on overnight trips. Therefore, these locations and events require particularly close prevention and monitoring strategies, and may indicate a certain kind of regulation is more appropriate than others.

6.1.5 Situational crime prevention of child sexual abuse in institutional contexts

The literature on situational crime prevention, and especially as applied to child sexual abuse in institutional contexts, provides instructive lessons for this context. Situational crime prevention does not aim to reduce offending through measures relating directly to the offender or the victim. Rather, it is a criminological model concerned with actions taken about the 'situation' or environment within which crime occurs, to reduce the likelihood of offending. The following questions are relevant:

- What exactly is the crime?
- Where does the crime occur?
- When does the crime occur?
- Who is involved?
- How does the crime occur?⁴⁴⁸

Smallbone et al. emphasise that regardless of the strength of the offender's motivation, child sexual offending, just as with other criminal offending, requires a 'conducive immediate environment'.⁴⁴⁹ They propose methods of situational prevention for different contexts, including the institutional context. Key proposals, grouped under conceptualised strategic methods, include:

- 'increasing effort': effective strategies to screen personnel; inclusion of material in formal job descriptions about expected and prohibited behaviour towards children; presence of a specialised risk management position dedicated to preventing harm to children; presence of a formal action plan to reduce risk of harm; staff awareness of the plan; and regular review of the plan
- 'increasing risks to offenders': reducing opportunities for adults to be alone with children; physical redesign of the environment through, for example, glass panels; requiring staff to report abuse;

⁴⁴⁶ Parent, S. & Demers, G. (2011). 'Sexual Abuse in Sport: A Model to Prevent and Protect Athletes.' *Child Abuse Review*, vol 20, pp 120–133.

⁴⁴⁷ Terry, K. & Ackerman, A. (2008). 'Child Sexual Abuse in the Catholic Church: How Situational Crime Prevention Strategies Can Help Create Safe Environments.' *Criminal Justice and Behavior*, vol 35(5), pp 643–657; Smallbone, S. & Wortley, R. (2000). *Child Sexual Abuse in Queensland: Offender Characteristics and Modus Operandi*. Queensland Crime Commission: Brisbane.

⁴⁴⁸ Smallbone, S., Marshall, W. & Wortley, R. (2013). *Preventing Child Sexual Abuse: Evidence, Policy and Practice*. Routledge: Abingdon, p 157. See also generally Death, J. (2015). 'Bad apples, bad barrel: Exploring institutional responses to child sexual abuse by Catholic clergy in Australia.' *International Journal for Crime, Justice and Social Democracy*, vol 4(2), pp 94–110.

⁴⁴⁹ Smallbone, S., Marshall, W. & Wortley, R. (2013). *Preventing Child Sexual Abuse: Evidence, Policy and Practice*. Routledge: Abingdon, p 161.

enhancing opportunities for disclosure by the child; requiring inspections and reviews by an independent authority

- ‘removing excuses/reducing permissibility’: ensuring the institution is not a ‘pathological institution’ in which a culture of abuse distorts individual moral judgments, enabling rationalisation of illegal and otherwise prohibited acts. This would be achieved using formal protocols about conduct between staff and children to set clear rules, which unequivocally establish acceptable and unacceptable conduct (for example, via formal codes of conduct, public announcements and activities, and punishment of breaches).⁴⁵⁰

Most recently, Leclerc et al. proposed key measures, informed by a study of sexual offenders and their insights into effective situational prevention.⁴⁵¹ Leclerc et al.’s recommendations include:

- in *screening at intake of new recruits*: verifying criminal records; questioning why the person wants to work with children; ensuring the interview process includes clear discussion of the organisation’s commitment to child protection and expectations of staff conduct, and requiring signed commitments from the individual to this end
- in *developing policies and regulations about staff conduct to prevent offending*: never leaving a child alone with an adult; prohibiting staff members from taking children to their home; prohibiting adults from showering with children and from showering at the same time; prohibiting mobile phone communication between staff members and children; prohibiting gift-giving between staff members and children; limiting contact outside institutional hours; and where abuse becomes known, a requirement that the organisation report it immediately to authorities
- in *environmental design of the institution*: eliminating hidden areas and rooms; designing windows to overlook corridors; and installing closed-circuit television cameras at entrances and exits.⁴⁵²

Other insights generally reinforce these ideas, including work by Kaufman and suggestions in the general literature.⁴⁵³ Kaufman, Hayes and Knox set out useful questionnaires for organisations to conduct self-audits to:

- initially assess and identify risk
- confirm risk

⁴⁵⁰ Smallbone, S., Marshall, W., & Wortley, R. (2013). *Preventing Child Sexual Abuse: Evidence, Policy and Practice*. Routledge: Abingdon: pp 166–171.

⁴⁵¹ Leclerc, B., Feakes, J. & Cale, J. (2015). ‘Child sexual abuse in youth - oriented organisations: tapping into situational crime prevention from the offender’s perspective.’ *Crime Science*, vol 4(28); see also Leclerc, B., Wortley, R. & Smallbone, S. (2011). ‘Getting into the Script of Adult Child Sex Offenders and Mapping out Situational Prevention Measures.’ *Journal of Research in Crime and Delinquency*, vol 48(2), pp 209–237.

⁴⁵² Leclerc, B., Feakes, J. & Cale, J. (2015). ‘Child sexual abuse in youth - oriented organisations: tapping into situational crime prevention from the offender’s perspective.’ *Crime Science*, vol 4(28).

⁴⁵³ Kaufman, K., Tews, H., Schuett, J. & Kaufman, B. (2012). ‘Prevention Is Better Than Cure: The Value of Situational Prevention In Organisations.’ In Erooga, M. (2012). *Creating Safer Organisations: Practical Steps to Prevent the Abuse of Children by Those Working With Them*. Wiley: Malden, pp 140–169; Kaufman, K., Holmberg, J., Orts, K., McCrady, F., Rotzien, A., Daleiden, E. & Hilliker, D. (1998). ‘Factors Influencing Sexual Offenders’ Modus Operandi: An Examination of Victim-Offender Relatedness and Age.’ *Child Maltreatment*, vol 3(4), pp 349–361; see also Saul, J., Patterson, J. & Audage, N. (2010). ‘Preventing Sexual Maltreatment in Youth-Serving Community Organizations.’ In K. Kaufman (Ed.) (2010). *The Prevention of Sexual Violence: A Practitioner’s Sourcebook*. NEARI Press: Holyoke, MA, pp 449–464. In addition, literature on situational crime prevention of child sexual abuse in religious contexts indicates key themes that may have parallels in some sporting, cultural, arts and recreational groups. See for example Terry, K. & Freilich, J. (2012). ‘Understanding Child Sexual Abuse by Catholic Priests from a Situational Perspective.’ *Journal of Child Sexual Abuse*, vol 21(4), pp 437–455; Terry, K. & Ackerman, A. (2008). ‘Child Sexual Abuse in the Catholic Church: How Situational Crime Prevention Strategies Can Help Create Safe Environments.’ *Criminal Justice and Behavior*, vol 35(5), pp 643–657. See also Balemba, S. & Beauregard, E. (2013). ‘Where and when? Examining spatiotemporal aspects of sexual assault events.’ *Journal of Sexual Aggression*, vol 19(2), pp 171–190.

- identify the available strategies to reduce risk and prevent offending (using a matrix assessing multiple dimensions such as lifestyle and routine activities; physical environment; victim characteristics; locations; facilitators and offenders)
- identify more detailed specific strategies to reduce risk and prevent offending.⁴⁵⁴

6.1.6 Models of prevention: Methods to reduce sexual abuse in child-serving institutions

Recommendations from academic experts and carefully designed policy efforts embody many of the situational crime prevention principles, while adding further details. Informed by decades of research and practice experience, Wurtele makes multiple recommendations about how to reduce the likelihood of offending, in which key elements are highlighted and discussed including:

- screening
- youth protection policies
- monitoring and supervision of staff in their dealings with children
- policies on electronic and social media use
- codes of conduct
- child sexual abuse education for staff, parents and children
- staff development training programs (including education on sexual boundaries).⁴⁵⁵

Wurtele's Child Sexual Abuse Prevention Evaluation Tool for Organizations: Child Protection Policy & Procedures

These elements are embodied in the tool Wurtele created. The *Child Sexual Abuse Prevention Evaluation Tool for Organizations: Child Protection Policy & Procedures* sets out a systematic matrix of seven key prevention dimensions (comprising an organisational policy and six standards), with multiple subcomponents clearly set out for each. The tool includes:

- *The organisational policy* (14 subcomponents)
- Standard 1: *Safe screening and hiring practices* (18 subcomponents)
- Standard 2: *Code of Conduct* (21 subcomponents)
- Standard 3: *Implementation and monitoring* (10 subcomponents)
- Standard 4: *Ensuring Safe Environments* (10 subcomponents)
- Standard 5: Reporting and responding to concerns, disclosures and allegations (21 subcomponents)
- Standard 6: *Training and education* (14 subcomponents).⁴⁵⁶

Other models from both overseas and Australia share elements with Wurtele's model, while having different levels of detail. Table 6.3 sets out five of these: Wurtele's prevention evaluation tool; the United States Centres for Disease Control and Prevention model; Child Wise (Australia); the Australian Childhood Foundation and the findings of the Walsh et al. *Audit tool for child safe organisations* 2016 (see Table 6.3).. Elements of these models, such as screening and the development of a code of conduct, are supported by the general literature on creating child safe organisations. These elements include:

⁴⁵⁴ Kaufman, K., Hayes, A. & Knox, L. (2010). 'The Situational Prevention Model: Creating Safer Environments for Children and Adolescents.' In Kaufman, K. *The Prevention of Sexual Violence: A Practitioner's Sourcebook*. NEARI Press: Holyoke, pp 350–355.

⁴⁵⁵ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453. See also Wurtele, S. (2009). 'Preventing Sexual Abuse of Children in the Twenty-First Century.' *Journal of Child Sexual Abuse*, vol 18, pp 1–18. Many of these principles are also identified by other academics and practitioners: see also Irenyi, M., Bromfield, L., Beyer, L. & Higgins, D. (2006). 'Child maltreatment in organisations: Risk factors and strategies for prevention.' *Child Abuse Prevention Issues*, vol 26, pp 1–24; Lanning, K. & Dietz, P. (2014). 'Acquaintance Molestation and Youth-Serving Organizations.' *Journal of Interpersonal Violence*, vol 29(15), pp 2815–2838; Wolfe, D., Jaffe, P., Jette, J. & Poisson, S. (2001). *Child Abuse In Community Institutions And Organizations: Improving Public And Professional Understanding*. Prepared for the Law Commission of Canada.

⁴⁵⁶ Copy on file with author.

- insights into offenders⁴⁵⁷
- insights about effective and ineffective organisations.⁴⁵⁸

Involvement of children in key elements of the process, and direct instruction to children about illegal conduct

It should be noted that involving children in relevant components of the strategy is necessary and desirable.⁴⁵⁹ While it may seem so obvious as to go without saying, it is also relevant to provide clear, direct instruction to children and youth in the organisation that specific sexual acts are not only unacceptable at the organisational level, but are illegal, exposing the offender to legal sanctions, and risking devastating consequences.⁴⁶⁰

Overall, Wurtele's model is possibly the most detailed and thorough identified in this study. The aim of this study was not to provide a comprehensive model of regulation and of all the subject matter of that regulation, along with the other material synthesised in this part of the project. However, its seven key prevention dimensions (comprising an organisational policy and six standards) have been closely considered in informing subsequent analysis and conclusions.

⁴⁵⁷ Erooga, M. (2012a). 'Understanding and Responding to People Who Sexually Abuse Children Whilst Employed In Positions of Trust: An Overview of the Relevant Literature – Part One: Offenders.' In Erooga, M. (2012). *Creating Safer Organisations: Practical Steps to Prevent the Abuse of Children by Those Working With Them*. Wiley: Malden, pp 7–26; Erooga, M., Allnock, D. & Telford, P. (2012). 'Sexual Abuse of Children By People In Organisations: What Offenders Can Teach Us About Protection.' In Erooga, M. (2012). *Creating Safer Organisations: Practical Steps to Prevent the Abuse of Children by Those Working With Them*. Wiley: Malden, pp 63–84; Smallbone, S., Marshall, W. & Wortley, R. (2013). *Preventing Child Sexual Abuse: Evidence, Policy and Practice*. Routledge: Abingdon. See also Ewing, C. (2014). *Preventing the Sexual Victimization of Children: Psychological, Legal and Public Policy Perspectives*. Oxford University Press: New York, pp 128–173; Plummer, C. (2013). *Using Policies to Promote Child Sexual Abuse Prevention: What is Working?* VAWnet, a project of the National Resource Center on Domestic Violence: Harrisburg, PA. Retrieved 27 October 2015 from <http://www.vawnet.org>.

⁴⁵⁸ Erooga, M. (2012b). 'Understanding and Responding to People Who Sexually Abuse Children Whilst Employed In Positions of Trust: An Overview of the Relevant Literature – Part Two: Organisations.' In Erooga, M. (2012). *Creating Safer Organisations: Practical Steps to Prevent the Abuse of Children by Those Working With Them*. Wiley: Malden, pp 27–43; Smallbone, S., Marshall, W. & Wortley, R. (2013). *Preventing Child Sexual Abuse: Evidence, Policy and Practice*. Routledge: Abingdon. See also the treatment of situational crime prevention at Part 6.2.4.

⁴⁵⁹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴⁶⁰ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, pp 2442–2453; Lanning, K. & Dietz, P. (2014). 'Acquaintance Molestation and Youth-Serving Organizations.' *Journal of Interpersonal Violence*, vol 29(15), pp 2815–2838.

Table 6.3 – The subject matter of regulation: Key components of child sexual abuse prevention in child-serving institutions⁴⁶¹

Wurtele <i>Child Sexual Abuse Prevention Evaluation Tool for Organizations</i> : seven dimensions	United States Centers for Disease Control and Prevention (Saul et al., 2007)	Child Wise ⁴⁶²	Australian Childhood Foundation ⁴⁶³	Audit tool for child safe organisations (Walsh et al., 2016)
The organisational policy (14 subcomponents)	Screening and selecting employees and volunteers	Open and aware culture	Commitment to safeguarding children	Organisational leadership, governance and culture
Standard 1: Safe screening and hiring practices (18 subcomponents)	Guidelines on interactions between individuals	Understanding child abuse	Personnel roles and conduct	HR management
Standard 2: Code of Conduct (21 subcomponents)	Monitoring behaviour	Managing risk to minimise abuse	Recruitment and screening practices	Child safe policy and procedures
Standard 3: Implementation and monitoring (10 subcomponents)	Ensuring safe environments	Child protection policies and procedures	Personnel induction and training	Child friendly complaint processes
Standard 4: Ensuring Safe Environments (10 subcomponents)	Responding to inappropriate behaviour, policy breaches, and suspicions and allegations of child sexual abuse	Clear boundaries	Involving children and parents	Education and training

⁴⁶¹ Note that other organisations have similar approaches, and other policy documents, to a greater or lesser extent, contain some of these principles. For example, see the Community and Disability Services Ministers' Conference. (2005). 'Creating Safe Environments for Children – Organisations, Employees and Volunteers (Framework).' Retrieved 3 February 2016 from http://www.ccp.vic.gov.au/childsafetycommissioner/downloads/childsafe_sched02.pdf; Community and Disability Services Ministers' Conference. (2005). 'Creating Safe Environments for Children – Organisations, Employees and Volunteers (Schedule): Guidelines for Building the Capacity of Child-Safe Organisations.' Retrieved 3 February 2016 from http://www.dhcs.act.gov.au/_data/assets/pdf_file/0020/5636/NCSF_Schedule1.pdf; the *ChildPlace Health and Safety* model developed by Bravehearts; and The Australian Childhood Foundation. (2013). Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 3 – Child Safe Institutions*. Retrieved 3 February 2016 from <http://www.childabuseroyalcommission.gov.au/submissions/309/issues-paper-3,-child-safe-institutions>. Overseas, see for example the National Society for the Prevention of Cruelty to Children (UK). *Child Protection in Sport Unit. Putting Safeguards in Place*. Retrieved 3 February 2016 from <https://thecpsu.org.uk/help-advice/putting-safeguards-in-place/>.

⁴⁶² Child Wise is a leading Australian not-for-profit child sexual abuse prevention organisation. It conducts a voluntary *Child Safe Certification* program, using its 12 Standards as the basis for a customised approach, depending on the nature of the organisation. Certification involves a needs assessment, a desktop review of current policies, practices and procedures, and questionnaires or interviews with selected staff. Child Wise then provides a report for the organisation, with advice and recommendations for action to enable certification to proceed. If granted, the organisation then undergoes a self-audit and a self-assessment in years 1 and 2 respectively, and in year 3, Child Wise conducts an analysis to ensure the organisation is maintaining and building on child safety standards for continuous improvement: see Child Wise. *Child Safe Certification*. Retrieved 3 February 2016 from <http://www.childwise.org.au/page/11/child-protection-consulting>.

⁴⁶³ The *Safeguarding Children Accreditation Program* is a voluntary accreditation scheme operated by the Australian Childhood Foundation, a national not-for-profit organisation, to boost organisational capacity to protect children from abuse. See *Safeguarding Children. About the Australian Childhood Foundation*. Retrieved 3 February 2016 from <http://www.safeguardingchildren.com.au/about-us/about-us.aspx>. See also Tucci, J., Mitchell, J., Homes, D., Hemsworth, C. & Hemsworth, L. (2015). 'Constructing a Child Protection Policy to Support a Safeguarding Children Culture in Organisations and Institutions.' *Children Australia*, vol 40(1) pp 78–86.

Wurtele <i>Child Sexual Abuse Prevention Evaluation Tool for Organizations</i> : seven dimensions	United States Centers for Disease Control and Prevention (Saul et al., 2007)	Child Wise ⁴⁶²	Australian Childhood Foundation ⁴⁶³	Audit tool for child safe organisations (Walsh et al., 2016)
Standard 5: Reporting and responding to concerns, disclosures and allegations (21 subcomponents)	Training in child sexual abuse prevention (for employees/volunteers, caregivers and youth)	Recruitment and selection	Child abuse reports and allegations	Children’s participation and empowerment
Standard 6: Training and education (14 subcomponents)		Screening representatives	Supporting a child safe culture	Family and community involvement
		Support and supervision		Physical and online environment
		Empowering children		Review and continuous improvement
		Training and education		
		Complaints and disclosures		
Legal responsibilities				

Part 6.2 – Regulatory models and approaches currently used in child-serving organisations

6.2.1 Introduction

In Australia, sporting, cultural, arts and recreational groups for children and youth are heterogeneous in nature, size, clientele, staffing and governance. This is significant when considering what regulatory models and approaches may be suitable for different organisations. After examining the nature of these groups, it is possible to discern two broad categories of organisations, although all are self-regulated in this context.

The first group of organisations is characterised by several features. They are large organisations, operate at a national level with state and territory associations, and have regional and local administrative bodies, even though many of their individual clubs or local organisations may be small and geographically diffuse. These organisations tend to have centralised child protection policies and management structures. Because of their overall nature, even though many of their individual clubs or local organisations are small, they may be well-suited to a particular kind of regulatory model and approach, based on a centralised model for as many of the seven key dimensions as possible. Examples of these organisations are swimming, gymnastics, scouts and the YMCA. Part 6.2.2 briefly covers the broad nature of these organisations.

The second group of organisations has different characteristics. These organisations are not as large or centralised. They are more diffuse, and lack centralised child protection policies and management structures at the national, state and territory, and sometimes even local, levels. They may have very few staff and small budgets, and may rely more heavily on volunteers. Because of their overall nature, these kinds of groups should still ideally be regulated, based on a centralised model for as many of the seven key dimensions as possible. But they may require additional flexibility in some aspects of regulation. Examples of these organisations are martial arts, dancing and singing clubs. Part 6.2.3 briefly covers the broad nature of these organisations.

6.2.2 Larger, more centralised organisations with well-developed management structures

Swimming

Nationally, in 2014–15, there were 924 swimming clubs affiliated with *Swimming Australia*, operating under ordinary business structures.⁴⁶⁴ It is difficult to identify the precise number of swimming coaches, instructors and volunteers, but it is substantial: the 2011 census revealed that 10,281 people self-identified as a ‘swimming coach or instructor’⁴⁶⁵, and there are also management and administrative staff. Employment may be part-time, full-time or casual, and volunteers may also be employed. *Swimming Australia* has member associations, including the peak bodies for each state and territory. Each of these entities operates independently of *Swimming Australia*, but is bound by the policies of *Swimming Australia*, including its *Child Welfare Policy*, which came into effect in June 2002. Local swimming clubs are affiliated with the respective state or territory association.⁴⁶⁶

The *Australian Swimming Coaches and Teachers Association* (ASCTA) offers accredited training, and provides membership to the association and professional development courses.⁴⁶⁷ *Swim Australia* provides (non-compulsory) registration and accreditation to swim schools. *Swim Australia* registers swim schools that have consent from the government to operate, are supervised by an ASCTA accredited teacher, agree to abide by

⁴⁶⁴ Swimming Australia. (2015). *Annual Report 2015*. Retrieved 3 February 2016 from

<http://www.swimming.org.au/visageimages/2015%20SAL%20Annual%20Report%20WEB.pdf>.

⁴⁶⁵ Australian Bureau of Statistics, *Employment in Sport and Recreation, August 2011*, cat no 4148.0, ABC, Canberra, 2012. Retrieved 3 February 2016 from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4148.0Main+Features1August%202011?OpenDocument>.

⁴⁶⁶ See also Royal Commission into Institutional Responses to Child Sexual Abuse. (2014). *Public Hearing into Swimming Australia Ltd, Case Study 15: Opening Address by Senior Counsel Assisting*, Sydney, p 3.

⁴⁶⁷ Australian Swimming Coaches and Teacher Association. Retrieved 3 February 2016 from <http://www.ascta.com>.

national guidelines as determined by ASCTA and agree to the inspection, complaints and evaluation mechanisms that operate.⁴⁶⁸

Gymnastics

Similar to swimming organisations, *Gymnastics Australia* is the overarching national body, and there are state and territory association members. Nationwide, there are 531 clubs offering gymnastics programs across Australia.⁴⁶⁹ It is difficult to identify the number of people employed as gymnastics instructors, although the 2011 census revealed that 2,507 people self-identified as a 'gymnastics coach or instructor'.⁴⁷⁰ Over 50 per cent of gymnastics coaches or instructors were aged 15–24, and were employed for 24 hours or less per week, indicating high levels of part-time employment.⁴⁷¹ The *Gymnastics Australia Annual Report 2014* indicates that there were 573 technical members (offered to suitably qualified coaches and judges) and 730 coaches.⁴⁷² In 2014, Gymnastics Australia partnered with a Registered Training Organisation to provide coaches with nationally recognised qualifications at the same time they receive their Gymnastics Australia accreditation.⁴⁷³ Gymnastics Australia has incorporated its child protection policy into its *Member Protection Policy*.⁴⁷⁴

Scouts Australia

In 2015, there were 14,139 Scout Leaders in Australia.⁴⁷⁵ Nationally recognised training qualifications, including Certificates in Adult Leadership, are obtained through the Scouts Australia Institute of Training (which is a Registered Training Organisation). All adults volunteering or working in Scouts Australia also need to undergo a Working with Children Check. All Leaders must sign a Code of Conduct, which 'incorporates important principles of Child Protection'.⁴⁷⁶ As well as uniformed Scout Leaders, the organisation encourages the participation of other

⁴⁶⁸ Swim Australia. (2015). Registered Swim Schools. Retrieved 3 February 2016 from <http://www.swimaustralia.org.au/about-us/registered-swim-school>.

⁴⁶⁹ Gymnastics Australia. (2014). *Gymnastics Australia Annual Report 2014*. Retrieved 3 February 2016 from http://www.gymnastics.org.au/visageimages/2014GA_Annual_Report_Artwork_final_proof.pdf, p 8.

⁴⁷⁰ Australian Bureau of Statistics. *Employment in Sport and Recreation, Australia, August 2011*, cat no. 4148.0, ABC, Canberra, 2012. Retrieved 3 February 2016 from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4148.0Main+Features1August%202011?OpenDocument>.

⁴⁷¹ Australian Bureau of Statistics. *Employment in Sport and Recreation, Australia, August 2011*, cat no. 4148.0, ABC, Canberra, 2012. Retrieved 3 February 2016 from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4148.0Main+Features1August%202011?OpenDocument> (Sport Occupations by Age: Table 6; Sport occupations by hours of work: Table 6.6).

⁴⁷² This may relate only to coaches employed directly by Gymnastics Australia, as during 2014, the organisation issued 1,516 Beginner Coach Accreditations and 692 Intermediate Accreditations. In addition, in 2014, Gymnastics Victoria had a coaching pool of 1,455: Gymnastics Victoria. (2014). *Gymnastics Victoria Annual Report 2014*. Retrieved 3 February 2016 from <http://vic.gymnastics.org.au/visageimages/About%20Us%20Folder/Annual%20Reports/2014-Annual-Report-v2.pdf>, p 40.

⁴⁷³ Gymnastics Australia. (2014). *Gymnastics Australia Annual Report 2014*. Retrieved February 3, 2016 from http://www.gymnastics.org.au/visageimages/2014GA_Annual_Report_Artwork_final_proof.pdf, p 16.

⁴⁷⁴ Gymnastics Australia. (2015) *Member Protection Policy*, 8th ed. Retrieved 3 February 2016 from http://www.gymnastics.org.au/visageimages/About_Us/By_laws_Policies_Tech_Regs/Member%20Protection%20Policy%20Aug%202015%20FINAL.pdf. In addition, child protection policies exist at state and local levels around the country: see for example Gymnastics Queensland. (2010). *Child Protection Policy*. Retrieved 3 February 2016 from http://qld.gymnastics.org.au/visageimages/governance/policies_and_procedures/GQPOL_02_CHILD_PROTECTION_POLICY.pdf; Gymnastics Victoria. (2013). *Child Safe and Child Friendly Policy*. Retrieved 3 February 2016 from <http://gymnastics.org.au/visageimages/clubs/BTYC/Child%20Safe%20and%20Child%20Friendly%20Policy.pdf>.

The member protection policies extend beyond 'preventing child sexual abuse' and incorporate matters including harassment, intimate relations and child protection generally. At the national level, Gymnastics Australia's *Member Protection Policy* includes position statements on matters including alcohol, social networking and photographing children. A full list of policies can be found at Gymnastics Australia, *By-laws, Policies and Technical Regulations*. Retrieved 3 February 2016 from <http://www.gymnastics.org.au/by-laws-policies-technical-regulations.html>.

⁴⁷⁵ Scouts Australia. (2015) Annual Report 2015, p 5. Retrieved from <http://www.scouts.com.au/about-us/annual-report>.

⁴⁷⁶ Scouts Australia. (2014). Safety Support. Retrieved 3 February 2016 from <http://www.scouts.com.au/royal-commission-support/safety-support>. The Scouts Australia Code of Conduct is built into Part 5.2 of: Scouts Australia. (2014). *Policy and Rules 2014*, 7th ed. Retrieved 3 February 2016 from <http://www.scouts.com.au/resources-and-information-for-members/online-library/policy-rules>.

adult volunteers to assist with activities. Volunteers can be from any part of the community, including a Scout's parents, student teachers or former Scouts, and must undergo a police check.⁴⁷⁷

YMCA

YMCA Australia is a federation of 24 member associations (head offices) across Australia. Each is governed by a local voluntary Board of Directors.⁴⁷⁸ The YMCA employs around 12,000 staff in more than 741 communities in Australia.⁴⁷⁹ Volunteers are also engaged across all YMCA services and are required to complete a Working with Children Check. A *Safeguarding Children Policy* applies to all Boards of Directors, staff and volunteers, licensed member associations and affiliated organisations.⁴⁸⁰

6.2.3 Smaller, less centralised organisations without well-developed management structures

Martial arts

Local clubs can be affiliated with state and national associations, but this is not always the case. The organisational frameworks for martial arts classes in Australia are varied. Martial arts clubs may be specific to one style or multiple varied styles. They are often run as small- to medium-sized businesses that cater to children and adults, generally in separate age/level classes. Some styles of martial arts, such as taekwondo, may have national and state level organisations, with a child protection policy.⁴⁸¹ Many clubs may not have a child protection policy, although instructors have Working with Children Checks.

Dance

Generally, dance organisations have little overall structure in terms of state and national associations, in contrast to some of the sports organisations referred to above. However, for competitive ballroom dancing, there is a national body (DanceSport Australia), which has state bodies. DanceSport Australia also provides accreditation to ballroom dancing schools and organisations, and coaches. Its *Member Protection Policy* includes child protection, photographing children, alcohol use, social networking and other matters.⁴⁸²

⁴⁷⁷ Scouts Australia. Organisation Chart. Retrieved 3 February 2016 from <http://www.scouts.com.au/about-us/organisation-chart>.

⁴⁷⁸ YMCA. (2014). Structure. Retrieved 3 February 2016 from http://ymca.org.au/who_we_are/structure/Pages/default.aspx.

⁴⁷⁹ YMCA. (2014). Careers. Retrieved 3 February 2016 from <http://ymca.org.au/get-involved/Pages/Jobs.aspx>.

⁴⁸⁰ YMCA. (2014). *Safeguarding Children and Young People*. Retrieved 3 February 2016 from http://ymca.org.au/who_we_are/Documents/ymca_CHILDPProtectPolicy%20A4%20191214.pdf. The Royal Commission's report *Case Study No 2: YMCA NSW's response to the conduct of Jonathan Lord* was published in June 2014. It found there were multiple and major systemic defects in the organisation's approach to child protection: Royal Commission into Institutional Responses to Child Sexual Abuse: Sydney. Retrieved 3 February 2016 from <http://www.childabuseroyalcommission.gov.au/case-study/d7153499-5a23-414b-99a0-9ff4f65155cf/case-study-2,-october-2013,-sydney>. See also the Final Second Statement by Ron Mell, CEO of YMCA, 1 April 2014, who stated: '... every YMCA, in over 700 communities across Australia, has either been audited or is scheduled for an audit, by the ACF': YMCA. (2014). 'Our Second Public Statement.' Retrieved 3 February 2016 from https://ymca.org.au/who_we_are/Documents/Final%20Second%20Public%20Statement%20YMCA%20Australia%20%201%20April%202014.pdf; and see the Final YMCA Statement relating to the Royal Commission Findings, made by CEO Ron Mell on 1 April 2014: 'We have continued to proactively review our child protection policies, processes, resources, culture and governance and will launch a new national child protection policy later this year ... This new Child Protection Policy raises the standards even higher for all YMCAs and ensures compliance to ensure all children are protected ... [we] plan to invest a further \$1.1 million over the next three years to externally audit all YMCAs to ensure they are maintaining the highest of standards in child protection': YMCA. (2014). Final Public Statement published on 1 July 2014. Retrieved 3 February 2016 from https://ymca.org.au/who_we_are/Documents/Final%20YMCA%20Australia%20Statement%20re%20Royal%20Commission%20Findings%201%20July%202014.pdf.

⁴⁸¹ Sports Taekwondo Australia's *Member Protection Policy* deals with matters including child protection, photographing children, social networking and sexual relationships: Sports Taekwondo Australia Ltd. (2015). *Member Protection Policy*. Retrieved 3 February 2016 from <http://www.sta.asn.au/site/taekwondo/national/downloads/PolicyDocs/Member%20Protection%20Policy%20-%20Pol.005%20V02.0.pdf>. Members include member associations (state and territory sports taekwondo associations) and affiliate members (associations and clubs affiliated with Sports Taekwondo Australia). Taekwondo Queensland is a member of Taekwondo Australia Ltd. Taekwondo Queensland's *Member Protection Policy* includes child protection, photographing children, social networking and sexual relationships: Taekwondo Queensland Inc. (2013). *Member Protection Policy*, 2nd ed. Retrieved 3 February 2016 from <http://www.tkdqld.com/about/documents>.

⁴⁸² DanceSport Australia. (2013). *Member Protection Policy: Version 5*. Retrieved 3 February 2016 from <http://www.dancesport.org.au/images/stories/national/general/pdf/cr006memberprotectpolicyv5.pdf>.

Singing

Singing organisations are similar to dance organisations. Singing schools range from individual sole operators to full schools, such as the FAME School of Performing Arts in Brisbane. The Australian National Association of Teachers of Singing has state and territory chapters, but it focuses on promoting high standards of education.⁴⁸³ There is no accreditation procedure and there is no clear child protection policy.

6.2.4 Self-regulation

A range of approaches are used that all constitute self-regulation. The exception to this is employee screening procedures, which, to an extent, apply through direct government regulation via legislative frameworks for Working with Children Checks, and may be common across these organisations, whether large or small. Larger, more centralised organisations tend to have a centralised policy that applies in all jurisdictions and agencies. This centralised policy is absent in smaller, more diffuse organisations.

Voluntary accreditation

A small additional element of self-regulation is voluntary accreditation, which may be undertaken by individual organisations using non-government agencies to provide this service.

The work done by these agencies, such as Child Wise and the Australian Childhood Foundation – which themselves are not strictly regulated – effectively amounts to soft external regulation, since there are no effective penalties for organisations that do not meet the relevant standards; fail to maintain recommended standards; or do not have enforcement mechanisms.

Child Wise

Child Wise is a leading Australian not-for-profit child sexual abuse prevention organisation. It conducts a voluntary *Child Safe Certification* program, using its 12 Standards as the basis for a customised approach, depending on the nature of the organisation. Certification involves a needs assessment, a desktop review of current policies, practices and procedures, and questionnaires or interviews with selected staff. Child Wise then provides a report for the organisation, with advice and recommendations for action to enable certification to proceed. If granted, the organisation then undergoes a self-audit and a self-assessment in years 1 and 2 respectively, and in year 3, Child Wise conducts an analysis to ensure the organisation is maintaining and building on child safety standards for continuous improvement.⁴⁸⁴

Australian Childhood Foundation

The *Safeguarding Children Accreditation Program* is a voluntary accreditation scheme operated by the Australian Childhood Foundation, a national not-for-profit organisation, to boost organisational capacity to protect children from abuse.⁴⁸⁵ At 8 November 2015, the foundation's website listed 16 organisations that are accredited (nine were YMCA branches) and a further 28 that are undergoing accreditation (15 were YMCA branches).⁴⁸⁶

⁴⁸³ Australian National Association of Teachers of Singing Ltd. Retrieved 3 February 2016 from <http://www.anats.org.au/>.

⁴⁸⁴ Child Wise. Child Safe Certification. Retrieved 3 February 2016 from <http://www.childwise.org.au/page/11/child-protection-consulting>.

⁴⁸⁵ Safeguarding Children. About the Australian Childhood Foundation. Retrieved 3 February 2016 from

<http://www.safeguardingchildren.com.au/about-us/about-us.aspx>. See also Tucci, J., Mitchell, J., Homes, D., Hemsworth, C. & Hemsworth, L. (2015). 'Constructing a Child Protection Policy to Support a Safeguarding Children Culture in Organisations and Institutions.' *Children Australia*, vol 40(1), pp 78–86.

⁴⁸⁶ Safeguarding Children. Accredited Organisations. Retrieved 3 February 2016 from <http://www.safeguardingchildren.com.au/the-program/accredited-organisations.aspx>.

Part 6.3 – Proposed regulatory models and approaches to ensure smaller organisations with limited resources are not overburdened with regulation, while still keeping children safe from sexual abuse

6.3.1 Introduction: Obstacles to effective regulation

As shown in Part 6.1, there are multiple obstacles to creating and successfully implementing child sexual abuse prevention and response strategies in all child-serving organisations, including those that are smaller and have few resources. Saul et al. identified challenges to key aspects of these necessary approaches as involving both *individual factors* (beliefs, attitudes, fears, knowledge, time capacity and financial resources) and *organisational structural factors* (resources such as finance, time, personnel and expertise; employee and volunteer turnover; a tendency to use only one strategy; and implementation problems including cultural impediments).⁴⁸⁷ Lanning and Dietz note the key obstacles to youth-serving organisations responding adequately as including:

- inadvertent reasons (ignorance, incompetence, denial, philosophy of forgiveness, ‘good old boy network’, elitism)
- intentional reasons (cost, fear of being sued, cover-ups, reputational control and complicity).⁴⁸⁸

Boyle, who has conducted extensive research on Boy Scouts of America, notes these obstacles as well, and emphasises the organisation’s powerful drive to protect its reputation as a major factor in inadequate responses.⁴⁸⁹ Similarly, Wurtele acknowledges that training staff requires financial investment and time, which presents difficulties for employees and even more so for volunteers, and which is complicated by turnover.⁴⁹⁰ Wurtele also notes that a ‘potentially greater barrier’ is reticence about even raising the subject of child sexual abuse, with associated challenges of ensuring staff are not in a state of denial about the reality of child sexual abuse, nor are fearful of the consequences of organisational prevention efforts on their pedagogical or service practise.⁴⁹¹ Even when there is genuine institutional will to comply with effective methods of regulation, with this being augmented by individuals’ intrinsic commitment, there can be implementation challenges.

Yet, there are ways to overcome these obstacles, and strategies that may be more useful and practicable for smaller organisations, by addressing both individual and organisational factors. As noted by Smallbone et al., one advantage of the very nature of an institution is its relatively strong powers to control various aspects of the environment, the presence and status of employees and volunteers, and the conduct required of its personnel.⁴⁹² This power can be sourced in the organisation’s own authority and ability to control the admission and conduct of

⁴⁸⁷ Saul, J. & Audage, N. (2007). *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures*. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control: Atlanta, GA, pp 29–32.

⁴⁸⁸ Lanning, K. & Dietz, P. (2014). ‘Acquaintance Molestation and Youth-Serving Organizations.’ *Journal of Interpersonal Violence*, vol 29(15), pp 2815–2838.

⁴⁸⁹ Boyle, P. (2014). ‘How Youth-Serving Organizations Enable Acquaintance Molesters.’ *Journal of Interpersonal Violence*, vol 29(15), pp 2839–2848.

⁴⁹⁰ Wurtele, S. (2012). ‘Preventing the sexual exploitation of minors in youth-serving organizations.’ *Children and Youth Services Review*, vol 34, pp 2442–2453.

⁴⁹¹ Wurtele, S. (2012). ‘Preventing the sexual exploitation of minors in youth-serving organizations.’ *Children and Youth Services Review*, vol 34, pp 2442–2453, p 2451. It should be noted that one such factor is the fear of ‘malicious allegations’, a fear that should be dispelled by evidence showing that concerns about false allegations are not founded, with less than 2 per cent of self-reports being ‘unwarranted’ and even fewer being malicious: see Heenan, M. & Murray, S. (2007). *Study of Reported Rapes in Victoria 2000–2003: Summary Research Report*, Statewide Steering Committee to Reduce Sexual Assault, Melbourne; see also Oates, R., Jones, D., Denson, D., Sirotnak, A., Gary, N. & Krugman, R. (2000). ‘Erroneous concerns about child sexual abuse.’ *Child Abuse & Neglect*, vol 24(1), pp 149–157.

⁴⁹² Smallbone, S., Marshall, W. & Wortley, R. (2013). *Preventing Child Sexual Abuse: Evidence, Policy and Practice*. Routledge: Abingdon, p 167.

its members (self-regulation). However, this power can also be imposed by an external authority and channelled through the organisation (direct government regulation).

6.3.2 Purpose of Part 6.3: Proposed models of regulation and approaches to implementation for these kinds of organisations

Informed by the material in parts 6.1 and 6.2, and by the earlier coverage and conclusions of regulatory theory in Part 4.2, Part 6.3 addresses the broad research question: What models of regulation and approaches to implementation are appropriate for and could be employed in sporting, cultural, arts and recreational organisations, to ensure that these smaller organisations with limited resources are not overburdened with regulation, while keeping children safe from sexual abuse? In doing so, Part 6.3 will also incorporate conclusions from Part 5 about the components of OHS models.

Proposing answers to this broad research question requires answers to *three narrower questions*:

- (1) What is the best regulatory model and overarching approach to implementation for these organisations? (This is covered in Part 6.3.3 and 6.3.4)
- (2) What is the subject matter being regulated, and how may it best be implemented? (This is covered in Part 6.3.5)
- (3) How could organisations be required to comply with the regulatory requirements, and to engage in a process of continuous improvement? (This is covered in Part 6.3.5).

This part of the project is not meant to provide a comprehensive model of every aspect of regulation and of all the subject matter of that regulation. However, it does seek to draw conclusions and generate proposals covering the nature and major features of a regulatory model, with observations about the appropriate forms and methods of implementation, for these kinds of organisations. In doing so, as concluded in Part 6.1.6, the seven dimensions of Wurtele’s model are considered to accurately define the subject matter of what needs to be regulated and forms a context informing the following conclusions and proposals in Parts 6.3.3 to 6.3.5.⁴⁹³ The subject matter of regulation will be returned to in Part 6.3.5, but first it is necessary to draw together the findings on the regulatory model and implementation approaches that could best be adopted.

6.3.3 What is the best regulatory model for these organisations?

The best regulatory model

Part 6.1.3 and 6.1.4 of this project synthesised factors that contribute to the perpetration of child sexual abuse in organisational settings. Parts 6.1.5 and 6.1.6 indicated the dimensions of strategies that are required to prevent and respond well to child sexual abuse in these settings. Part 6.2.2 and 6.2.3 then set out the two main groupings of organisations that exist in the contexts of sporting, cultural, arts and recreational activities. This complements the synthesis in Part 6.1.2 of children’s involvement in these organisations across the country.

Part 4.2 of the project analysed regulatory theory. It was concluded that, while there are different approaches to regulating various activities, there are multiple features of the nature and context of child sexual abuse in institutional contexts – including the characteristics of the organisations in which it occurs – that make certain

⁴⁹³ As noted previously, there is considerable overlap among the models in the literature: see Part 6.1.6 and Table 5.2: Saul, J. & Audage, N. (2007). *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures*. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control: Atlanta, GA; Wurtele, S. (2012). ‘Preventing the sexual exploitation of minors in youth-serving organizations.’ *Children and Youth Services Review*, vol 34, pp 2442–2453; Wurtele, S. (2009). ‘Preventing Sexual Abuse of Children in the Twenty-First Century.’ *Journal of Child Sexual Abuse*, vol 18, pp 1–18; Kenny, M. & Wurtele, S. (2012). ‘Preventing Childhood Sexual Abuse: An Ecological Approach.’ *Journal of Child Sexual Abuse*, vol 21(4), pp 361–367; Tucci, J., Mitchell, J., Homes, D., Hemsworth, C. & Hemsworth, L. (2015). ‘Constructing a Child Protection Policy to Support a Safeguarding Children Culture in Organisations and Institutions.’ *Children Australia*, vol 40(1), pp 78–86.

kinds of regulation are more appropriate than others. Specifically, the project concluded that (see the following summary of Part 4.2; author's emphasis):

Regulatory theory, supported by a range of studies, suggests that a ***stronger, more centralised form of direct regulation and program delivery is required when a regulated context is characterised by features such as those that exist in the context of child sexual abuse in institutional contexts***, namely:

- (1) the presence of high risk
- (2) the involvement of a major public health issue
- (3) the involvement of multiple industries
- (4) further fragmentation within those industries
- (5) wide geographical spread of these industries
- (6) highly specialised subject matter and skills required (for example, in educational efforts)
- (7) the desirability of policy having universal application
- (8) the desirability of certainty
- (9) economic pressures confronting the regulated industries
- (10) conflicting organisational interests and cultural values that may not align with the ideal form and content of regulation
- (11) insufficient industry capacity and/or commitment to respond to the problem
- (12) the risk of noncompliance or active subversion.

However, while stronger than a conventional co-regulatory approach, such direct regulation will still require substantial cooperation between the relevant authorities and individuals. This cooperation will be required to not only heighten the likelihood of organisational and individual compliance, but to foster long-term cultural change, organisational adaptation and growth, and achievement of regulatory goals. Genuine compliance that is sustained over time, itself creating an improved culture and a self-perpetuating cycle of desired behaviour and attitudes, is contingent upon:

- receiving cooperative and coordinated support by major government and non-government actors for major regulatory initiatives
- building genuine organisational and individual commitment to the policy measures and practices through attitudinal factors that underpin an internalised normative duty
- having a small number of actors in an organised and homogenous environment
- having simple, streamlined procedural structures
- having a robust enforcement regime.

With respect to the optimal dimensions of regulation as identified in Wurtele's model, Part 6.2 of this project has identified a general lack of regulation in these organisations in relation to child sexual abuse. Even where it does exist, it is limited to self-regulation (except for employee screening). It has also identified two broad groups of organisations that may require slightly different regulatory approaches and models. Especially in the case of the smaller, decentralised organisations – but also in the case of the larger, more centralised organisations – the 12 features in the list summarised in Part 4.2 can be readily discerned. Some of these may be even more clearly present for some of these organisations (for example, organisational fragmentation may be even more pronounced in smaller, less centralised organisations; some activities may involve higher levels of risk due to the nature of the activity undertaken; and some organisations may be under economic strain). Table 6.4 illustrates the presence and strength of each of these 12 factors, with the exception of one factor.

Table 6.4 – Twelve features of the context of child sexual abuse in institutional contexts and relevance to optimal regulatory and implementation approaches

Feature	SCAR groups (Type 1): larger, more centralised organisations (swimming, gymnastics, scouts, YMCA)	SCAR groups (Type 2): Smaller, less centralised organisations (martial arts, dance, singing)
Presence of high risk	✓	✓
Involvement of a major public health issue	✓	✓
Involvement of multiple industries	✓	✓
Further fragmentation in those industries	✓	✓
Wide geographical spread	✓	✓
Highly specialised subject matter and skills required	✓	✓
Desirability of policy having universal application	✓	✓
Desirability of certainty	✓	✓
Economic pressures on regulated industries	✓	✓
Conflicting organisational interests/cultural values	?	?
Insufficient industry capacity/commitment to respond	✓	✓
Risk of noncompliance or active subversion	✓	✓

Conclusion: Direct regulation and seven overarching proposals

Because of the presence of these features, the overall conclusion from these analyses is that direct regulation is necessary and preferable. Accordingly, the proposed model prioritises this method wherever possible. The following lists seven overarching proposals for the preferred regulatory model and approach:

- (1) A single, centralised national regulatory body⁴⁹⁴ could be made responsible for as many of the dimensions as possible.
- (2) National, state and territory governments (and, if desirable, relevant government child protection bodies such as children’s commissions) could provide financial and logistical support, but duplication and fragmentation must be avoided.
- (3) This body could have considerable strength in its regulatory actions; it could be supported by a legislative scheme (or could at least have the power to compel certain acts via organisations’ accreditation or registration requirements), and where an organised sports, cultural, arts or recreational group does not have an accreditation or registration scheme, the process could be developed in a streamlined, cost-effective and practicable way for the purpose of child protection.
- (4) In developing harmonised, common approaches to as many relevant aspects of the regulated subject matter as possible, this body could consult with peak organisations where they exist for Type 1 and Type 2 organisations (and where peak organisations do not exist, it could consult with the relevant bodies), but ultimate decision-making power could rest with the regulatory body.
- (5) Mechanisms for providing key components of the regulated subject matter could be simple, streamlined, cost-efficient and easily accessible (for example, using online methods for training and other dimensions of the regulated subject matter).
- (6) Quality assurance and periodic review could be conducted by either one body or a small number of auditing bodies, which are themselves overseen by the central agency to ensure quality.
- (7) The strength of the centralised regulatory body is necessary but must be balanced with strategies to (a) enhance stakeholder adoption of the ideals underlying the regulated context, and (b) develop intrinsic organisational and individual attitudes to heighten the likelihood of compliance and sustain cultural change and commitment. Therefore, several of the key dimensions of the subject matter of regulation could receive special attention, with education and training being the cornerstone.

⁴⁹⁴ See the note on the next page about an alternative to a single centralised body.

Cooperation between government regulators, and provision of support by the regulator to the organisations (in policy materials, training programs and other parts of the model) could assist this. Under the recommended approach, the central regulator would relieve pressure from existing organisations to develop initiatives, and protect children and themselves.

These seven overarching proposals are consistent with the preceding analyses in this project about optimal regulatory models and OHS frameworks and concepts. The key OHS objects relate to risk elimination and minimisation; consultation and cooperation; encouraging organisations to promote improvements; promoting provision of information and training; securing compliance; ensuring appropriate scrutiny; providing a framework for continuous improvement; maintaining and strengthening a national approach; and practicability. The seven overarching proposals embody principles that map on to multiple objectives of the OHS scheme (see Table 6.5).

A note on an alternative to a single centralised body

As noted previously in Part 5.5.2 at p 181, it may be that for political, practical or other reasons, it is not possible to develop a single, centralised body. An alternative approach may be possible, which could still be consistent with the five key requirements for implementation of the subject matter of regulation. This would include the need for a small number of actors in an organised and homogenous environment, and cooperative and coordinated support by major government and non-government actors. As was noted in Part 5.5.2, an alternative is to implement a nationally consistent regulatory approach by state and territory agencies with specific responsibility for protecting children from sexual abuse in institutional contexts. Ideally, it would be under the umbrella of a national coordinating agency. This type of hub-and-spoke approach is similar to the OHS framework (see Part 5.2). The group of coordinated agencies operating under this kind of approach would need to meet the requirements outlined in the seven overarching proposals.

The next sections of this report, and the proposals contained within them, can be envisaged as being implemented within either the first preferred option of a single centralised body, or this kind of alternative approach, which may still achieve the aims of such a centralised body. However, it should be noted that the need to avoid unnecessary duplication and diffusion, and create a high-quality homogenous environment of regulation, are paramount.

Table 6.5 – Comparative mapping of the seven overarching principles with OHS objectives

Seven overarching principles underpinning the proposals	Overarching principle mapped onto OHS objectives
1. A single, centralised national regulatory body could be made responsible for as many dimensions as possible	Provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces: section 3(1) Maintain and strengthen the national harmonisation of OHS laws and facilitate a consistent national approach: section 3(1)(h)
2. National, state and territory governments could provide financial and logistical support to the centralised body (and if desirable, relevant government child protection bodies such as children’s commissions could also provide support)	Provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces: section 3(1) Maintain and strengthen the national harmonisation of OHS laws and facilitate a consistent national approach: section 3(1)(h)
3. The centralised body could have considerable strength in its regulatory actions; it could be supported by a legislative scheme (or at least have the power to compel certain acts via organisations’ accreditation or registration requirements)	Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces: section 3(1) Maintain and strengthen the national harmonisation of OHS laws and facilitate a consistent national approach: section 3(1)(h)
4. In developing harmonised, common approaches to as many aspects of the regulated subject matter as possible, this body could consult and cooperate with peak organisations while retaining ultimate authority	Provide for fair and effective workplace representation, consultation and cooperation: section 3(1)(b) Encourage organisations to take a constructive role in promoting improvements: section 3(1)(c) Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Practicability: section 3(2)
5. Mechanisms for providing subject matter could be simple, streamlined, cost-efficient, and easily accessible, while minimising burden	Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Practicability: section 3(2)
6. Quality assurance and periodic review could be conducted at practicable intervals by either one body or a small number of auditing bodies, which are themselves overseen by the central agency to ensure quality	Provide a framework for continuous improvement and progressively higher standards: section 3(1)(g) Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Ensure appropriate scrutiny of persons performing functions under the Act: section 3(1)(f) Maintain harmonisation of national approach: section 3(1)(h) Practicability: section 3(2)
7. Strategies could be used to increase the likelihood of compliance, enhance stakeholder adoption of ideals and develop intrinsic organisational and individual attitudes. Education and training could receive special focus, and be strongly and centrally supported	Assist PCBUs and workers to achieve a healthier and safer work environment: section 3(1)(c) Promote provision of advice, information, education and training: section 3(1)(d) Secure effective and appropriate compliance and enforcement measures: section 3(1)(e) Practicability: section 3(2)

6.3.4 What is the best overarching approach to implementing the subject matter of regulation?

The absence of carefully conceived national approaches to essential aspects of protecting children from sexual abuse has been noted. Wurtele has observed that, 'The United States lacks a comprehensive national plan or act to prevent child sexual abuse in general, let alone institutional child sexual abuse. No law or act requires YSOs [youth-serving organisations] to employ screening measures, follow national standards for child protection, develop policies to prevent institutional sexual abuse, or mandate youth and staff education about SSM [staff sexual misconduct]'.⁴⁹⁵ Wurtele urged that:

A national center or clearinghouse could establish national safety standards for YSOs, conduct background screening checks on all staff and volunteers, maintain a database containing names of adults accused of or resigning from YSOs due to sexual misconduct, provide for data collection and information dissemination on the incidence of institutional child sexual abuse as well as identify the risk factors that contribute to this victimization and provide much-needed leadership, resources, technical assistance, and training to assist YSOs in preventing this crime against youth. At a time when national attention and resources are focused on staff sexual misconduct, federal support is necessary because state, local, and agency funding is sorely limited.⁴⁹⁶

Several of the key domains of the subject matter of regulation can be identified in this single recommendation: screening, training and providing leadership, resources and technical assistance.

The overarching approach to implementing regulations must achieve quality of design, consistency, practicability and cost-effectiveness. To achieve these goals, the five key requirements for implementing the subject matter of regulation are:

- receiving cooperative and coordinated support from major government and non-government actors for major regulatory initiatives
- building genuine organisational and individual commitment to the policy measures and practices through attitudinal factors that underpin an internalised normative duty
- having a small number of actors in an organised and homogenous environment
- having simple, streamlined procedural structures
- having a robust enforcement regime.

Conclusion on the optimal approach to implementation

The subject matter of the context of child sexual abuse, and the challenges and requirements of this context are common for all types of child-serving organisations (Type 1 and Type 2 organisations). The experience of child sexual abuse in both types of organisations, analyses in this report, insights from regulatory theory about optimal approaches, and the current regulatory practice in sporting, cultural, arts and recreational organisations, all inform a conclusion that the optimal approach to implementing many of the required dimensions of regulation is a unified, centralised approach implemented by a central authority. This authority should have extensive powers to develop, communicate, administer and enforce the regulated subject matter. This offers the greatest likelihood of promoting quality of design and best practice, and avoiding poor design and practice, and fragmentation and diffusion. It would also lead to efficient use of resources and avoid duplication of effort, enhancing child protection.

⁴⁹⁵ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2444.

⁴⁹⁶ Wurtele, S. (2012). Preventing the sexual exploitation of minors in youth-serving organizations. *Children and Youth Services Review*, vol 34, p 2442–2453, p 2445.

Two types of organisations

This commonality of subject matter, challenges and requirements exists even though this project has found that there are two broad types of sporting, cultural, arts and recreational organisations that need to be regulated.

Type 1 organisations. As seen in Part 6.2.2, the first group of organisations identified in this study – for example, organised swimming and gymnastics, scouts and the YMCA – are large national organisations, with state and territory associations, and regional and local administrative bodies, even though many of their individual clubs or local organisations may be small and geographically diffuse.

These organisations tend to have centralised child protection policies and management structures. Because of their overall nature – and even though many of their individual clubs or local organisations are small – they may be well-suited to a particular kind of regulatory model and approach, based on a centralised model for as many of the seven key dimensions as possible.

Type 2 organisations. The second group of organisations – for example, martial arts, dance and singing groups – are not as large or centralised. They are more diffuse, and lack centralised child protection policies and management structures at the national, state or territory levels, and sometimes even locally. They may have very few staff members and small budgets, and may rely more heavily on volunteers. Because of their overall nature, these kinds of groups should still ideally be regulated based on a centralised model for as many of the seven key dimensions as possible. However, they may require additional flexibility and local variation for appropriate details of the regulated dimensions (see Table 6.6, p 212).

Because of the different features of larger and smaller organisations, they may need slightly different implementation approaches for some aspects of the subject matter to be regulated. In addition, different approaches could be adopted for compliance and continuous improvement. Some organisations present higher risk, and these may require more stringent approaches to implementation and enforcement, and to requirements for continuous improvement. Type 2 organisations may require further support for capacity-building and an approach to implementation that is not as stringent as some of the Type 1 organisations (see Table 6.6, p 212).

However, across all these organisations, a common approach to the core content of several key aspects of the subject matter of regulation is desirable and arguably could be implemented. These key aspects include:

- the design of a code of conduct
- the design of the organisational policy
- the design of education and training.

In addition, in all cases, as observed above, a direct regulatory model must attract substantial cooperation between relevant authorities and individuals, to heighten the likelihood of compliance, to sustain it over time and foster long-term cultural change and ongoing continuous improvement by self-monitoring and external checks.

Further detailed conclusions about how implementation of different aspects of the subject matter of regulation could be achieved are presented in Part 6.3.5. To inform and contextualise those conclusions, it is necessary to set out in more detail the subject matter to be regulated and implemented in these organisations.

6.3.5 What is the subject matter of regulation, and how may it best be implemented? Wurtele's Child Sexual Abuse Prevention Evaluation Tool for Organizations: Child Protection Policy & Procedures

Given that the direct regulatory model is the preferred model, and that a common approach to regulation across organisations despite their diversity is generally desirable (especially in core features of the subject matter of regulation), the next questions are:

- *What* is the subject matter of regulation?
- *How* can this subject matter be implemented?

The subject matter of regulation: What needs to be regulated?

The key dimensions and details of what needs to be regulated are those identified in Wurtele's child sexual abuse *Prevention Evaluation Tool for Organizations: Child Protection Policy & Procedures*⁴⁹⁷. These are supported by the body of literature generally covered in Parts 6.1.5 and 6.1.6. Wurtele's tool sets out a systematic matrix of seven key prevention dimensions (comprising policy and six standards), with multiple subcomponents clearly set out for each: The key dimensions are:

- The organisational policy (14 subcomponents)
- Standard 1: Safe screening and hiring practices (18 subcomponents)
- Standard 2: Code of Conduct (21 subcomponents)
- Standard 3: Implementation and monitoring (10 subcomponents)
- Standard 4: Ensuring safe environments (10 subcomponents)
- Standard 5: Reporting and responding to concerns, disclosures and allegations (21 subcomponents)
- Standard 6: Training and education (14 subcomponents)

Proposals about how these aspects of the subject matter could best be regulated and implemented

In the paragraphs below, proposals about how these aspects could be regulated and implemented will be made.

The organisational policy standards (14 subcomponents).⁴⁹⁸ Every sound policy in this context must possess several key components. Some of these, such as definitions of key terms and the principles that underpin the policy, are universal. It is difficult to conceive of a good reason why there should not be a centralised approach to these elements, based on careful consideration and informed by the evidence base.

Other important aspects of the policy may also be harmonised to the greatest extent possible. Situations known to present the highest level of risk may be made subject to universal policy approaches. For example, Wurtele has observed that some organisations, such as the Boy Scouts of America, have a policy requiring separate sleeping and showering accommodations for youth and adults, and limit one-on-one interactions between youth and adults through a 'two-deep leadership' policy requiring that at least two adults supervise all scouting activities.⁴⁹⁹ Another high-risk situation is when staff members have contact with youth outside the context of the program. A universal policy could limit contact between staff and youth to activities and programs sanctioned by the organisation.⁵⁰⁰ Sports coaches could be prohibited from going on trips alone with athletes, and from staying in hotel rooms with them. Wurtele also observed that all organisations should develop and implement an appropriate electronic communication policy, setting out acceptable and unacceptable uses of electronic communications with youth, including via social networking sites.⁵⁰¹ Locally relevant aspects of policy and implementation provisions may still require material specific to the jurisdiction and activity.

⁴⁹⁷ Copy on file with author.

⁴⁹⁸ The 14 subcomponents of the Organisational Policy Standards are: policy is written in a clear understandable way; contains definitions of key terms; is publicised, displayed, promoted and distributed to all in the organisation; states purpose to protect children from harm in the organisation; states principles underlying the standards; for example, children's right to safety and freedom from abuse; describes zero tolerance for sexual misconduct; is approved and endorsed by the relevant management or oversight body; specifies to whom standards apply; is developed with relevant stakeholders; encourages parents and staff to work together to keep children safe; is reviewed regularly; a process exists to consult children and parents in the review; identifies personnel with child protection roles and responsibilities; and provides information and contact details about where to seek help and the designated contact person.

⁴⁹⁹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2447. See also in the US, Darkness to Light: End Child Sexual Abuse. (2013). *Child Sexual Abuse Prevention Tools for Organizations*. Retrieved 3 February 2016 from

http://www.d2l.org/site/c.4dICIJOkGcISE/b.6236023/k.945/Child_Sexual_Abuse_Prevention_Tools_for_Organizations.htm

⁵⁰⁰ Kenny, M. & Wurtele, S. (2012). 'Preventing Childhood Sexual Abuse: An Ecological Approach.' *Journal of Child Sexual Abuse*, vol 21(4), pp 361–367.

⁵⁰¹ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2447, reported several recent developments in this context. The New York City Department of Education released a social media policy in 2012, which banned student–teacher Facebook friendships. The Board of Education in Paramus, New Jersey, increased restrictions

Standard 1: Safe screening and hiring practices.⁵⁰² The Royal Commission has made extensive inquiries into Working with Children Checks and has recommended improvements to these schemes in each state and territory.⁵⁰³ This project does not seek to make further observations about screening and hiring, except to support the use of effective screening methods for employees and volunteers through robust, efficient state and territory legislative frameworks. A centralised national body could be charged with conducting such checks if there are difficulties at state and territory level, or if there are difficulties with certain categories of employee or volunteer.⁵⁰⁴

Standard 2: Code of Conduct.⁵⁰⁵ Similar to the organisational policy, many aspects of an organisation's Code of Conduct must possess key components. It seems viable to propose a centralised approach to designing these elements of a Code of Conduct, based on careful consideration and informed by the evidence base. To begin with, as recommended by Wurtele, every relevant organisation should *possess* a Code of Conduct. Its purpose is to 'describe how adults should always maintain professional relationships with youth, both in and outside the agency. It is a straight-forward guide of do's and don'ts to assist staff and volunteers to conduct their work professionally and effectively. It lets everyone know what behaviors are acceptable and unacceptable within that organization'.⁵⁰⁶

The 'do's and don'ts' encompass multiple aspects (enumerated as many of the 21 subcomponents), including discipline practices, internet use, photography, electronic communications with children, other communication and language, transport, and alcohol and drug use. While there may be exceptions to some forms of conduct in some specialised contexts, in general there seems to be no plausible reason why common approaches to these matters cannot be developed through consultation and consensus-building. All staff should sign a document agreeing to comply with the code.

Standard 3: Implementation and monitoring.⁵⁰⁷ There are several elements in the 10 enumerated subcomponents that clearly relate to internal organisational implementation and monitoring. Some of these, such as both therapeutic and formal supervision, present substantial challenges, especially for Type 2 organisations. Yet, even these challenges could be met, provided there is sufficient will and investment. Wurtele observed that to maximise the safety of its 210,000 children, the Big Brothers Big Sisters organisation requires the mentor, mentee and parent or guardian to meet with a professional staff member at least once a month.⁵⁰⁸ Modified

on employee use of social networks and mobile phones, including prohibiting teachers from giving their contact details to students or calling students under the age of 18 on their mobile phones without parental authorisation. Boy Scouts of America prohibits the use of any device that can record or transmit images in showers or other areas where privacy is normally expected, and prohibits transmission of sexually explicit photos or videos.

⁵⁰² There are 18 subcomponents of the screening and hiring practices dimension: copy on file with author.

⁵⁰³ See Royal Commission into Institutional Responses to Child Sexual Abuse. (2015). *Working With Children Checks Report*, Sydney. The Royal Commission concluded that, among other weaknesses, these schemes are inconsistent and complex, characterised by unnecessary duplication, and are unintegrated and lack adequate information sharing and monitoring of working with children check cardholders. Overall, 'the system is not providing the protection to children that it otherwise could' (p 3).

⁵⁰⁴ There may be challenges with volunteers (such as family members) and this question may need further consideration. Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2445, concluded that 'A national center or clearinghouse could establish national safety standards for YSOs, conduct background screening checks on all staff and volunteers, maintain a database containing names of adults accused of or resigning from YSOs due to sexual misconduct, provide for data collection and information dissemination on the incidence of institutional child sexual abuse as well as identify the risk factors that contribute to this victimization and provide much-needed leadership, resources, technical assistance, and training to assist YSOs in preventing this crime against youth. At a time when national attention and resources are focused on staff sexual misconduct, federal support is necessary because state, local, and agency funding is sorely limited.'

⁵⁰⁵ There are 21 subcomponents of the Code of Conduct dimension: copy on file with author.

⁵⁰⁶ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2447.

⁵⁰⁷ The implementation and monitoring dimension has 10 subcomponents: copy on file with author.

⁵⁰⁸ Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2447.

versions of this may be possible if specific organisations have dedicated child protection leaders. Supervision could be conducted using innovative methods beyond traditional face-to-face debriefings, such as through Skype conversations or a specialised application.

The other focus of this implementation and monitoring standard, which will present considerable challenges, is the task of auditing organisations. As this requires independence, expertise and resources, external oversight is necessary. Wherever possible, this type of oversight could be conducted by one of a small number of actors, using high-quality methods, which have been carefully designed for quality control.

Standard 4: Ensuring safe environments.⁵⁰⁹ There is some overlap with this standard and the code of conduct, since many of its 10 enumerated subcomponents relate to the same kinds of 'do's and don'ts' that would be the subject of the code. However, this standard is directed at ensuring that these principles are observed in practice, as well as elaborating on them in the manner of situational crime prevention.

Some of these principles have resource implications (such as the use of cameras and windows in doors), which would need to be funded by a central government. However, others require only that established policy measures as espoused in the policy and Code of Conduct are further embedded, disseminated and made known throughout the organisation (such as openly displaying and making available the policy and Code of Conduct to all staff, parents and children).

Standard 5: Reporting and responding to concerns, disclosures and allegations.⁵¹⁰ In Wurtele's model, there are 21 subcomponents in this dimension. Some overlap with aspects of the Code of Conduct dimension, and some overlap with the education and training dimension (for example, staff training in recognising indicators of child sexual abuse, and staff, parents and youth education about how to report suspected cases). However, a considerable number of these subcomponents relate directly to developing and implementing processes for receiving, recording and dealing with complaints and allegations. This is a complex process and some organisations would no doubt prefer to develop their own protocols for dealing with these situations. However, a problem can easily arise if organisations have autonomy and are not subject to checks and balances on whether their protocol is sound, in theory and in practice. There are numerous cases where injustices, and repeated offending, have occurred because of a lack of sound policies and procedures to deal internally with suspected cases.

A key question arising here is whether it is preferable, and possible, to develop a single approach to treating such concerns or allegations, detailing what an organisation must do (although due to the different natures of organisations, details could vary, such as which staff members are responsible for different roles, including recording details; passing on information to child welfare authorities and/or law enforcement; communicating with staff, parents and children during and following an event; supporting the child; dealing with media; and post-resolution processes).

Standard 6: Training and education.⁵¹¹ Wurtele has observed that 'Education is the cornerstone of preventing child sexual abuse and sexual boundary violations by YSO staff members.'⁵¹² This dimension has 14 subcomponents. Education and training need to be implemented comprehensively and appropriately, primarily for staff, but also for children and parents. Wurtele provides examples of these strategies:

⁵⁰⁹ The ensuring safe environments dimension has 10 subcomponents: copy on file with author.

⁵¹⁰ The reporting and responding dimension has 21 subcomponents: copy on file with author.

⁵¹¹ The 14 subcomponents of the training and education dimension are: the agency has developed and implemented education specifically designed for youth, parents, professionals, staff and volunteers who have significant contact with children; all groups are educated about child abuse with in-depth coverage of child sexual abuse; material on professional boundaries (multiple subcomponents relate to this); ethical conflicts; self-regulation; cognitive distortions and rationalisations; how to recognise and respond to a colleague's inappropriate actions; information about duties to report inclusion of a means of confirming an individual's completion of training; training provided before interaction begins with children, and it's repeated periodically.

⁵¹² Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' *Children and Youth Services Review*, vol 34, p 2448.

- The US Conference of Catholic Bishops *Charter for the Protection of Children and Young People* (2002) ‘requires that all employees, volunteers, and customers (including parents and children) of Catholic services be adequately trained in policies, procedures, and information about keeping children safe from sexual exploitation’.
- Boy Scouts of America (BSA) has a strategy including requirements that:
 - all leaders and registered volunteers complete youth protection training on joining the organisation, which is repeated every two years
 - every parent completing a youth membership form must acknowledge awareness of the BSA Youth Protection policies, and affirm their intention to review the book, ‘How to Protect your Children from Child Abuse: A Parent’s Guide’, which is included in every Cub Scout and Boy Scout handbook
 - BSA youth members are taught personal safety awareness skills, including the ‘three R’s’ of prevention (Wurtele, 2009): recognise, resist and report
 - Scouts must also take youth protection training periodically as a condition for rank advancement.⁵¹³

Wurtele urges that all children in an organisation should be provided with information about child sexual abuse, including material about appropriate and inappropriate interactions online and offline with adults. For further staff development generally, including on sexual boundary education, Wurtele has recommended that:

once selected for positions in YSOs, it is critical that in-service training programs be offered to inform all employees and volunteers about institutional child sexual abuse. These trainings can give all adults a heightened awareness of an organization’s commitment to youth safety and intolerance of sexual misconduct. Training objectives should include understanding the complex dynamics of child sexual abuse and how youth are harmed by sexual exploitation, recognizing signs that a youth is being sexually abused, responding sensitively to a victim’s disclosure, understanding the agency’s zero-tolerance policies and consequences, and knowing the agency’s reporting policies and state laws. Everyone working with children must be aware of their ethical and legal duty to report any reasonable suspicions of child sexual abuse to a designated state agency or to law enforcement.⁵¹⁴

How could training and education be designed and implemented?

There are many elements of staff and volunteer training in relation to child sexual abuse in institutional contexts that are universal, such as:

- the definition of child sexual abuse
- its prevalence
- its criminality
- its serious consequences
- who experiences it and at what ages
- who inflicts it
- the tendency towards nondisclosure
- children’s truthfulness in disclosure (even if they recant)
- the indicators of child sexual abuse: children’s typical emotional, social and behavioural responses after victimisation, including how they may indicate their experience without clear disclosure
- legal and ethical duties to report, and processes for reporting.

⁵¹³ Wurtele, S. (2012). ‘Preventing the sexual exploitation of minors in youth-serving organizations.’ *Children and Youth Services Review*, vol 34, pp 2448–2451.

⁵¹⁴ Wurtele, S. (2012). ‘Preventing the sexual exploitation of minors in youth-serving organizations.’ *Children and Youth Services Review*, vol 34, pp 2448–2451

These elements of training could be designed using a robust process of expert development. In addition, several subcomponents of this training and education dimension of Wurtele's model relate to sexual boundary education. These principles also appear sufficiently common across youth-serving organisations and their activities to be able to be harmonised. Specific aspects may have greater or lesser resonance for some organisations, but specialised optional modules could be produced for these kinds of situations. Furthermore, this training could be delivered efficiently and economically through a centralised website.⁵¹⁵ Other organisations have adopted this method of delivery, such as Penn State University's online platform.⁵¹⁶

How could organisations be required to comply with the regulatory method?

As concluded above, there are several dimensions of the subject matter of regulation that are particularly important for both Type 1 and Type 2 organisations. These dimensions, arguably, are organisational policy; Code of Conduct; implementation and monitoring; reporting and responding; training and education. Given their status as a precondition for contributing to child safe organisations, compliance with these dimensions by both Type 1 and Type 2 organisations could be made a condition of registration or accreditation (and/or financial support by the state). Without this accreditation or registration, the organisation would not have lawful status to operate (see Table 6.6). These dimensions could also be a focus of organisational auditing and review, and efforts at continuous improvement.

For Type 1 organisations, given their size and qualities, screening is another dimension of the subject matter of regulation that could be made a condition of registration or accreditation. In contrast, for Type 2 organisations, because of their qualitative differences and worker profiles, compliance with the screening dimension could be qualified or tempered to extend only to paid employees and those working at the organisation in specified capacities (for example, those having close contact with children, and/or being involved in higher risk activities with children), and those working part-time. .

Some aspects of the dimension of ensuring a safe environment present problems for compliance, given that they involve different measures, and levels of expense and maintenance. However, those aspects of this dimension that overlap with the Code of Conduct (see above in Part 6.3.5) could be made a condition of registration or accreditation.

A summary of these methods, and the different approaches, depending on whether the organisation is Type 1 or Type 2, and its level of risk, is shown in Table 6.6.

How could organisations be encouraged or required to engage in a process of continuous improvement?

Especially for Type 1 organisations, auditing procedures could focus on key dimensions of the regulated subject matter. The demonstration by these organisations of efforts to continuously improve the nature and implementation of their practice – especially the most central dimensions of the regulated subject matter – could be made a condition of meeting audit approval and registration or accreditation, and/or of receiving ongoing funding. This could apply to the dimensions of organisational policy; Code of Conduct; reporting and responding; and training and education.

In addition, in Type 1 organisations, or in institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities undertaken:

⁵¹⁵ See generally Kenny, M. (2007). 'Web-based training in child maltreatment for future mandated reporters.' *Child Abuse & Neglect*, vol 31, pp 671–678; Paranal, R., Thomas, K. & Derrick, C. (2012). 'Utilizing Online Training for Child Sexual Abuse Prevention: Benefits and Limitations.' *Journal of Child Sexual Abuse*, vol 21, pp 507–520.

⁵¹⁶ This was a multi-media, multi-module, online educational platform developed for early childhood education and care practitioners in the state of Pennsylvania, starting in 2013–14. The author of this report was a co-investigator on this project and worked at the university in May 2013, in the design and planning stages. The program was studied in a randomised controlled trial involving 735 participants. It was subsequently made available statewide and has now been used by more than 5,000 practitioners.

- directors of organisations, or those in management positions, could be required or encouraged to demonstrate that they have received advanced education and training
- directors of organisations, or those in management positions, could be required or encouraged to demonstrate how improvements have been made pursuant to the previous audit and its recommendations
- audit procedures could be more stringent
- inspections could be conducted independently of incident notification and outside audit periods.

A summary of these methods, and the different approaches, depending on whether the organisation is Type 1 or Type 2, and its level of risk, is shown in Table 6.6.

Resource burden

A premise of the second research question addressed in this report is that smaller organisations, especially those identified in Type 2 organisations, should not be overburdened with regulation.

It can be noted that the current state of self-regulation imposes a far greater burden on multiple Type 1 and Type 2 organisations than the model proposed by this report. The broader proposals in this report, including the model of direct regulation, and the overarching centralised approach to implementation, have the effect of:

- reducing the burden on individual organisations (both at the management level of the parent organisation, and at the level of individual organisations overseen by the parent) by removing the responsibility to create, deliver and monitor the dimensions of this specialised subject by themselves
- providing a centralised body with specialised skills and knowledge to design and deliver as much of the core content as possible
- providing the kinds of policy, practical advice, resources and administrative direction these organisations are said to need, and seek.

As concluded in the discussion above covering the seven dimensions, methods of implementation of key dimensions of the relevant subject matter could be adopted to minimise resource burden for all Type 1 and Type 2 organisations. The most significant ways in which resource burden can be minimised, while achieving high-quality design, and eliminating duplication and fragmentation, are:

- placing responsibility for design of the key dimensions (policy; Code of Conduct; education and training; and screening) with the central regulatory agency at a national level
- delivering and implementing key dimensions of the subject matter (education and training; implementation and monitoring) to adopt simple, streamlined, readily accessible measures and formats, including through central online websites
- conducting regular audits of varying frequency, and at differing levels of focus, depending on the type of organisation and its level of risk.

Table 6.6 – Summary of the proposed implementation of the key dimensions of regulated subject matter

Dimension	Implementation in Type 1 sporting, cultural, arts and recreational groups: Larger, more centralised organisations (swimming, gymnastics, scouts, YMCA)			Implementation in Type 2 sporting, cultural, arts and recreational groups: Smaller, less centralised organisations (martial arts, dance, singing)		
	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>
Organisational policy (14 subcomponents)	Strong, centralised, direct regulation (with cooperative and coordinated support)	<p>Make it a condition of registration/accreditation, and of receiving state funding</p> <p>Centralised national body, supported by federal, state and territory governments, develops and regulates policy</p> <p>Impose more stringent duties on directors of organisations, or those in management positions</p>	<p>Audit and review every three years by a centralised national body, after consulting with Type 1 organisations</p> <p>Make it a condition of registration/accreditation</p> <p>Any localised modifications to policy to be approved, recorded and transparent</p> <p>Require or encourage directors of organisations, or those in management positions, to demonstrate that improvements have been made pursuant to the previous audit and its recommendations</p>	Strong, centralised, direct regulation (with cooperative and coordinated support)	<p>Made it a condition of registration/accreditation, and of receiving state funding</p> <p>Centralised national body, supported by federal, state and territory governments, develops and regulates policy</p>	<p>Audit and review every four years by a centralised national body, after consulting with Type 2 organisations</p> <p>Make it a condition of registration/accreditation</p> <p>Any localised modification to policy to be approved, recorded and transparent</p> <p>Impose more stringent duties on directors of organisations, or those in management positions, in institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities</p>

Dimension	Implementation in Type 1 sporting, cultural, arts and recreational groups: Larger, more centralised organisations (swimming, gymnastics, scouts, YMCA)			Implementation in Type 2 sporting, cultural, arts and recreational groups: Smaller, less centralised organisations (martial arts, dance, singing)		
	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>
Standard 1: Safe screening and hiring practices (18 subcomponents)	Strong, centralised, direct regulation (with cooperative and coordinated support)	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body, supported by federal, state and territory governments, regulates policy Impose more stringent duties on directors of organisations, or those in management positions	Audit and review every three years by centralised national body, after consulting with Type 1 organisations	Strong, centralised, direct regulation (with cooperative and coordinated support)	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body, supported by federal, state and territory governments, regulates policy	Audit and review every four years by centralised national body, after consulting with Type 2 organisations
Standard 2: Code of Conduct (21 subcomponents)	Strong, centralised, direct regulation (with cooperative and coordinated support)	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body, develops and regulates policy. Development to involve consultation with Type 1 organisations and to be informed by context-specific needs, but ultimate authority rests with national body More stringent duties imposed on directors of organisations, or those in management positions	Audit and review every three years Make it a condition of registration/accreditation Require or encourage directors of organisations, or those in management positions, to demonstrate that improvements have been made pursuant to the previous audit and its recommendations	Strong, centralised, direct regulation (with cooperative and coordinated support)	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body develops and regulates policy; development to involve consultation with Type 2 organisations and to be informed by context-specific needs, but ultimate authority rests with national body	Audit and review every three years Make it a condition of registration/accreditation Impose more stringent duties on directors of organisations, or those in management positions, in institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities
Standard 3: Implementation and monitoring	Strong, centralised, direct regulation (with cooperative and	Make it a condition of registration/accreditation, and of receiving state funding	Audit and review every three years Require or encourage	Strong, centralised, direct regulation (with cooperative and	Make it a condition of registration/accreditation, and of receiving state funding	Audit and review every four years

Dimension	Implementation in Type 1 sporting, cultural, arts and recreational groups: Larger, more centralised organisations (swimming, gymnastics, scouts, YMCA)			Implementation in Type 2 sporting, cultural, arts and recreational groups: Smaller, less centralised organisations (martial arts, dance, singing)		
	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>
(10 subcomponents)	coordinated support)	Through a government agency or related authority Impose more stringent duties on directors of organisations, or those in management positions	directors of organisations, or those in management positions, to demonstrate that improvements have been made pursuant to the previous audit and its recommendations	coordinated support)	Through a government agency or related authority	
Standard 4: Ensuring safe environments (10 subcomponents)	Strong, centralised, direct regulation (with cooperative and coordinated support)	Simple components of this can be dealt with as for organisational policy and Code of Conduct Complex components with resource implications (eg, structural modifications and cameras) could be audited and assessed, with improvements resourced by a centralised national body Impose more stringent duties on directors of organisations, or those in management positions	Audit and review every three years	Strong, centralised, direct regulation (with cooperative and coordinated support)	Simple components of this can be dealt with as for implementation policy and Code of Conduct Complex components with resource implications (eg, structural modifications and cameras) could be audited and assessed, with improvements resourced by a centralised national body	Audit and review every four years

Dimension	Implementation in Type 1 sporting, cultural, arts and recreational groups: Larger, more centralised organisations (swimming, gymnastics, scouts, YMCA)			Implementation in Type 2 sporting, cultural, arts and recreational groups: Smaller, less centralised organisations (martial arts, dance, singing)		
	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>	<i>Regulatory model and approach</i>	<i>How to require compliance? And through which body?</i>	<i>How to require/encourage continuous improvement?</i>
Standard 5: Reporting and responding to concerns, disclosures and allegations (21 subcomponents)	Strong, centralised, direct regulation + Local variation for appropriate details	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body develops and regulates policy. Development to involve consultation with Type 1 organisations and to be informed by context-specific needs, but ultimate authority rests with national body Impose more stringent duties on directors of organisations, or those in management positions	Audit and review every three years Make it a condition of registration/accreditation Require or encourage directors of organisations, or those in management positions, to demonstrate that improvements have been made pursuant to the previous audit and its recommendations	Strong, centralised, direct regulation + Local variation for appropriate details	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body develops and regulates policy. Development to involve consultation with Type 2 organisations and to be informed by context-specific needs, but ultimate authority rests with national body	Audit and review every four years Make it a condition of registration/accreditation Impose more stringent duties on directors of organisations, or those in management positions, in institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities
Standard 6: Training and education (14 subcomponents)	Strong, centralised, direct regulation (with cooperative and coordinated support)	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body develops and regulates policy. Development to involve consultation with Type 1 organisations and to be informed by context-specific needs, but ultimate authority rests with national body Impose more stringent duties on directors of organisations, or those in management positions	Audit and review every three years Make it a condition of registration/accreditation Require or encourage directors of organisations, or those in management positions, to demonstrate that improvements have been made pursuant to the previous audit and its recommendations	Strong, centralised, direct regulation (with cooperative and coordinated support)	Make it a condition of registration/accreditation, and of receiving state funding Centralised national body develops and regulates policy. Development to involve consultation with Type 2 organisations and to be informed by context-specific needs, but ultimate authority rests with national body	Audit and review every four years Make it a condition of registration/accreditation Impose more stringent duties on directors of organisations, or those in management positions, in institutions where child sexual abuse is more common, or where the risk is heightened because of the nature of activities

APPENDICES

Appendix 1 – Overview, methodology and approach

Four broad questions formed the core of this research project for the Royal Commission:

- What is the current nature and dimensions of Australian and selected overseas oversight and regulatory bodies for the protection of children from child sexual abuse in institutional contexts?
- What evidence is there about the efficacy of these bodies?
- What evidence exists about the efficacy of other innovative regulatory models for protecting children from sexual abuse in institutional contexts?
- What models of regulation from other fields or industries may be applicable or adaptable for protecting children from sexual abuse in institutional contexts?

The project is primarily a synthesis and evidence review of oversight and regulatory bodies in the context of protecting children from sexual abuse in institutional contexts. It also explores other innovative models for protecting children from sexual abuse in institutional contexts, and examines models of regulation from other fields that may be applicable or adaptable.

The Australian synthesis and analysis focused on regulatory and oversight mechanisms in each jurisdiction, as child protection is a state and territory constitutional responsibility. The Royal Commission defined oversight mechanisms to include ombudsman offices, commissioners of children and young people, children’s guardians and advocates, crime and misconduct commissions, and schemes such as official visitors and reportable conduct schemes. The project also sought coverage of regulatory arrangements specific to childcare, non-government schools and the medical sector. The synthesis of the nature of these schemes focused on legislative and regulatory research and analysis, primarily in Australia, and considered key overseas jurisdictions where this was possible and useful. For relevance and feasibility, the overseas research synthesis and analysis focused on a selection of jurisdictions (including the United States, Canada, the United Kingdom, New Zealand and Scandinavia). Doctrinal research and analysis, and policy research and analysis, was conducted into legislative and regulatory frameworks, both in Australia and overseas, to identify the general nature and significant elements of the respective oversight and regulatory bodies.

A body of literature exists on the theory and practice of regulation and oversight of public and private bodies in various contexts, relating to conventional approaches (embracing standard approaches such as licensure, certification, registration, risk prevention and complaints mechanisms) and innovations aimed at enhancing professionalisation,

compliance and social justice.⁵¹⁷ For this project, regulatory theory was analysed to create a conceptual model of efficacy as having narrow and broad senses. Legislative and policy analysis evaluated 'narrow efficacy' of key dimensions of these frameworks, informed by regulatory theory and discussion with the Royal Commission. The systematic critical review of broad efficacy focused on Australian and overseas studies, using a range of databases and complying with the PRISMA Statement, in accordance with the Royal Commission's requirement.⁵¹⁸ Table A1.1 details the approach to these literature searches (see also Appendix 3 and Appendix 4).

⁵¹⁷ Baldwin, R., Cave, M. & Lodge, M. (2012). *Understanding Regulation: Theory, strategy and practice*. Oxford University Press: Oxford; Brownsword, R. (Ed.) (2004). *Global Governance and the Quest for Justice*. Oxford University Press: Oxford; Freiberg, A. (2010). *The tools of regulation*. Federation Press: Sydney; Gunningham, N. & Grabosky, P. (1998). *Smart Regulation*. Oxford University Press: Oxford; Ayres, I. & Braithwaite, J. (1998). *Responsive Regulation*, Oxford University Press: New York; Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford University Press: Oxford; Kleiner, M. & Hendricks, M. (2013). 'Occupational Regulation of Child Care Services.' In Klein, M. (Ed.) *Stages of Occupational Regulation*, Morris Upjohn: Kalamazoo, MI, pp 85–124.

⁵¹⁸ Moher, D., Liberati, A., Tetzlaff, J., Altman, D. & The PRISMA Group. (2009). 'Preferred Reporting Items for Systematic Reviews and Meta-Analyses: The PRISMA Statement.' *PLoS Med*, vol 6(7), e1000097. doi:10.1371/journal.pmed.1000097.

Table A1.1 – Methodology: Literature review of nature and efficacy of oversight and regulatory frameworks

Nature of oversight and regulatory systems	Jurisdictions	Legislation databases (statutes and regulations)	Secondary source databases searched	Search terms within primary sources
What are the current Australian oversight and regulatory systems aimed at protecting children from sexual abuse, particularly in institutional contexts?	Each Australian state and territory	<p> http://www.legislation.act.gov.au/ http://www.legislation.nsw.gov.au/ http://www.legislation.nt.gov.au/ http://www.legislation.qld.gov.au/ http://www.legislation.sa.gov.au/ http://www.legislation.tas.gov.au/ http://www.legislation.vic.gov.au/ http://www.legislation.wa.gov.au/ </p> <p>Main legislation and regulatory policies searched: Ombudsman, child protection, commission for children, guardianship, crime and misconduct commission, and health practitioner and medical sector legislation; 14 medical boards; medical regulatory bodies; medical regulators' codes of conduct for various professions; and state and territory health department policies</p>	<ol style="list-style-type: none"> 1. The Laws of Australia (via Westlaw AU) 2. Halsbury's Laws of Australia (via LexisNexisAU) 3. Austlii 4. Organisational websites for all oversight and regulatory bodies (child protection; education; crime; medicine; nursing; health; state and territory government health departments) 5. ACECQA website and guidelines: http://acecqa.gov.au/ 6. AIHW 	<p>(Solely or in combination; different terms used as appropriate to research question)</p> <p>Ombudsman Commissioner* of Children Child* Guardian Child* Advocates Crime and Misconduct Commissions Community Visitor* schemes Official Visitor* schemes Reportable Conduct schemes Child* Child sexual abuse Sexual abuse Sexual Abuse Child protection Institution* Child* Early childh* Education/educ*/non-state school/ACECQA/Childcare Report* Mandat* CPD/education/training Criminal/history/working with child*/fitn* Accredit*/registr*/licen* Board/council/federation Code/conduct/ethics Standard*/procedure/guideline Medic*/nurs* Private hospital*</p>

	Jurisdictions	Legislation databases (statutes and regulations)	Secondary sources searched	Search terms for primary sources
What are the current oversight and regulatory systems in key overseas jurisdictions that are aimed at protecting children from sexual abuse, particularly in institutional contexts?	Overseas jurisdictions including: <ul style="list-style-type: none"> • United States • Canada • United Kingdom • New Zealand • Other selected European jurisdictions; eg, Sweden, Norway, Greece 	<p>United States: state legislation databases via province and territory official government websites, as used in prior studies</p> <p>Canadian: legislation databases via province and territory official government websites, cross-checked with CanLii, as used in prior studies http://www.legislation.gov.uk/ http://www.canlii.org/en/index.html http://www.legislation.govt.nz/</p> <p>Selected European: jurisdictions' legislation via official legislative databases</p>	<ol style="list-style-type: none"> 1. LegalTrac 2. HeinOnline 3. Index to Legal Periodicals & Books 4. Lexis.com 5. Oxford Index 6. Westlaw International 7. Children's Rights Information Network 	As above where applicable
Evidence of broad efficacy	Jurisdictions	Secondary sources		Notes
What does evidence tell us about the efficacy of these Australian systems? (Literature review and critical analysis of evidence)	Federal and all Australian states and territories	<p>Legal databases</p> <ol style="list-style-type: none"> 1. AGIS (via INFORMIT) 2. Austlii journal databases via austlii.edu.au 3. LexisNexisAU via QUT library 4. WestlawAU via QUT library <p>Books from university library catalogues via QUT library</p> <p>Grey literature: via</p> <ol style="list-style-type: none"> 1. Organisational websites (including annual reports) 2. Australasian theses (http://trove.nla.gov.au/book/result?-australian=y&l-format=Thesis&q=&sortby=dateDesc) 3. OpenGrey (http://www.opengrey.eu/) 4. ProQuest Dissertations and Theses (via ProQuest Research 	<p>Social science databases</p> <ol style="list-style-type: none"> 1. Embase via embase.com 2. EBSCO Host (includes CINAHL, ERIC, PsycINFO, Social Services Abstracts, Violence and Abuse Abstracts) 3. Science Direct via QUT library 4. ProQuest Research Library (includes ProQuest Psychology, ProQuest Social Science, ProQuest dissertations and theses, and Sociological Abstracts) 	<p>The search strategy was generally but not always restricted to the abstract. No date or language limits were used. Search strategies were adapted to suit databases.</p> <p>To ensure key sources were identified, the author:</p> <ol style="list-style-type: none"> 1. hand-searched reference lists of included studies 2. searched key organisational websites including: <ul style="list-style-type: none"> • ISPCAN via www.ispcan.org/ • USDHSS Child Welfare Information Gateway & Children's Bureau Express via https://www.childwelfare.gov/ • Coalition for Evidence-Based Policy via http://coalition4evidence.org/ • RAND Promising Practices Network via http://www.promisingpractices.net/ <p>Inclusion criteria were based on the presence of a focus on the use of these systems to protect children from child sexual abuse, with a focus on institutional contexts.</p> <p>Exclusion criteria were based on absence of such a focus. See further Appendix 3</p> <p>Study selection. Studies were initially identified for inclusion by analysing</p>

		Library) 5. Google and Google Scholar		titles and abstracts/equivalent. Of those included, the full text of studies was screened for eligibility by assessing whether they meet sufficiently robust standards of relevance, design, and absence of bias. See further Appendix 3
	Jurisdictions	Secondary sources to assist include		Notes
What does evidence tell us about the efficacy of these overseas systems? (Literature review and critical analysis of evidence)	Overseas jurisdictions as above	Legal databases As specified above, plus: <ol style="list-style-type: none"> 1. LegalTrac 2. HeinOnline 3. Index to Legal Periodicals & Books 4. Lexis.com 5. Oxford Index 6. Westlaw International 	Social science databases as specified above	Search strategy as above
		Books and grey literature as specified above		
Other regulatory models	Jurisdictions	Secondary sources to assist include		Notes
What is the evidence about other innovative models such as self-regulation, co-regulation, responsive regulation and funding agreements? (Synthesis and evidence review)	Australian and overseas jurisdictions	Journal databases outlined above Books and grey literature as specified above		Work on ‘smart regulation’, as well as the more conventional models of regulation, was used as a base from which to proceed. In addition, the work of key figures was used as a base from which to proceed, including Baldwin, Black, Ayres and Braithwaite, Gunningham & Grabosky, Freiberg, Parker.

	Jurisdictions	Secondary source databases to assist include	Notes
What models of regulation and oversight from other fields/industries may be applicable or adaptable, and what evidence exists about these models? (Synthesis and evidence review)	Australian and overseas jurisdictions	Journal databases outlined above Books and grey literature as specified above, plus institutional websites	Other fields explored included but were not limited to: <ul style="list-style-type: none"> • educational institutions in the context of bullying • regulation of financial and other commercial institutions • workplace health and safety • environmental law

Appendix 2 – Conceptualisation of narrow and broad efficacy

Operational definition of the concept of ‘efficacy’

A key purpose of this project was to explore the efficacy of oversight and regulatory models. Generally, regulation – with that term used in its broadest sense – is deemed efficacious when it achieves the results envisaged in the regulatory mandate, without producing intolerable costs.⁵¹⁹

Yet, the concept of efficacy is ambiguous both generally, and in regulatory theory. Informed by research into regulatory theory⁵²⁰ and discussions with the Royal Commission, the author considered how this project should best understand and employ this concept of efficacy to meet the project aims. The model used and detailed here was created and discussed with the Royal Commission, and it was agreed that it provides a suitable framework.

The project requires exploration of narrow and broad efficacy

The overarching or broad question of efficacy is normally concerned with whether the objects and principles in a regulatory model have been achieved.⁵²¹ In a ‘broad’ sense, therefore, the question relates to whether the actual implementation of the regulatory mandate has achieved in lived experience the goal of the regulatory scheme⁵²², which is the improved protection of children from sexual abuse in institutional contexts. ‘Improved protection’ at its highest level could be viewed as the actual reduction of child sexual abuse in institutional contexts. However, even the concept of improved protection in this broad sense can be achieved in several ways, and arguably should not be limited only to this highest form of improved protection. It could also include other enhanced conditions to promote protection of children from sexual abuse in institutional contexts, as explained further below, and so the necessary exploration of broad efficacy can involve a multi-layered analysis. The exploration of this type of broad efficacy typically requires rigorous empirical evidence.

Exploration of broad efficacy is necessary but is not sufficient for the purpose of this project. Alone, it is likely to reveal only a partial picture of this context, especially given the likelihood that very few empirical evaluations have been undertaken – and will not provide the Royal Commission with a sufficient understanding of the oversight and regulatory context or of its efficacy in a deeper sense.

Another narrower dimension of efficacy is relevant. This involves an analysis of the nature of the oversight or regulatory body, measured against key criteria that are relevant to its capacity to be efficacious. This analysis and measurement is informed by elements of regulatory theory;

⁵¹⁹ Baldwin, R., Cave, M. & Lodge, M. (2012) *Understanding Regulation: Theory, strategy and practice*, Oxford University Press: Oxford, p 69; Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney, p 260. Such costs are not only economic; and incursion of economic cost may not always be a relevant or weighty consideration: Baldwin, R., Cave, M. & Lodge, M. (2012) *Understanding Regulation: Theory, strategy and practice*, Oxford University Press: Oxford, pp 30-31. The concept of ‘efficacy’ therefore contains elements of the concepts of ‘effectiveness’ (achieving an aim) and ‘efficiency’ (doing so without intolerable cost).

⁵²⁰ Especially Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney; and Baldwin, R., Cave, M. & Lodge, M. (2012). *Understanding Regulation: Theory, strategy and practice*, Oxford University Press: Oxford.

⁵²¹ Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney, p 260.

⁵²² Yeung, K. (2004). *Securing Compliance*. Hart Publishing: Oxford.

for example, accessibility to the target group, ability to be transmitted, clarity and accuracy, and capacity to be implemented efficiently.⁵²³

Accordingly, there are two senses in which efficacy should be understood and evaluated for this project, as both senses are important and relate to the project's aims. The concept of efficacy should be understood as being concerned with:

- narrow efficacy: the nominal presence and nature of the regulatory mandate (concerned with the nature of key dimensions of the oversight or regulatory body)
- broad efficacy: whether the goal of the regulatory mandate has been achieved (concerned with the actual attainment of the policy goals in lived experience).

Depending on whether the evaluation of efficacy relates to an oversight body, or a regulatory body, one of these dimensions may have particular importance relative to the other. Inherently, capturing evidence of efficacy requires appropriate methods of analysis and evaluation, for both narrow efficacy (presence and nature of regulatory/oversight mechanisms) and broad efficacy (achievement of the goal of the policy).

Narrow efficacy

Accordingly, *narrow efficacy* is conceptualised as exploring the presence and nature of key requirements that enable the protection of children from child sexual abuse in institutional contexts. The exploration of narrow efficacy is conducted by synthesis, and conceptual and textual analysis of the nature of the oversight bodies and regulatory frameworks. This sense of narrow efficacy has been explored in Part 1 by:

- conducting doctrinal analysis of the legislative and regulatory frameworks
- researching secondary sources for critical analyses of these frameworks
- researching grey literature (most relevantly, agency annual reports) to identify evidence of narrow efficacy.

The dimensions of narrow efficacy considered in Part 1 depend on the nature of the oversight body or regulatory framework concerned. However, for oversight bodies, the key dimensions of narrow efficacy included:

- the nominal presence of the particular oversight body
- the jurisdiction of the oversight body (its scope of application, that is, government versus non-government bodies; public versus private institutions; different professions)
- the independence of the oversight body
- the implementation capacity of the oversight body (for example, frequency of use and personnel)
- the accessibility to children of the oversight body
- the ability of the oversight body to make determinative findings/recommendations.

For regulatory bodies, the key dimensions of narrow efficacy included:

- the nominal presence of the regulatory framework
- the jurisdiction of the regulatory framework (its scope of application, that is, government versus non-government bodies; public versus private institutions; different professions)

⁵²³ Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney, pp 269–274.

- whether the regulatory framework required criminal history checks
- whether the regulatory framework had other methods for assessing fitness to practise
- whether the regulatory framework required professionals to undertake or receive education in child protection
- whether the regulatory framework required practitioners to report child sexual abuse or supported legislative reporting requirements
- whether the regulatory framework provided practitioners with online access to resources about child sexual abuse
- whether such resources appear to be readily accessible to practitioners.

Broad efficacy

Broad efficacy is conceptualised as the *actual effect in practice* of the oversight or regulatory mechanism in protecting children from sexual abuse in institutional contexts. In sum, the evaluation of broad efficacy asks: does the oversight or regulatory body achieve the policy goal in lived experience of actually *improving protection* of children from child sexual abuse in institutional contexts?⁵²⁴

This question is explored by different means than the evaluation of narrow efficacy. Improved protection could be achieved in lived experience in several ways, and arguably should not be limited to actual reduction of child sexual abuse (the highest form of improved protection). For example, it could include other enhanced conditions to promote protection of children from child sexual abuse in institutional contexts (such as enhanced case detection; fewer instances of employees abusing children; provision of widescale training; employees having greater policy awareness; employees having more knowledge of child sexual abuse; and employees demonstrating better reporting practice and outcomes).

Typically, rigorous empirical evaluations are required to obtain evidence of whether these kinds of policy goals have been achieved. As noted by Freiberg⁵²⁵, empirical evaluations of this broad dimension of efficacy are difficult to conduct for numerous reasons: poor data sources may limit the capacity to conduct pre- and post-tests; there can be difficulty in isolating causal factors influencing change because of the presence of multiple co-existing factors; and undisclosed noncompliance can be a further confounding factor.

As required by the Royal Commission, broad efficacy is explored in this part of the project by conducting a systematic review of literature (complying with the PRISMA statement) regarding the efficacy of these bodies in protecting children from sexual abuse in institutional contexts. The dimensions of broad efficacy considered include:

- reducing child sexual abuse in institutional contexts generally
- reducing child sexual abuse specifically by employees or other persons within the oversight or regulatory agency's jurisdiction
- detecting more cases of child sexual abuse in institutional contexts
- recording fewer instances of hiring employees who clearly pose a risk to children
- increasing employee knowledge about child sexual abuse and the laws and institutional policies relating to child sexual abuse, including reporting
- implementing training in the management and/or prevention of child sexual abuse

⁵²⁴ Yeung, K. (2004). *Securing Compliance*. Hart Publishing: Oxford.

⁵²⁵ Freiberg, A. (2010). *The Tools of Regulation*. Federation Press: Sydney, p 262.

- improving such training.

This project evaluated efficacy in both narrow and broad senses. Table 1.1 (see Executive Summary, Part 1.1) depicts a model of how these two dimensions of efficacy interrelate and operate, and what kinds of evidence may be used to evaluate their efficacy. An example of each kind of body (oversight and regulatory) is provided for illustrative purposes. This model was adapted for the other oversight and regulatory bodies. For clarification, an example of the function of the analysis of narrow and broad efficacy is:

Question evaluating narrow efficacy: Does a particular regulatory body (for example, a department of health) have a policy requirement that staff attend child protection training? (Method: explore narrow efficacy through synthesis and document analysis of policy).

Question evaluating broad efficacy: To what extent is training provided, and with what quality and outcomes? (Method: explore broad efficacy through literature review searching for empirical studies and other relevant evidence).

Appendix 3 – Methodology: Systematic literature review for parts 1–4

Literature review: Evidence of the efficacy of current Australian oversight and regulatory systems aimed at protecting children from sexual abuse, particularly in institutional contexts

1. Published scholarly literature: legal and social science databases

Unless otherwise stated, searches were conducted using the advanced search template with no date or time limits. Searches were conducted using both broader and more specific parameters, namely:

- searching title and abstract
- searching across all text, often not using any proximity operators (but sometimes using them; for example, within 20 words)
- where it became clear that narrower searches of a field were yielding few or no relevant results, searches of all text were conducted rather than the narrower search of title and abstract, normally without proximity operators; and broader synonymous terms, or fewer terms, were used to expand the yield of results
- where possible, searches were conducted using multi-word terms as phrases, and using truncators, for example, 'child sex* abuse'. Where possible, multiple related searches were combined (for example, in the case of crime and misconduct commissions, and crime and corruption commissions).

2. Medical/health databases

For these databases, the above strategy was adapted to ensure results were limited to relevant sources. In line with PRISMA item 8, a full strategy is listed below. In addition to the searches across the named databases, a search was conducted of the specialist journal titled *Journal of Child Sexual Abuse*.

3. Grey literature

For grey literature, searches using the same or an appropriately adapted strategy were conducted of (a) oversight and regulatory agencies' organisational websites for annual reports and other relevant materials (embedded in the report); (b) Australasian theses; (c) OpenGrey; and (d) ProQuest Dissertations and Theses. Because compliance with PRISMA was required, and inclusion criteria restricted eligible studies to peer-reviewed studies, grey literature was searched, not for inclusion in the systematic review synthesis of broad efficacy, but for the evaluation of narrow efficacy.

Search methods for identification of studies

Databases searched are detailed below. As a general search strategy, the search approach had several components: child sexual abuse or related terms; institutions or related terms; and regulation or oversight or related terms, including the specific kind of body. In several cases, early in the searching process, it became clear that very narrow or specific searches were yielding no results, so the general searching strategy was adapted to prefer broader searches.

Inclusion and exclusion criteria

Inclusion criteria: articles that are peer reviewed; relating to child sexual abuse, including institutional abuse; and relating to efficacy of an oversight/regulatory system as defined by the Royal Commission for this report and in the sense of broad efficacy (which ideally is empirical, but may be

of other clearly relevant and persuasive kinds) about whether and to what extent it works or does not work and/or the reasons for this.

Exclusion criteria: articles that are non-peer reviewed; solely relating to non-institutional abuse; for example, familial abuse or other types of child abuse and neglect; solely on specific programs/policies (for example, aspects of the Northern Territory Emergency Response) that are not 'Australian oversight and regulatory systems' (although these may be included in another part of this project); focused on other systemic issues; for example, criminal justice/procedure, family court procedure; that are purely abstract or theoretical critiques of government strategies/discourses; on health and other effects of child sexual abuse generally and child sexual abuse in institutional contexts; devoted only to optimal clinical practice or theoretical models or proposals for prevention; solely on the nature of, or factors influencing, reporting practice; on other concepts of 'efficacy'; for example, the constitutional legitimacy of a system; on general prevention of child sexual abuse; and those on incidence and prevalence.

Table A3.1 records these searches of databases in law, social science, medicine, health and grey literature respectively. As recommended by the *PRISMA Explanation and Elaboration Document*⁵²⁶, the author has provided details of: (a) total results (number of identified records); (b) number of potentially relevant studies; and (c) number of included studies (directly relevant studies).

⁵²⁶ Liberati, A., Altman, D., Tetzlaff, J., Mulrow, C., Gotzsche, P., Ionnadis, J., Clarke, M., Devereaux, P., Kleijnen, J. & Moher, D. (2009). 'The PRISMA Statement for Reporting Systematic Reviews and Meta-Analyses of Studies That Evaluate Health Care Interventions: Explanation and Elaboration.' *Annals of Internal Medicine*, vol 151(4), W-65-W-94.

Table A3.1 – Methodology: Systematic literature review for parts 1–4 – Australian legal/social science databases

Database	Search terms	Total results	Number of potentially relevant studies	Number of included studies	Other sources identified as potentially significant for other research questions (RQs)
APAFT (general search)	child sex* abuse (title and/or abstract only)	79	0	0	
	child sex* abuse AND institution (all fields and full text with proximity within 20 words)	48	0	0	
(Specific searches)	Ombudsm* AND child sex* abuse (title and/or abstract only)	0	0	0	
	Ombudsm* AND child sex* abuse AND institution* (all fields and full text)	4	0	0	Mace and Powell ('A new child protection strategy for Aboriginal communities in Western Australia')
	Child* Guard* OR Child* Advocate* AND child sex* abuse (title and/or abstract only)	0	0	0	
	Child* Guard* OR Child* Advocate* AND child sex* abuse AND institution* (all text with proximity within 20 words)	0	0	0	
	Crime OR Corruption AND Commission AND child sex* abuse (all text)	17	0	0	
	Visit* AND child sex* abuse (all text)	0	0	0	
	Reportab* Conduct scheme* AND child sex* abuse (all text)	0	0	0	
Database	Search terms	Total results	Number of potentially relevant studies	Number of included studies	Other sources identified as potentially significant for other RQs
Austlii ('child sexual abuse', refined by adding another search term)	child sex* abuse (all text)	184			
	child sex* abuse AND institution* (all text)	79	0	0	
Database	Search terms	Total results	Number of potentially relevant studies	Number of included studies	Other sources identified as potentially significant for other RQs

LexisNexisAU (general search)	child sex* abuse (all text)	142	0	0	
	'Child abuse' AND training AND (teacher OR doctor OR nurse) (all text)	25	0	0	
Database	Search terms	Total results	Number of potentially relevant studies	Number of included studies	Other sources identified as potentially significant for other RQs
WestlawAU (general search of journals only)	child sex* abuse (free text)	121	2 Farrell, 2013, 'Children's rights to legal representation in child protection proceedings' – 3 Fam L Rev 94 Wallis, 2011, 'The role of the Australian Crime Commission in policing indigenous violence and child abuse', 35 Crim LJ 398	0	Storey, 2009, 'Indigenous Justice Taskforce: Delivering justice in the Kimberley region of Western Australia', 19 JJA 100 Aronson, 2005, 'Is the ADJR Act hampering the development of Australian administrative law?' 12 AJ Admin L 79
	child sex* abuse AND institution (all text)	40	0	0	
	'Child sexual abuse' (all text) (not including ombudsman)	121	0	0	
	child! AND ombudsm! AND 'sexual abuse' (all text)	6	0	0	
	Crime OR Corruption AND Commission AND 'child sex* abuse' (all text)	10	0	0	
	Visitor AND child sex* abuse (all text)	9	0	0	Phelan, 2004. 'Problem-solving courts: Solving human problems or deciding cases? Judicial innovation in New York and its relevance to Australia: Part III.' JJA, 13, 244

					<p>Parker, M. (2010). 'Bioethical issues: Four decades of complaints to a State Medical Board about graduates from one medical school: Implications for change in self-regulation processes', 17 JLM 493</p> <p>Parker, M. (2009). 'Bioethical issues: Full steam ahead on the ss external regulator? mandatory reporting, professional independence, self-regulation and patient harm', 17 JLM 29</p> <p>Ludlow, K. (2007). 'One size fits all? Australian regulation of nanoparticle exposure in the workplace', 15 JLM 136</p>
	'Child sexual abuse' AND non-State	2	0	0	
	'Child sexual abuse' AND (accredit* OR licens* OR registr*)	16	0	0	
	'Child sexual abuse' AND childcare	1	0	0	
	'Child sexual abuse' AND ACECQA	0	0	0	
	'Child sexual abuse' AND board OR council'	0	0	0	
	accredit* OR licens* OR registr* /20 child*	90	0	0	
	'Child sexual abuse' AND training AND (teacher OR doctor OR nurse) (all text)	26	1	1	
			Mathews, B., Fraser, J., Walsh, K., Dunne, M., Kilby, S. & Chen, L. (2008). 'Queensland nurses' attitudes towards and knowledge of the legislative duty to report child abuse and neglect: Results of a statewide survey.' <i>Journal of Law and Medicine</i> , vol 16, p 288.		
Search across entire database for useful material	'Child sexual abuse' AND institution! (Searching free text of legislation and commentary, journals, and government and regulatory materials)	61	0	0	<p>Farrell, J. (2013). 'Professional insights: Children's rights to legal representation in child protection proceedings.' 3 Fam L Rev 94</p> <p>King, M. (2011). 'Therapeutic jurisprudence initiatives in Australia and New Zealand and the overseas experience.' <i>Journal of Judicial Administration</i>, vol 21, p 19.</p>

Social science, medical and health databases

Database	Search terms	Total results	Number of potentially relevant studies	Number of included studies
Embase via embase.com (search of articles only)	'child sexual abuse' in abstract AND institution*	15	1 Rassenhofer M., et al (2015). 'Child sexual abuse in the Roman Catholic Church in Germany: Comparison of victim-impact data collected through church-sponsored and government-sponsored programs.' <i>Child Abuse and Neglect</i> , vol 40, pp 60–67.	0
EBSCO Host (includes CINAHL, ERIC, PsycINFO, Social Services Abstracts, Violence and Abuse Abstracts) (scholarly journals, full text)	'child sexual abuse' in abstract AND institution*	146	2 Parkinson, P.N., Oates, R.K, Jayakody, A.A. (2012). 'Child Sexual Abuse in the Anglican Church of Australia.' <i>Journal of Child Sexual Abuse</i> , vol 21, pp 553–570 Euser, S., Alink, L., Tharner, A., van IJzendoorn, M., Bakermans-Kranenburg, M. (2013). 'The prevalence of child sexual abuse in out-of-home care: A comparison between abuse in residential and in foster care.' <i>Child Maltreatment</i> , vol 18, pp 221–231	0
	'child sexual abuse' in abstract AND ombuds*	34	1 Simpson, E. (2010). 'An Examination of the Relationship of Teacher Certification Area to Sexual Misconduct: Florida as a Case Study.' <i>Journal of Music Teacher Education</i> , vol 20, pp 56–65	0
	'child sexual abuse' in abstract AND advocate AND institut*	39	0	0
	'child sexual abuse' in abstract AND 'community visitor'	0	0	0
	'child sexual abuse' and instit* AND (crime OR corruption) (abstract)	5	0	0
	'child sexual abuse' and instit* AND non-State (abstract)	0	0	0
	'child sexual abuse' and instit* AND guardian (abstract)	0	0	0
	'child sexual abuse' and instit* AND medical (abstract)	2	0	0
	'child sexual abuse (abstract) and instit* AND oversight (all text)	14	2 Meunier-Sham, J., Cross, T., Zuniga, L. (2013). 'The Seven Pillars of Quality Care in a Statewide Pediatric Sexual Assault Nurse Examiner Program.' <i>Journal of Child Sexual Abuse</i> , vol 22, pp 777–795. Schober, D., et al. (2012). 'The Enough Abuse Campaign: Building the Movement to Prevent Child Sexual Abuse in Massachusetts.' <i>Journal of Child Sexual Abuse</i> , vol 21, pp 456–469.	0

'child sexual abuse' and instit* AND regulation (all text)	155	1	Mathews, B., Walsh, K., Rassafiani, M., Butler, D. & Farrell, A. (2009). 'Teachers Reporting Suspected Child Sexual Abuse: Results of a Three-state Study.' <i>University of New South Wales Law Journal</i> , vol 32, pp 772–813.	1
'Child sexual abuse' AND non-State (all text – fulltext, scholarly)	70	0		0
'Child sexual abuse' (abstract) AND (accredit* OR licens* OR registr*) (all text) (fulltext, scholarly)	185	5	Ayonrinde, O. & Payne, H. (2006). 'Child Protection Training Received by Paediatric Trainees.' <i>Child Abuse Review</i> , vol 15, pp 190–203 Walsh, K., Berthelsen, D., Nicholson, J., Brandon, L., Stevens, J. & Rachele, J. (2013). 'Child sexual abuse prevention education: A review of school policy and curriculum provision in Australia.' <i>Oxford Review of Education</i> , vol 39, pp 649–680. Price, S., Hanson, R. & Tagliani, L. (2013). 'Screening procedures in the United Kingdom for positions of trust with children.' <i>Journal of Sexual Aggression</i> , vol 19(1), pp 17–31. Goldman, J. (2010). 'Australian undergraduate primary school student-teachers' responses to child sexual abuse and its mandatory reporting.' <i>Pastoral Care in Education</i> , vol 28(4), pp 283–294. Terry, K. (2007). 'Understanding the Sexual Abuse Crisis in the Catholic Church: Challenges with Prevention Policies.' <i>Victims and Offenders</i> , vol 3, pp 31–44.	0
'Child sexual abuse' AND childcare (abstract)	17	0		0
'Child sexual abuse' AND ACECQA	0	0		
'Child sexual abuse' AND training AND (teacher OR doctor) (abstract)	18	5	Goldman, J. & Grimbeek, P. (2014). 'Child Sexual Abuse and Mandatory Reporting Intervention Preservice Content Preferred by Student Teachers.' <i>Journal of Child Sexual Abuse</i> , vol 23, pp 1–16. Goldman, J. & Padayachi, U. (2005). 'Child Sexual Abuse Reporting Behaviour by School Counsellors and Their Need for Further Education.' <i>Health Education Journal</i> , vol 64(4), pp 302–322. Mathews, B. (2011). 'Teacher Education to meet the challenges posed by child sexual abuse.' <i>Australian Journal of Teacher Education</i> , vol 36(11), pp 13–32. Walsh, K., Mathews, B., Rassafiani, M., Farrell, A. & Butler, D. (2013). 'Elementary Teachers' Knowledge of Legislative and Policy Duties for Reporting Child Sexual Abuse.' <i>Elementary School Journal</i> , vol 114(2), pp 178–199.	4

			Additional paper identified: Walsh, K., Laskey, L., McInnes, E., Farrell, A., Mathews, B. & Briggs, F. (2011). 'Locating child protection in preservice teacher education.' <i>Australian Journal of Teacher Education</i> , vol 36, p 7.	
	'Child sexual abuse' AND training AND nurse (abstract)	10	1 Fraser, J., Mathews, B., Walsh, K., Chen, L., Dunne, M. (2010). 'Factors influencing child abuse and neglect recognition and reporting by nurses: A multivariate analysis.' <i>International Journal of Nursing Studies</i> , vol 47(2), pp 146–153.	1
	'child protection' AND training AND (nurse OR doctor) (abstract)	55	0	0
	'child abuse' AND training AND CPD (all text)	69	0	0
	'child protection' AND training AND teacher (abstract)	56	0	0
Science Direct via QUT library 1965 – present	'child sexual abuse and instit* (abstract)	25	1 Wurtele, S. (2012). 'Preventing the sexual exploitation of minors in youth-serving organizations.' <i>Children and Youth Services Review</i> , vol 34, pp 2442–2453.	0
	'child sexual abuse' AND ombuds*	21	0	
	'child sexual abuse' and instit* AND regulation (all text)	56	0	
	'child sexual abuse' and instit* AND oversight (all text)	21	0	
ProQuest Research Library (includes ProQ Psychology, ProQ Social Science)	'child sexual abuse' (abstract) AND institution*	90	1 Goldman, J., Grimbeek, P. (2009). 'How university student-teachers for primary school learn about Department of Education Policy on child sexual abuse, and mandatory reporting: the sources of their professional information.' <i>Higher Education</i> , vol 58, pp 221–239.	1
Specific journal search: <i>Journal of Child Sexual Abuse</i>	regulat*	91	1 Parent, S. (2011). 'Disclosure of child sexual abuse in sport organizations: A case study.' <i>Journal of Child Sexual Abuse</i> , vol 20, pp 322–337.	0
	institutional	261	1 Caldas S & Bensy M. (2014). 'The Sexual Maltreatment of Students with Disabilities in American School Settings.' <i>Journal of Child Sexual Abuse</i> , vol 23, pp 345–366.	0

Specific journal search: <i>Medical Journal of Australia</i>	'child sexual abuse' (all text) 'child abuse' (all text)	0 Not defined	0 2 Oates, R.K. (2014). 'Role of the medical community in detecting and managing child abuse.' <i>Medical Journal of Australia</i> , vol 200(1), pp 7–8. McGurgan, P., et al. (2010). 'Fitness-to-practise policies in Australian medical schools – are they fit for purpose?' <i>Medical Journal of Australia</i> , vol 193(11), pp 665–667.	0 0
Total	For all searches, all databases (duplicates not removed)	2536	27	8

Grey literature

Database	Search terms	Total results	Number of potentially relevant studies	Number of included studies
Australian Theses database (Trove) http://trove.nla.gov.au/book/result?-australian=y&l-format=Thesis&q=&sortby=dateDesc	Advanced search (books and theses) 2000 onwards 'child sex* abuse' (keywords)	262 2010–19: 57 2000–09: 205	5 Salter, M. (2010). <i>Adult accounts of organised child sexual abuse in Australia</i> . Public Health & Community Medicine, Faculty of Medicine, UNSW. Dunn, J. (2013). <i>'Shepherd the flock with justice': Improving access to redress for victims of child sexual abuse by religious</i> . O'Connor, P. (2013). <i>Sexual abuse against children by priests and religious: a study of factors that might lead to offence within the Catholic Church</i> . Death, J. (2008). <i>Forgiveness, power and child sexual abuse by church leaders in Australian churches</i> . Van Wirdum, R. (1999). 'The forgotten generations: the physical, sexual, psychological and systematic abuse and neglect of children due to management practices in children's institutions in Australia 1801 to 2001.'	0
OpenGrey database (http://www.opengrey.eu/) (Europe)	'child sexual abuse' (all text)	110	0	0
ProQuest dissertations and theses (via ProQuest research library) – worldwide theses	'child sexual abuse' and institution* (abstract)	30	0	0

Appendix 4 – Example of research methodology: Health policy

Table A4.1 provides an example of a research methodology for identifying the key health policy documents detailed at length in Table 2.9(2) – State and territory regulation of practitioners in public hospitals via government health departments’ policies on hospitals.

Table A4.1 – Research methodology for identifying key health policy documents

Jurisdiction	Medical regulatory bodies
	<p>Identify policy on child abuse/child sexual abuse/child protection (searching health department websites using the terms ‘child’, ‘abuse’, ‘sexual’, ‘child abuse’, ‘child protection’, ‘sexual abuse’ and ‘child sexual abuse’) – searched either the entire site or, more commonly, the sections headed ‘For professionals’, ‘policy’, ‘guidelines’, ‘publications’, ‘research’ and ‘governance’</p>
<p>ACT</p> <p>ACT Health http://health.act.gov.au/</p>	<p>Under ‘Research and Publications’ tab, select ‘Policy and Plans’, and go to ‘C’ (http://health.act.gov.au/research-publications/policy-and-plans), where there are five documents:</p> <ul style="list-style-type: none"> • <i>Child Protection Policy, ‘Fact Sheet 1: Information sharing’</i> • <i>Child Protection Policy, ‘Fact Sheet 2: Prenatal Reporting, Prenatal Information Sharing, Pre Birth Alerts’</i> • <i>Child Protection Policy, ‘Fact Sheet 3: Making a Child Protection Report to CPS’</i> <i>Child Protection Policy</i> <i>Child Protection Practice Paper</i>
<p>NSW</p> <p>NSW Health http://www.health.nsw.gov.au/Pages/default.aspx</p>	<p>Under the ‘Policy, directives and guidelines’ link, select ‘Browse by functional group’, select ‘Clinical/Patient Services – Baby and child’ (http://www0.health.nsw.gov.au/policies/groups/ps_baby.html) and then select:</p> <ul style="list-style-type: none"> • ‘Child Wellbeing and Child Protection Policies and Procedures for NSW Health’ • ‘Suspected Child Abuse and Neglect (SCAN) Medical Protocol’
<p>NT</p> <p>NT Department of Health Services http://www.health.nt.gov.au/</p>	<p>Under ‘For Professionals’, select ‘A to Z index’, select ‘child protection’, select ‘Child abuse’ link at right of page, select ‘Reporting child abuse and neglect’. http://childrenandfamilies.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/54/35.pdf&siteID=5&str_title=Reporting Child Abuse and Neglect.pdf</p>

Jurisdiction	Medical regulatory bodies
<p>Qld</p> <p>Queensland Health http://www.health.qld.gov.au/</p>	<p>Under the 'Health system and governance' tab, select 'policies and standards', select 'policies', select 'Child Protection' http://www.health.qld.gov.au/qhpolicy/html/index-c.asp.</p> <p>There are six separate guidelines:</p> <ul style="list-style-type: none"> • Care and Treatment Order for a Child • Conducting Child Sexual Assault Examinations • Consent in Child Protection and Management of Complex Care Cases and End of Life Decision Making • Health Professionals Child Safety Capability Requirements • Information Sharing in Child Protection • Reporting a Reasonable/Reportable Suspicion of Child Abuse and Neglect
<p>SA</p> <p>Department for Health and Ageing http://www.sahealth.sa.gov.au/wps/wcm/connect/public/content/sa+health+internet/about+us/department+of+health</p>	<p>Under 'Publications and resources' table at left, select 'Child protection'.</p> <p>There are numerous resources. Choose the Child Protection 'Mandatory Notification of actual or suspected child abuse or neglect (0-18 years) Policy Directive' http://www.sahealth.sa.gov.au/wps/wcm/connect/87403080476852fbb1cef322c3ec38c5/Directive_Child+Protection+Mandatory+Notification_Feb2015.pdf?MOD=AJPERES&CACHEID=87403080476852fbb1cef322c3ec38c5</p>
<p>TAS</p> <p>Department of Health and Human Services http://www.dhhs.tas.gov.au/</p>	<p>Under the 'Children and families', select 'child protection services' 'Child Protection' document: http://www.dhhs.tas.gov.au/children/child_protection_services</p> <p>Note: In Tasmania, the DHHS site states that 'The major public teaching hospitals and the private hospitals with which the Agency has contracts are accredited by the Australian Council on Health Care Standards'</p>
<p>Vic</p> <p>Department of Health and Human Services http://www.health.vic.gov.au/</p>	<p>Under 'How Do I?', selected 'access policy and guidelines', but there was no result. Searched the site using the term 'child abuse'. Revealed several documents:</p> <ul style="list-style-type: none"> • <i>Child abuse or neglect: neonatal e-handbook</i> • http://www.health.vic.gov.au/neonatalhandbook/assessment/child-abuse-neglect.htm • <i>Vulnerable babies, children and young people at risk of harm. Best practice framework for acute health services</i> • http://docs.health.vic.gov.au/docs/doc/Vulnerable-babies--children-and-young-people-at-risk-of-harm--Best-practice-framework-for-acute-health-services • <i>Vulnerable babies, children and young people at risk of harm – An intervention guide:</i> http://health.vic.gov.au/childrenatrisk/documents/vulnerable_children.pdf
<p>WA</p> <p>Department of Health http://ww2.health.wa.gov.au/</p>	<p>OD 0606/15 Guidelines for Protecting Children 2015 http://www.health.wa.gov.au/circularsnew/index.cfm</p>

Appendix 5 – Methodology for parts 5–6

Table A5.1 – Methodology for parts 5–6

Component	Major tasks	Research methods/key sources
Part 5: Overall question How could components, structures and mechanisms for implementation from OHS regulatory models in Australia inform a regulatory approach to protecting children from sexual abuse in institutional contexts?	1. What is the nature of OHS schemes in Australia?	Doctrinal legal research into, and analysis and synthesis of, key aspects of legal frameworks of OHS (alternatively termed workplace health and safety, or work health and safety) in Australia Primary sources (obtained from authorised legislation sites at Commonwealth, and state and territory government websites): <ul style="list-style-type: none"> • Legislation in Australia (key Commonwealth, state and territory statutes; for example, <i>Work Health and Safety Act 2011</i> (Cth); <i>Work Health and Safety Act 2011</i> (NSW); <i>Work Health and Safety Act 2011</i> (Qld); <i>Occupational Health and Safety Act 2004</i> (Vic)) • Subordinate legislation in Australia (and each state and territory); for example, Work Health and Safety Regulations 2011 (Cth); Work Health and Safety Regulation 2011 (NSW); Work Health and Safety Regulation 2011 (Qld); Work Health and Safety (Codes of Practice) Notice 2011 (Qld) Secondary sources: CCH online looseleaf service, and books obtained via QUT library Journal articles via social science research – see below Organisational/regulatory bodies’ websites: Safe Work Australia at http://www.safeworkaustralia.gov.au/sites/swa/pages/default and in each state and territory: WorkSafe ACT at www.worksafe.act.gov.au ; SafeWork NSW at http://www.safework.nsw.gov.au/ ; NT WorkSafe at www.worksafe.nt.gov.au ; Workplace Health and Safety Queensland at www.worksafe.qld.gov.au ; SafeWork SA at www.safework.sa.gov.au ; WorkSafe Tasmania at www.worksafe.tas.gov.au ; WorkSafe Victoria at www.worksafe.vic.gov.au ; and WorkSafe WA at www.commerce.wa.gov.au/WorkSafe
	2. How do OHS schemes apply to different types of organisations and different levels of risk?	Doctrinal legal research and analysis of the legislation. Further doctrinal research of relevant instruments/regulations/subordinate legislation Doctrinal research into industry-specific OHS/WHS frameworks as set out in legislation, and as discussed in secondary sources
	3. How do OHS schemes emphasise and ensure continuous improvement to workplace health and safety and compliance with OHS obligations?	Doctrinal legal research and analysis Secondary source research and analysis: books; journal articles; annual reports; industry and regulatory websites

Component	Major tasks	Research methods/key sources
	<p>4. What is the evidence that suggests the efficacy, strengths and weaknesses of OHS schemes in ensuring workplace health and safety?</p>	<p>Partly answered by legal analysis Also involved secondary source research (journal articles, annual reports and reviews) using:</p> <ul style="list-style-type: none"> • books (QUT library) • journal articles via legal databases: AGIS; Austlii journal databases; LexisNexisAU; WestlawAU, CCH Online (OH&S Library) • journal articles via social science databases: Science Direct, EBSCO, ProQuest • individual searches of <i>Safety Science</i>, <i>Australian Journal of Labour Law</i> and <i>Journal of Occupational Health and Safety</i> • hand-searched reference lists of key studies • key organisational websites (for example, Safe Work Australia) • key authors' personal webpages • Google to search grey literature. <p>The search strategy was generally not restricted to title, abstract and keywords but applied to all text. If few useful results were obtained, the search was widened through broadening of search terms. No date limits were used. Search strategies were adapted to suit databases. Key search terms/phrases included (individually and in combination): workpl* AND effi*; 'work health and safety' AND eff*; 'workplace health and safety' AND eff*; 'occupational health and safety' AND eff*; efficacy AND empirical</p>
<p>Part 6: Overall question What regulatory models and approaches could be used to ensure that smaller organisations with limited resources (that is, sporting, cultural, arts and recreational groups) are not overburdened with regulation, while still keeping children safe from sexual abuse?</p>	<p>1. Develop a framework/understanding of the basic nature, range and key characteristics (for example, number of staff, volunteers, children, demographics and locations) of the organisations from the subgroups of sports, culture, arts and recreation</p> <p>2. Review literature on models and approaches that are (a) used in, and (b) appropriate for, child-serving and youth-serving organisations of these types</p>	<p>Australian Bureau of Statistics Secondary source research using websites of relevant organisations for selected sports, recreational, arts and cultural bodies identified as involving large numbers of children in a diverse range of pursuits, in both larger and smaller organisations</p> <p>Social science research using the following databases:</p> <ol style="list-style-type: none"> 1. EBSCO Host 2. Science Direct 3. ProQuest Research Library (includes ProQuest Psychology, ProQuest Social Science) <p>Conducted individual searches of <i>Journal of Child Sexual Abuse</i>, <i>Children and Youth Services Review</i>, <i>Child Maltreatment</i>, <i>Child Abuse & Neglect</i>, <i>Social Science & Medicine</i>, <i>Journal of Sexual Aggression</i> and <i>Journal of Interpersonal Violence</i></p> <p>The search strategy was initially restricted to title, abstract and keywords. If few useful results were obtained, the search was</p>

Component	Major tasks	Research methods/key sources
		<p>widened to all text. No date limits were used. Search strategies were adapted to suit databases. Key search terms/phrases included (individually and in combination): youth-serving AND 'sex* abuse', child-serving AND 'sex* abuse', organisation* OR institution* AND sexual; institutional</p> <p><i>Inclusion criteria:</i> literature on models and approaches used in youth-serving or child-serving organisations specifically relating to sexual abuse; models and approaches used in situational crime prevention generally, and in relation to situational crime prevention for child sexual abuse specifically; not limited to Australia; and not limited to models that have been empirically tested (but limited to credible models and approaches as evidenced by refereed literature or by being the product of a nationally authoritative body such as the Centers for Disease Control and Prevention (CDC))</p> <p><i>Exclusion criteria:</i> literature on violence other than sexual abuse; literature on sexual assault against adults in organisations; purely descriptive literature on the existence of a problem, without discussion or proposals about models or approaches; and other literature about sexual abuse prevention generally but without direct relevance to the research question</p> <p>To ensure key sources were identified, the author also:</p> <ul style="list-style-type: none"> • hand-searched reference lists of key studies • searched key organisational websites (for example,, Child Wise, Australian Childhood Foundation) • searched grey literature (Australia and overseas) via Google • searched key authors' personal webpages • consulted Royal Commission reports and case studies as relevant; for example, Case Study 1 (Scouts); Case Study 2 (YMCA)

REFERENCES

References for parts 1-4 and parts 5–6 respectively are detailed below.

References for parts 1–4

Legislation

Advocate for Children and Young People Act 1998 (NSW)
An Act Respecting Private Education 2015 (Quebec)
Australian Education Act 2013 (Cth)
Board of Studies, Teaching and Educational Standards Act 2013 (NSW)
Children (Education and Care Services National Law Application) Act 2010 (NSW)
Children (Education and Care Services) National Law (NSW)
Children and Young People Act 2008 (ACT)
Children and Young Persons (Care and Protection) Act 1998 (NSW)
Children, Young Persons and Their Families Act 1997 (Tas)
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