



Royal Commission
into Institutional Responses
to Child Sexual Abuse

REPORT OF CASE STUDY NO. 12

The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009

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Report of Case Study No. 12

The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009

June 2015

COMMISSIONERS

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Preface

The Royal Commission

The Letters Patent provided to the Royal Commission require that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’.

In carrying out this task, we are directed to focus on systemic issues but be informed by an understanding of individual cases. The Royal Commission must make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

For a copy of the Letters Patent, see Appendix A.

Public hearings

A Royal Commission commonly does its work through public hearings. A public hearing follows intensive investigation, research and preparation by Royal Commission staff and Counsel Assisting the Royal Commission. Although it may only occupy a limited number of days of hearing time, the preparatory work required to be undertaken by Royal Commission staff and by parties with an interest in the public hearing can be very significant.

The Royal Commission is aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission were to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners have accepted criteria by which Senior Counsel Assisting will identify appropriate matters for a public hearing and bring them forward as individual ‘case studies’.

The decision to conduct a case study will be informed by whether or not the hearing will advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes, so that any findings and recommendations for future change that the Royal Commission makes will have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings will also be held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This will enable the Royal Commission to understand the way in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identify a significant concentration of abuse in one institution, it is likely that the matter will be brought forward to a public hearing.

Public hearings will also be held to tell the story of some individuals, which will assist in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most

importantly, the devastating impact that it can have on some people's lives. A detailed explanation of the rules and conduct of public hearings is available in the Practice Notes published on the Royal Commission's website at:

www.childabuseroyalcommission.gov.au

Public hearings are streamed live over the internet.

In reaching findings, the Royal Commission will apply the civil standard of proof that requires its 'reasonable satisfaction' as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

In other words, the more serious the allegation, the higher the degree of probability that is required before the Royal Commission can be reasonably satisfied as to the truth of that allegation.

Private sessions

When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of child sexual abuse in an institutional setting. As a result, the Commonwealth Parliament amended the *Royal Commissions Act 1902* to create a process called a 'private session'.

A private session is conducted by one or two Commissioners and is an opportunity for a person to tell their story of abuse in a protected and supportive environment. As at 12 June 2015, the Royal Commission has held 3,550 private sessions and more than 1,582 people were waiting to attend one. Many accounts from these sessions will be recounted in later Royal Commission reports in a de-identified form.

Research program

The Royal Commission also has an extensive research program. Apart from the information we gain in public hearings and private sessions, the program will draw on research by consultants and the original work of our own staff. Significant issues will be considered in issues papers and discussed at roundtables.

This case study

Child sexual abuse at an independent school in Perth, Western Australia

This is the report of the public hearing that examined the response of an independent school in Perth, Western Australia:

- to concerns raised between 1999 and 2009 by several teachers and a parent about the behaviour of a male teacher in the preparatory school towards a number of his students
- in relation to the victims, their families and the wider school community following that teacher's arrest in 2009.

In examining the school's response to concerns about the teacher, this case study considered the systems, policies and procedures in place at the school between 1999 and 2014. It also examined the degree of involvement of the State of Western Australia with independent schools through the independent school registration process. For the purposes of the Royal Commission's consideration of redress schemes more generally, the case study also considered information on claims for compensation that the school has settled.

The scope and purpose of the public hearing was as follows:

- The response by the headmasters, relevant department heads and the school council of an independent school in Perth to concerns raised between 1999 and 2009 by teachers and others about the level and type of contact between a teacher and several of his students.
- The response of the school, following the arrest of a teacher in 2009 on multiple charges of indecent dealing with a child, in relation to the victims and their families and the wider school community.
- The school's response to and management of the victims' claims for compensation.
- The systems, policies and procedures in place at the school between 1999 and 2014 in relation to raising and responding to concerns about child sexual abuse.
- The registration of the school under the *School Education Act 1999* (WA) between 1999 and 2014.
- Any other related matters.

Systemic issues

This case study considered whether the school's systems for:

- reporting allegations internally and to relevant agencies
- recording allegations
- responding to those reports

- monitoring the conduct of the accused teacher
- releasing information to the suspect, alleged victims and wider school community
- training of staff in child sexual abuse awareness
- creating and maintaining a culture which supports staff and students to report child protection concerns

were adequate to prevent children being sexually abused by a teacher.

The case study also considered the importance of policies, procedures and training on grooming behaviours.

The Royal Commission will further consider the material received about the victims' civil claims as part of the report on redress.

Executive summary

The school that was the subject of this case study is an independent school located in Perth, Western Australia, and affiliated with the Anglican Church.

The school consists of a preparatory school and a senior school.

The school as a whole has a headmaster. From 1999 to 2002, WB was headmaster of the school. The headmaster from 2003 to 2010 was WD. The current headmaster, WL, commenced at the end of 2010.

There are also separate heads for the preparatory school and the senior school. YN was head of the preparatory school in 1999. YK took over as head of the preparatory school from 2000 until September 2009. The current head of the preparatory school is WM.

The offending teacher, YJ, was employed at the school from 1985 until 2009. Between 1985 and 1988, the offending teacher taught years 7, 8 and 9 in the senior school. From 1989 to 2002, he taught year 5 in the preparatory school and from 2003 until his dismissal in 2009 he taught year 4 in the preparatory school.

In September 2009, WP – a former student at the school – disclosed to the Western Australia Police that YJ had sexually assaulted him while he was a student at the school. YJ was later charged with having committed sexual offences against five students – WP, WT, YA, WW and WX. WP, WT and YA were all in year 5 and about nine or 10 years old at the time of the sexual abuse. WW and WX were in year 4 and about eight years old at the time the abuse commenced. All of the victims were pupils in one of YJ's classes at the time of the offending.

With some victims, the offending teacher put his hand into the pockets of their shorts and rubbed their penises. With others, he put his hand down the back of their shorts, inside their underpants, and rubbed their bottoms. On one occasion, the offending teacher pulled down the victim's shorts and underpants and masturbated him.

At the time of reporting the allegations to police, WP, WT and YA had left the school. WW and WX were still students at the school.

On 30 June 2010, after a trial by jury in the District Court of Western Australia, YJ was convicted of 13 charges of indecent dealing with a child under 13. He was convicted of indecently dealing with each of the five complainants.

On 7 December 2011, the Supreme Court of Western Australia allowed an appeal against six of the convictions. A retrial was ordered on counts 1 to 6 of the indictment, which included the charges in relation to offences against WP, WT and YA.

The retrial commenced in the District Court of Western Australia on 13 August 2012. On 20 August 2012, the jury returned a verdict of guilty on all six counts of indecent dealing with a child under 13. The offending teacher was sentenced to a total effective term of five years' imprisonment,

backdated to commence on 30 June 2010, with eligibility for parole after three years.

At the time of the public hearing, YJ remained in custody. YJ maintains his innocence of all of the charges he was convicted of.

History of complaints about the offending teacher

From 1999 until 2005, several teachers and a parent at the school made complaints to either or both of the then head of the preparatory school and the then headmaster about the nature of contact between the offending teacher and his students.

In about mid-1999, WG, a teacher at the school, recalls seeing YJ, the offending teacher, in his classroom with a boy between his knees while he was marking the boy's work. WG immediately spoke to YN, the then head of the preparatory school, about her concerns regarding the offending teacher's conduct.

YN wrote a formal warning letter to the offending teacher on 16 November 1999. Then on 22 February 2001 a second warning letter was sent to the offending teacher. The offending teacher would not agree to sign acknowledging receipt of the letter.

On 9 April 2001, YK, the then head of the preparatory school, placed a memorandum on the offending teacher's personnel file, noting that he had raised those concerns with the then headmaster, WB, after staff again expressed concerns about the offending teacher's conduct on a school camp.

Then, on 12 December 2001, WF, a teacher in the preparatory school, gave a letter to YK detailing her concerns and observations about the offending teacher's conduct with some of his students. YK placed a copy of the letter on the offending teacher's personnel file held at the preparatory school and on the offending teacher's file held at the senior school. In early 2002, WF gave the then headmaster, WB, her letter dated 12 December 2001.

After receiving the letter from WF, WB, met with the offending teacher, telling him there was no suggestion of sexual impropriety but that his behaviours could be interpreted in an unhelpful way for himself and the children.

In mid-2002, staff again raised concerns with YK, the then head of the preparatory school. On 13 June 2002, YK met with the offending teacher about the concerns.

WH, a teacher at the school, wrote to YK on 27 October 2004 about the 'inappropriate' and 'unacceptable' conduct of the offending teacher. YK gave a copy of this letter to the headmaster, WD. At that point WD reviewed the offending teacher's personnel file for the first time. After he had done this, the headmaster had a meeting with WH on 5 November 2004.

WD, the then headmaster, met with the offending teacher on 10 November 2004 and discussed the allegations of inappropriate behaviour. WD formalised his discussion with the offending teacher in a letter to him dated 10 November 2004. In the letter, the headmaster informed the offending teacher that, because the offending teacher had previously been given two formal warning letters – dated 16 November 1999 and 22 February 2001 – the letter of 10 November 2004 should be considered a third and final warning.

On 14 December 2004, WD wrote to the offending teacher seeking his formal acknowledgment of receipt of the final warning in the letter dated 10 November 2004. The offending teacher did not sign the acknowledgment of receipt.

Following this, on 30 May 2005, WQ (the mother of WP) met with WD in his office to discuss concerns she had about the offending teacher's behaviour towards WP.

A couple of weeks later, the headmaster spoke with WQ and told her that the offending teacher was on his final warning and if there was any hint of any further trouble or complaints he would be dismissed immediately. The headmaster did not raise the issue again with WQ.

The adequacy of the school's systems for child protection from 1999 until 2009

The Royal Commission considered the adequacy of the school's systems for child protection between 1999 and 2009 – the period of time in which staff and a parent made complaints about the offending teacher, YJ.

The public hearing received a statement from Professor Stephen Smallbone, who has expertise in child safety with a particular emphasis on the school environment. Professor Smallbone is a psychologist and professor in the School of Criminology and Criminal Justice at Griffith University, Queensland.

Professor Smallbone gave evidence about the school's response by reference to present-day or contemporary standards of best practice.

Professor Smallbone expressed the view that current best practice for a child safe school environment includes:

- clear, written policies on:
 - how to detect child abuse or grooming behaviours
 - the procedures for reporting child abuse or grooming behaviours
 - handling complaints of child sexual abuse or grooming behaviours

- expertise training for staff on detecting and reporting child abuse and grooming behaviours
- an environment that is conducive to staff, parents and students reporting concerns.

The school's child protection policies and procedures

Before 2004, the school did not have a dedicated child protection policy.

In 2004, the school introduced a Policy Statement on Issues Related to Child Abuse and Neglect. The school's 2004 child abuse policy statement provided no reference to, or definition of, grooming behaviours or behaviour distinct from inappropriate touching or fondling of the child's body. Also, there was no reference to the indicators of grooming behaviour or the appropriate procedures that apply when a teacher is concerned about grooming behaviour.

The school adopted a new child protection policy on 9 February 2006. The policy applied until it was revised on 13 May 2009.

We are satisfied that the school did not have a dedicated child protection policy until 2004.

We are satisfied that the school's child protection policies that were in force from 2004 until 2009, although compliant with re-registration standards during the period, were deficient when measured against current standards of 'best practice' because:

- they provided insufficient information about how child sexual abuse occurs
- there was no reference to grooming behaviours, no definition of grooming behaviours and no instruction on how grooming behaviours might be detected and when they should be reported
- there were no separate guidelines for handling reports of (i) suspected child abuse; and (ii) grooming or inappropriate behaviour by staff that did not involve a specific allegation of child sexual abuse or (after 2009) fell below the threshold for mandatory reporting.

The school's training of teachers and instruction of students in child protection

Before 2009, teachers and staff received no or little training from the school in child protection or child sexual abuse.

The school instructed students on 'stranger danger', but there was no emphasis on 'friendly danger' or grooming behaviours. WP, a survivor of child sexual abuse at the school, said in evidence that, if there had been, it would have been easier for him to report his abuse.

Professor Smallbone stressed the importance of staff being trained in the concept of grooming and sexual abuse, with a particular focus on abuse in a school setting. This training should also concentrate on potential barriers to identifying and reporting concerns – for example, the natural tendency to protect colleagues and a school’s reputation; and fears of being ostracised.

Difficulties experienced by teachers and a parent in reporting their concerns about YJ to the school

The reporting teachers – WG, WF and WH – all gave evidence that they experienced trepidation in raising with the school the behaviour of the offending teacher, YJ, towards some students. Each teacher gave evidence that they:

- had little or no knowledge of procedures for reporting their concerns
- received no training from the school in detecting and reporting suspected child abuse or grooming behaviours
- were concerned that they would be subjected to rejection, ostracism or bullying/harassment from some staff if they were identified as ‘whistleblowers’ or complainants.

WQ is the mother of a former student of the school, WP.

WQ said she felt uncomfortable raising the issue of the offending teacher with the then headmaster, WD, in 2005. She said she was very scared and concerned she would look stupid.

WQ was not aware of any school procedures or policies to assist her or any parent in making a complaint about a teacher. WQ said she did not know where to find child protection policies or any policy relevant to her concerns about the offending teacher even though she had been a liaison parent and president of the Parents and Friends Association and she did volunteer work at the school. WQ did not recall ever seeing a document that the school produced called the Parents’ Worries and Complaints policy.

We are satisfied that, from 1999 to 2005, the school’s environment was such that, in respect of the reporting of sexual abuse, possible sexual abuse or other inappropriate behaviours:

- school staff and one parent who gave evidence were not aware of any written policies or guidance on the procedure to report child sexual abuse or other inappropriate behaviours
- school staff received limited or no training or education in understanding the indicators of child sexual abuse and inappropriate behaviours or in reporting child sexual abuse and inappropriate behaviours
- school staff and parents were not always kept informed of the school’s response when concerns were raised with the school
- there was evidence of a culture at the school where some of the staff members and

one parent felt that, if they raised concerns about another staff member, they may be ostracised by parts of the school community.

The school's response to the complaints made about YJ by teachers and a parent

YN's handling of first and second complaints in 1999

YN, the then head of the preparatory school, met with the offending teacher on 17 September 1999 after WG raised concerns about YJ's behaviour. During the meeting he pointed out to the offending teacher that he 'placed [himself] and the School at great risk if this type of incident was allowed'.

He also wrote to the offending teacher reiterating the school policy that there can be no physical contact between a teacher and student and YJ should not be alone with a student.

YN informed the then headmaster, WB, of the concerns that teachers had raised.

YK's handling of third and fourth complaints in 2001

On 22 February 2001, YK, the then head of the preparatory school, met with the offending teacher and expressed his concerns over the offending teacher's degree of familiarity with students.

YK did not review the personnel files of his staff when he commenced in his position in 2000. Also, YK did not review the offending teacher's personnel file before his meeting with him on 22 February 2001. At the time of this meeting, YK was unaware of the previous concerns documented by YN in 1999.

YK resolved to keep the offending teacher under closer supervision and scrutiny. YK sent a warning letter to YJ, which he refused to sign.

On 9 April 2001, YK raised new concerns with WB, the then headmaster, about the offending teacher's behaviour towards students on a camp. After the fresh concerns were raised, YK did not revise his strategy or implement a new strategy to deal with them.

YK's and WB's handling of fifth complaint – the letter by WF dated 12 December 2001

In December 2001, WF, a teacher, handed YK, the then head of the preparatory school, a letter dated 12 December 2001 that thoroughly documented WF's concerns about the offending teacher's behaviour towards students.

In response, YK placed the letter on the offending teacher's file and resolved to keep the offending teacher under closer supervision. YK did not raise the letter with the then headmaster, WB, or the offending teacher. He did not contact WF and discuss the letter with her or any of the parents of the students named in the letter.

WB, the then headmaster, said that, in early 2002, WF gave him her letter dated 12 December 2001. WB did not ask YK, the then head of the preparatory school, why he had not shown him the letter.

WB met with the offending teacher and told him that his behaviours could be interpreted in an unhelpful way for himself and the children. WB did not attempt to speak with any of the boys named in the letter or their families. He did not obtain any advice from any independent child protection services.

YK's handling of the sixth complaint on 13 June 2002

YK had been informed that the offending teacher used terms such as 'give him a good belting' when dealing with students. On 13 June 2002, YK, the then head of the preparatory school, met with the offending teacher about his use of this type of language. YK noted that the offending teacher acknowledged the concern and agreed to refrain from using such references.

YK's and WD's handling of the seventh complaint by WH on 27 October 2004

On 27 October 2004, WH wrote a letter to YK, the then head of the preparatory school, about concerns that the offending teacher had favourite boys and had been seen in his classroom alone with children. YK gave the letter to WD, the then headmaster.

WD met with the concerned teacher, WH, on 5 November 2004.

WD reviewed the offending teacher's file for the first time and became aware of the earlier complaints about YJ. In particular, he became aware of WF's thorough and detailed letter of 12 December 2001. WD also contacted the Independent Schools Salaried Officers Association and the Association of Independent Schools of Western Australia about whether he could lawfully dismiss YJ from his employment. He was told he had insufficient evidence to do so.

On 10 November 2004, WD spoke with YJ, the offending teacher, about the concerns raised in WH's letter. He then wrote a letter that he referred to as the third and final warning. He asked the offending teacher to countersign the letter as an acknowledgement of the meeting. The offending teacher declined to do so.

On 14 December 2004, the headmaster wrote again to the offending teacher and asked him to sign the letter. Again YJ declined to do so. By that stage, WD was aware of two earlier warning letters sent to the offending teacher, both of which he had refused to sign.

WD did not consult the Western Australian Department of Child Protection, a counsellor, the police or anyone with expertise in child sexual abuse or the protection of children. He did not consult WF or any of the parents of the children referred to in WF's letter. WD did not take any further action against the offending teacher, YJ, after he declined to sign the warning letters of November and December 2004.

WD's handling of the eighth complaint by WQ on 30 May 2005

WQ, the mother of WP, met with WD in his office on 30 May 2005, where she discussed her concerns about the offending teacher's behaviour. The meeting did not cause WD to reconsider his decision not to dismiss the offending teacher, as WQ had raised no new matters.

Recording of concerns

We are satisfied that from 1999 until 2009 the school's system to record complaints or concerns about inappropriate behaviour by staff members was deficient to the extent that:

- there was no centralised database to (i) record concerns or complaints; or (ii) facilitate a comprehensive review of the file when a complaint is made
- there were two personnel files – one in the preparatory school and one in the senior school – neither of which required reference to the other.

Failure by the school to place sufficient and correct significance on the complaints

We are satisfied that the then head of the preparatory school (YK) and then headmasters (WB and WD) did not attach sufficient significance to the reports made between 2001 and 2005 about the offending teacher's inappropriate and grooming behaviours. They did not seek sufficient external advice, make inquiries of the named children (or their parents) or manage the offending teacher's behaviour. The lack of training and policies in child protection at the school contributed to their failure to do so.

We are satisfied that between 1999 and 2005 the school did not attach sufficient and correct significance to the reports made to it and concerns raised with it about the inappropriate conduct of the offending teacher, YJ. The school's policies and limited staff training during that period contributed to its failings in this regard. The school accepts that, had sufficient and correct significance been attached to the reports and concerns when they were raised, the school's response would have been different and mitigated the risk of the offending teacher, YJ, sexually abusing students.

WP discloses allegations of sexual abuse by YJ in 2009

The initial disclosure by WP

On 1 September 2009, WP told his parents, WQ and WR, about the sexual abuse by the offending teacher. Later that day, the then headmaster, WD, was informed of the allegations and the school called a critical incident meeting.

The school decided to suspend the offending teacher, YJ, on full pay; report the matter to the police; offer counselling to the victim and his family as well as the offending teacher; report the allegations to the Archbishop's office; and prepare a media response.

On 2 September 2009, WP and his parents contacted the Western Australia Police and WP and WQ met with a detective from the Child Abuse Squad. Later that day, the offending teacher was arrested and charged with four offences as a result of WP's complaint.

On 10 September 2009, WD terminated the offending teacher's employment with the school.

YJ, the offending teacher, was later charged with a further 13 offences against another four students or former students of the school, including WT and YA, who had been identified by WF in her letter of 12 December 2001 as 'favourites' of the offending teacher.

The school's response to the allegations raised by WP and others from 1 September 2009

WP's disclosure

In responding to WP's allegations, the school followed the procedures set out in the 2009 child protection policy. The then headmaster, WD, and the school also complied with mandatory reporting requirements under the *Children and Community Services Act 2004* (WA).

WD had no guidelines to follow to ensure that he did not act in a way that may potentially undermine the police investigation.

Release of information by the school

In 2009, there were no school policies or procedures on what information should be provided to either a suspect who was a staff member or families of students when a staff member has been

charged with sexual offences. There were no written guidelines on the type of liaison that the school should have with police.

The school has since developed templates of letters to be sent to parents for any future police investigations.

The school's current procedure regarding the release of information to a suspect and liaison with police is that the headmaster will first seek advice from the police and/or the Western Australian Department of Child Protection on the appropriate action to take in respect of the alleged offender, the child and the child's parent(s)/caregiver(s).

In 2013, the Western Australia Police, the Western Australian Department of Education Services, the Training Accreditation Council Western Australia and the Teacher Registration Board of Western Australia agreed to develop a memorandum of understanding (MOU) on the sharing of child protection information. This MOU relates to information sharing in non-government schools and was signed by all parties as of May 2014.

We are satisfied that, before 2009, the school had no procedures or guidelines about the release of information to (i) a suspect; or (ii) individual parents of alleged victims; or (iii) the wider school community during a police investigation about child sexual abuse.

Other initiatives developed by the school

We are satisfied that the school has implemented significant improvements to its relevant child protection policies and procedures.

We are satisfied that the current child protection policy could be further strengthened by including a section on detecting and reporting grooming behaviours.

We are satisfied that the school's current system for recording concerns would be strengthened by including directions that required staff (about whom the concern is raised) to acknowledge concerns and accept behavioural management plans, special monitoring, supervision provisions and associated disciplinary procedures.

History of the registration of the school under Western Australian legislation

The *School Education Act 1999* (WA) commenced on 1 January 2001. Section 154 of that Act requires non-government schools to be registered.

Registration of the school in 2004

The school applied for renewal of its registration in February 2004. The school was inspected on 2 March 2004 and a registration report dated 19 April 2004 recommended that the school be registered for a period of between five and seven years. The report stated that the school had developed and implemented a child protection policy and that its documented policies and procedures were of a very high standard. The school was registered for the period of 1 January 2004 to 31 December 2010.

Registration of the school in 2010

On 17 August 2010, the school was inspected and a registration report dated 27 October 2010 recommended that the school be registered until 31 December 2015. Amendments to the *Children and Community Services Act 2004* (WA) introduced mandatory reporting, which commenced on 1 January 2009. The registration report recommended that the wording of the school's child protection policy on mandatory reporting be altered to comply with the legislation. These changes were completed as required by 1 August 2011. The school was registered for the period 1 January 2011 to 31 December 2015.

At the time of the re-registration visit in August 2010, the offending teacher had been dismissed from the school – this happened in September 2009 – and had been convicted of 13 child sexual abuse offences (as at 30 June 2010).

The Western Australian Department of Education Services does not have any records indicating that, during the registration process in 2004 or 2010, the school disclosed any concerns about any inappropriate conduct between teachers and students, YJ's criminal conviction for sexually abusing students or the apparent failure of the school's child protection policies, procedures and practices. There is no record of the school disclosing those concerns to the department at any other time.

There was no legislative requirement in 2004 or 2010 that the school disclose the concerns reported by staff and a parent about the offending teacher to the department during the registration process.

Current registration standards for non-government schools in Western Australia

The 2013 Registration Standards for Non-Government Schools in Western Australia (the Registration Standards) introduced a requirement for non-government schools to report to the department all critical and emergency incidents. This requirement was retained in the 2014 Registration Standards. Mr Richard Strickland, the Chief Executive Officer of the Western Australian Department of Education Services, said in a statement that the definition of 'critical and emergency incidents' could be improved by making clear that circumstances that pose a critical risk to the health, safety or wellbeing of a student include an allegation of sexual abuse against a student.

The Western Australian Department of Education Services will also consider:

- how to incorporate the concept of grooming behaviours into the Registration Standards
- the development of a stand-alone child protection standard that, in addition to other requirements, covers grooming behaviours directly.

The Western Australian Department of Education Services also intends to establish a strong base of evidence for a child protection standard by seeking expert advice and research and reviewing the Registration Standards to ensure that non-government schools meet contemporary standards of best practice.

The Registration Standards developed by the Western Australian Department of Education Services should clearly state that an allegation of sexual abuse against a student is a 'critical and emergency incident' that should be reported to the department. A school should be required to report to the department where a staff member has received a formal warning for grooming behaviour.

A clearly enunciated and sufficiently detailed stand-alone child protection standard should be introduced for registration of non-government schools and should include grooming behaviours.

The Western Australian Registration Standards should clearly articulate the current standards or benchmarks for child protection policies and procedures against which best practice is assessed and a school registered.

Civil litigation

On 29 November 2010, the school made an offer of a full and final ex-gratia payment from the school to the victims' parents. The payment was to be made without admission of liability and required a formal deed of settlement to be entered into. The payment was to the victims' parents in their personal capacities and was not intended to cover any prospective claim by their sons in their personal capacities.

On 6 July 2011, the five victims commenced civil claims for compensation from the school.

On 2 September 2011, the school increased its ex-gratia payment offer to the victims' parents. On 18 October 2011, the victims' parents accepted the ex-gratia offers.

The Royal Commission received documentary material that all civil claims were settled with a deed of release.

Systemic issues

This case study considered whether the school's systems for:

- reporting allegations internally and to relevant external agencies
- recording allegations
- responding to those reports
- monitoring the conduct of the accused teacher
- releasing information to the suspect, alleged victims and wider school community
- training of staff in child sexual abuse awareness
- creating and maintaining a culture which supports staff and students to report child protection concerns

were adequate to prevent children from being sexually abused by a teacher.

The case study also considered the importance of policies, procedures and training on grooming behaviours.

The Royal Commission will further consider the material it has received about the victims' civil claims as part of the report on redress.

1 Introduction

1.1 The school

The school is an independent school located in Perth, Western Australia, and affiliated with the Anglican Church. It has a co-educational preparatory school catering for kindergarten to year 6 and a senior school for years 7 to 12 for boys only. The preparatory and senior schools are geographically separate – the preparatory school campus is located approximately one kilometre from the senior school campus.

The school as a whole has a headmaster and there are also separate heads for the preparatory school and the senior school.

From 1999 to 2002, WB was headmaster of the school. The headmaster from 2003 to 2010 was WD. The current headmaster, WL, commenced at the end of 2010.

YN was head of the preparatory school in 1999. YK took over as head of the preparatory school from 2000 until September 2009. The current head of the preparatory school is WM.

1.2 YJ's employment at the school

The offending teacher, YJ, was employed at the school from 1985 until 2009. He was also involved in school extracurricular activities that brought him into contact with students. His extracurricular activities included conducting an after-school calligraphy class, coaching soccer and softball and attending the annual camp for the relevant year group he was teaching.¹

Between 1985 and 1988, the offending teacher taught English, mathematics, religious education and health to boys in years 7, 8 and 9 in the senior school.² From 1989 to 2002, he taught year 5 in the preparatory school. From 2003 until his dismissal in 2009, he taught year 4 in the preparatory school.³

1.3 YJ's convictions for sexual offences

In September 2009, WP, a former student at the school, disclosed to the Western Australia Police that YJ had sexually assaulted him while he was a student at the school. YJ was later charged with having committed sexual offences against five students: WP, WT, YA, WW and WX. WP, WT and YA were all in year 5 and about nine or ten years old at the time of the abuse. WW and WX were in year 4 and about eight years old at the time the abuse commenced. All of the victims were pupils in one of YJ's classes at the time of the offending.

Four of the victims were new to the school when they commenced in the offending teacher's class. As new students, they were vulnerable, as they had not yet been able to form friendships with

other students and were able to be easily isolated and manipulated by the offending teacher.⁴ The offending teacher singled out each complainant at the start of the school year and gave them gifts and additional attention, both in the classroom and while taking part in extracurricular activities.⁵ The victims were bullied by other students because they were perceived as ‘teacher’s pets’ due to the extra attention that the offending teacher gave to them.⁶ This increased their social isolation and vulnerability. The offending teacher also cultivated friendships with the victims’ mothers, which made it more difficult for the victims to disclose their abuse.⁷

As the school year continued, the offending teacher used a tactile manner to progress from a form of touching the victims on the outside of their clothing to putting his hand inside their clothing.⁸ With some victims, the offending teacher put his hand into the pockets of their shorts and rubbed their penises.⁹ With others, he put his hand down the back of their shorts, inside their underpants, and rubbed their bottoms.¹⁰ On one occasion, the offending teacher pulled down the victim’s shorts and underpants and masturbated him.¹¹

At the time of reporting the allegations to police, WP, WT and YA had left the school. WW and WX were still students at the school.

After a trial by jury in the District Court of Western Australia, on 30 June 2010 YJ was convicted of 13 charges of indecent dealing with a child under 13.¹² He was convicted of indecently dealing with each of the five complainants.

On 7 December 2011, the Supreme Court of Western Australia allowed an appeal against six of the convictions. A retrial was ordered on counts 1 to 6 of the indictment, which included the charges for offences against WP, WT and YA.¹³

The retrial commenced in the District Court of Western Australia on 13 August 2012. On 20 August 2012, the jury returned a verdict of guilty on all six counts of indecent dealing with a child under 13. The offending teacher was sentenced to a total effective term of five years’ imprisonment, backdated to commence on 30 June 2010, with eligibility for parole after three years.¹⁴

At the time of the public hearing, YJ remained in custody. YJ maintains his innocence of all of the charges he was convicted of.

1.4 De-identified nature of the public hearing

Counsel for a former student, WP, and his mother, WQ, made an application that the school and witnesses be publicly identified.

However, the public hearing was conducted in a de-identified manner. The school and the majority of the witnesses were not publicly identified. A pseudonym and non-publication order was issued in respect of any person or matter that, in the Royal Commission’s view, might be reasonably said

to lead to the identification of the school. Reasons for that ruling were provided to all parties at the commencement of the public hearing.¹⁵

The effect of section 36C of the *Evidence Act 1906* (WA) precludes the Royal Commission from identifying the school or the offending teacher, YJ, or any matter likely to lead to the identification of the school in circumstances where two of the complainants were still attending the school. Even if section 36C did not have that effect, in the particular circumstances of this case it was not in the public interest to identify the school.

2 History of complaints about YJ

From 1999 until 2005, several teachers and the parent of a boy who attended the school made complaints to either or both of the then head of the preparatory school and the headmaster about the nature of contact between YJ, the offending teacher, and his students.

The school issued YJ with three warnings between 1999 and 2005.

2.1 First complaint: WG reports concerns in mid-1999

WG was a teacher at the school from 1999. She taught a year 5 class in 1999. The offending teacher was the other year 5 teacher. WG soon noticed that the offending teacher was, in her view, over-friendly with the boys in his class, frequently touching and patting them on the bottom or putting his arm around them.¹⁶ She also observed him hitting the boys with his hand or a ruler.

In about mid-1999, after seeing the offending teacher in his classroom with a boy between his knees while he was marking the boy's work, she immediately spoke to YN, the then head of the preparatory school, about her concerns about the offending teacher's conduct. YN told her that he would speak to the offending teacher.¹⁷

2.2 Second complaint: WG and another teacher report concerns in September 1999

In mid- to late 1999, two teachers expressed their concern to YN, the then head of the preparatory school, about having seen the offending teacher, YJ, alone in his classroom with a child and about having seen him with a child on his knee on one occasion.¹⁸ One of the teachers was WG and this complaint related to her earlier complaint in mid-1999 (see section 2.1 above).

On 17 September 1999, YN, held a meeting with the offending teacher.¹⁹ YN did not identify the other teacher, who was said to have complained about YJ in September 1999.²⁰

At the meeting YN, informed the offending teacher that any physical contact with a child was unacceptable and that it should never happen again. The offending teacher gave YN an assurance that it would never happen again.²¹

2.3 First formal warning by YN on 16 November 1999

YN, the then head of the preparatory school, wrote a formal warning letter to YJ on 16 November 1999 informing him that it was the school's clear and stated policy that there could never be any excuse for physical contact with a student and that he must never allow himself to be alone

with a student.²² The offending teacher was informed in the letter that a number of colleagues had expressed their concerns to him about instances of contact between the offending teacher and students that they had witnessed. A copy of the letter was placed on the offending teacher's personnel file.²³

2.4 Third complaint: teachers report concerns in early 2001

In early 2001, teachers expressed concerns to YK, the then head of the preparatory school, about the offending teacher's degree of familiarity with some students.²⁴ On 22 February 2001, YK held a meeting with the offending teacher.²⁵ YK informed the offending teacher that, for his own protection, he should be careful in his dealings with students. The offending teacher told YK that he was aware of these types of perceptions and that he had always dealt with students in a tactile manner.²⁶

2.5 Second formal warning by YK on 22 February 2001

A formal warning letter dated 22 February 2001 was provided by YK, the then head of the preparatory school, to the offending teacher stating that the policy of the school was that there could never be any excuse for any physical contact between a teacher and a student and that the offending teacher must never allow himself to be alone with a student.²⁷ YK noted on a copy of that letter that the offending teacher would not agree to sign the letter. The letter was placed on the offending teacher's personnel file kept in the preparatory school.²⁸

2.6 Fourth complaint: staff report concerns in about April 2001

In about April 2001, staff expressed concerns to YK, the then head of the preparatory school, about the offending teacher's conduct on a school camp.²⁹ On 9 April 2001, YK placed a memorandum on the offending teacher's personnel file, noting that he had raised those concerns with the then headmaster, WB.³⁰ The memorandum noted that the headmaster had contacted Ms Theresa Howe, the President of the Independent Schools Salaried Officers Association, and was informed that there was not a great deal that the school could do, all that could be done had been done and a note should be placed on file that the union had been contacted and no action had been taken.

2.7 Fifth complaint: WF reports concerns on 12 December 2001

On 12 December 2001, WF, a teacher in the preparatory school, provided a letter to YK, the then head of the preparatory school, that detailed her concerns and observations about the offending

teacher's conduct with some of his students.³¹

The letter stated that the offending teacher consistently behaved inappropriately with male students, that he took an unhealthy interest in one boy in his class each year and that she had observed him touching many boys in his class in a manner 'outside the bounds of accepted behaviour by an adult who is not the child's parents'. She also noted that he had never been observed behaving in this way with girls.

WF identified in her letter three boys from previous years that had been the offending teacher's favourites – namely, WT in 1999, WP in 2000 and YA in 2001. She noted that the favourite boys were all quite similar in appearance.³²

WF also wrote in her letter:

We are not suggesting anything more serious (as in 'sexual') has occurred. We have no proof of anything like that. However there are several aspects to our concerns. First and foremost is the safety, both physically and emotionally of all children who have come and will come into contact with YJ. Even if what has been outlined in this letter is the total extent of what has occurred, I believe it is still totally unacceptable within any organisation let alone any school and especially our school.³³

Before writing the letter, on four or five occasions over the time she worked at the school, WF discussed with other teachers her concerns about YJ's conduct with students. Each teacher she spoke with shared her concern.³⁴

WF expressed concerns about her confidentiality being maintained and anticipated that a copy of the letter would be forwarded to WB, the then headmaster.³⁵

YK, the then head of the preparatory school, placed a copy of the letter on the offending teacher's personnel file held at the preparatory school and also on the offending teacher's file held at the senior school.³⁶

YK did not inform the then headmaster, WB, about the letter and did not raise it with the offending teacher.³⁷ YK did not raise the letter with WB because he was unsure of how to respond.³⁸

WB said in his statement that in early 2002 WF gave him her letter dated 12 December 2001.³⁹ At the time WB received the letter from WF, he was aware of the warning letter from YN, the then head of the preparatory school, to the offending teacher dated 16 November 1999. WB said he helped to draft that letter.⁴⁰ WB was also aware of the 'fourth complaint' – that is, the concerns raised by staff about the offending teacher on a school camp, noted on 9 April 2001. WB said that, at the time he received the letter of 12 December 2001 from WF, he had no recollection of being informed of the 'first complaint' in mid-1999⁴¹ or the 'third complaint' in mid-2001.⁴²

WB did not ask YK why he had not shown him the letter.⁴³

WB met with the offending teacher. The headmaster told the offending teacher that, while there was no suggestion of sexual impropriety, his behaviours could be interpreted in an unhelpful way for himself and the children. The offending teacher responded in a confident manner and maintained that his behaviour was normal and acceptable.⁴⁴

2.8 Sixth complaint: 13 June 2002

In mid-2002, concerns were raised with YK, the then head of the preparatory school, that the offending teacher used terms such as ‘give him a good belting’ when dealing with students. On 13 June 2002, YK met with the offending teacher to inform him that using language such as ‘give him a good belting’ was not acceptable. YK noted that the offending teacher acknowledged the concern and agreed to refrain from these references.⁴⁵

2.9 Seventh complaint: WH reports concerns on 27 October 2004

Another teacher, WH, wrote to the then head of the preparatory school, YK, on 27 October 2004 about her concerns about the behaviour of the offending teacher, YJ, that she felt may be deemed ‘inappropriate’ and ‘unacceptable’.⁴⁶

WH had been disturbed by an incident she had witnessed in the last two weeks of term 3 of 2004. WH had entered the offending teacher’s classroom and observed him sitting at a computer with a male student on his knee and that his left hand was resting high up on the inside thigh of the boy. In addition, she had seen the offending teacher regularly putting his arm around ‘favourite’ students and giving them lollies at the end of the day after they had completed jobs for him. She also noted that the offending teacher commented regularly that children should be smacked or belted and had admitted to her that he had smacked students in his class.⁴⁷

On 5 November 2004, YK provided this letter to the then headmaster, WD.⁴⁸ WD had been headmaster since April 2003. WD then reviewed the offending teacher’s personnel file for the first time.⁴⁹ WD read for the first time the previous correspondence about inappropriate behaviour by the offending teacher towards students.⁵⁰

WD then arranged a meeting with WH. The meeting was held in the office of the then head of the preparatory school on 5 November 2004.⁵¹ The head of the preparatory school was not present.⁵²

On 7 November 2004, WH wrote to the headmaster about the meeting she had had with him on 5 November 2004.⁵³ WH was concerned that her confidentiality be maintained and her name not be mentioned in any discussions held with the offending teacher about the contents of her letter.⁵⁴

WD, the headmaster, called Ms Howe from the union on 9 November 2004 to discuss the

appropriate approach to take with the offending teacher. WD said he also called Dr Ian Fraser from the Association of Independent Schools of Western Australia.⁵⁵ WD said that the information from Dr Fraser confirmed his understanding that the school was not in a position to dismiss the offending teacher, as there was no formal complaint against him, there was insufficient evidence of sexual misconduct and there was no requirement for mandatory reporting at that time.⁵⁶

2.10 Third formal warning by WD on 10 November 2004

WD, the then headmaster, met with the offending teacher in the office of the then head of the preparatory school on 10 November 2004.⁵⁷

At that meeting, the headmaster told the offending teacher that there was an allegation that he had his hand high up on a boy's thigh; that he picked favourite boys and rewarded them with lollies; and that he had made inappropriate comments about smacking a child.⁵⁸

WD formalised his discussion with the offending teacher in a letter to him dated 10 November 2004.⁵⁹ In the letter, the headmaster informed the offending teacher that, because the offending teacher had been given two previous formal warning letters dated 16 November 1999⁶⁰ and 22 February 2001,⁶¹ the letter of 10 November 2004 should be considered a third and final warning. The headmaster stated in the letter that if there was any 'further evidence of this kind of inappropriate and unprofessional behaviour being repeated in the future' he would pursue the offending teacher's dismissal from the school.⁶²

On 14 December 2004, WD, the then headmaster, wrote to the offending teacher seeking his formal acknowledgment of receipt of the final warning in the letter dated 10 November 2004.⁶³ The offending teacher did not sign the acknowledgment of receipt. WD did not raise this failure with the offending teacher.⁶⁴

2.11 Eighth complaint: WQ (mother of student WP) on 30 May 2005

On 30 May 2005, WQ (the mother of WP) met with WD, the then headmaster, in his office to discuss concerns she had about the offending teacher's behaviour towards WP.⁶⁵ There is a divergence in the evidence as to how this meeting came about. WD said that the meeting with WQ was unscheduled and WQ came to his office 'to touch base'.⁶⁶ However, WQ gave evidence that she requested a meeting with WD, after which an appointment was made to see WD.⁶⁷

WQ said she attended the meeting with a written list of her concerns about the offending teacher. WQ said she told WD, the then headmaster, about a *Four Corners* program called 'Unlocking the Demons', which explained how paedophiles groom victims and their families. It was as a result of

this program that she raised the issue of the offending teacher with WD.⁶⁸ She felt that her family may have been 'groomed' by the offending teacher. WQ said that she told WD about the level of attention the offending teacher had shown to both of her sons.⁶⁹

A couple of weeks later, the headmaster spoke with WQ and told her that the offending teacher was on his final warning and if there was any hint of any further trouble or complaints, he would be dismissed immediately. The headmaster did not raise the issue again with WQ.⁷⁰

3 The adequacy of the school's systems for child protection from 1999 until 2009

The Royal Commission considered the adequacy of the school's systems for child protection from 1999 until 2009, during the time that staff and a parent had made complaints about the offending teacher, YJ.

The public hearing received a statement from Professor Smallbone, who has expertise in child safety with a particular emphasis on the school environment. Professor Smallbone is a psychologist and professor in the School of Criminology and Criminal Justice at Griffith University, Queensland.

Professor Smallbone gave evidence at the public hearing about best practice for child safety in a school environment. Professor Smallbone defines 'best practice' in his statement as 'requiring a striving for continual improvement by keeping abreast of emerging thinking, evidence and practice'.⁷¹ In evidence he said that the concept of best practice should be 'grounded in good empirical evidence, objectivity and well-established theory' and is 'a matter of educated opinion'.⁷² Professor Smallbone considered there would be some disagreement among professional academics about what precisely might constitute best practice in child safety.⁷³

Professor Smallbone gave evidence about the school's response by reference to present-day or contemporary standards of best practice. We accept the school's submission that Professor Smallbone's evidence was directed towards the question of whether the school's systems for child protection that existed from 1999 until 2009 met present-day standards of best practice, not those that may have prevailed at the time.

Professor Smallbone expressed the view that current best practice for a child safe school environment includes:⁷⁴

- clear written policies on:
 - how to detect child abuse or grooming behaviours
 - the procedures for reporting child abuse or grooming behaviours
 - the procedures for handling complaints of child sexual abuse or grooming behaviours
- expertise training for staff on detecting and reporting child abuse and grooming behaviours
- an environment that is conducive to staff, parents and students reporting concerns.

Professor Smallbone defined 'grooming behaviours' as the course by which a person creates or exploits opportunities to safely engage in sexual contact with a particular child or children.⁷⁵ Grooming behaviour typically involves a graduation from attention giving and non-sexual touching to increasingly more intimate and intrusive behaviours.⁷⁶ Professor Smallbone said that grooming behaviour precedes sexual abuse in a significant majority of cases, but not all cases.⁷⁷

Professor Smallbone said that written policies can assist in creating an environment in which to report concerns. Policies should clarify rules and expectations about staff behaviour with children, give examples of behaviours that ought to trigger concerns, provide rules or guidelines about how to report concerns and explain how a school will respond to these concerns.⁷⁸ Without clarity, a person is more or less left to their own devices to make judgments about things that can be very complex.⁷⁹

Professor Smallbone expressed the view that policy material should be supplemented with expert training about the concept of grooming and sexual abuse, with a particular focus on abuse in a school setting. This training should also concentrate on potential barriers to identifying and reporting concerns – for example, the natural tendency to protect colleagues and a school’s reputation; and fears of being ostracised.⁸⁰ Staff should have a clear understanding of how grooming and sexual behaviours may be identified and why it is important to notice these behaviours and voice concerns about them.⁸¹

Professor Smallbone expressed the view that, ultimately, for an environment that is conducive to staff reporting concerns, an organisational culture is required in which prevention of child sexual abuse is accepted as an ordinary responsibility of all adults. This requires leadership from senior management and staff. It also requires that reported concerns should be taken seriously and staff who express a concern should be informed of any action taken.⁸²

3.1 The school’s child protection policies and procedures

Between 1999 and 2005, when concerns about the offending teacher YJ were raised, the school did not have a dedicated child protection policy.⁸³ Each of the reporting teachers and WQ, the mother of WP, did not know of any policies or procedures to assist them in deciding whether to report their concerns and the appropriate procedure for doing so.⁸⁴

The school did not implement a dedicated child protection policy until 2004.⁸⁵ Before that, policy statements were found in staff handbooks. Specifically, there was a policy for sexual harassment and a section on mandatory reporting in the 2001, 2002 and 2003 staff handbooks.⁸⁶ Mandatory reporting was not introduced to Western Australia until 2009,⁸⁷ so, to that extent, the handbooks were incorrect. The sections on mandatory reporting speak of procedures to follow when a ‘belief has been formed’.

There is no reference in the staff handbooks about procedures to follow if a person’s concern falls below the threshold of having formed a belief that child sexual abuse has occurred.

The policy sections in the 2001, 2002 and 2003 staff handbooks on sexual harassment refer to the *Sexual Discrimination Act 1984* (Cth).⁸⁸ The definition of ‘harassment’ is given in the policy. Examples of harassment are given and include ‘leering, patting, pinching, touching or unnecessary familiarity, indecent exposure, sexual assault or rape’. While some grooming behaviours or child sexual abuse may fit within this definition, the policy sections in the handbook do not specifically refer to child sexual abuse or grooming behaviours.

Child abuse and neglect policy of 2004

In 2004, the school introduced a Policy Statement on Issues Related to Child Abuse and Neglect.⁸⁹

The school policies for Sexual Harassment and for Parents' Worries and Complaints were separated into different documents.⁹⁰

The school's 2004 child abuse policy statement defined sexual abuse to cover:

a wide range of sexual behaviour including observation or involvement with inappropriate touching or fondling of the child's body, making the child touch the adult genitalia, sexual penetration and showing or making pornographic videos to, with or of the child.⁹¹

The policy contained no reference to, or definition of, grooming behaviours or behaviour distinct from inappropriate touching or fondling of the child's body.

The 2004 policy statement sets out the indicators of child abuse and neglect. However, there is no reference to the indicators of grooming behaviour.

Under the section, 'Actions teachers should take', there is advice on how to document and report matters when teachers 'have concerns that abuse or neglect may be occurring'. There is no reference to the appropriate procedures that apply when a teacher is concerned about grooming behaviour. The policy also states that it is 'important the decisions in these instances should not be made hastily or without adequate evidence'. The use of the word 'evidence' may lead to confusion or misunderstanding about what is required before the matter is documented or reported.⁹²

The 2004 policy also listed the persons that a concerned staff member may contact (with the approval of the headmaster). The list included a senior social worker at Anglicare, a duty staff person at the Department for Community Development, the non-government schools psychology service, the Sexual Assault Resource Centre (for children over 13 years) or the Princess Margaret Hospital (for children under 13 years).⁹³

Child protection policy of 2006

The school adopted a new child protection policy on 9 February 2006. The Royal Commission was only provided with the 2006 policy as amended in 2009.⁹⁴ The 2006 policy applied until it was revised on 13 May 2009.⁹⁵ The 2009 policy does contain an additional section on the procedure for reporting any allegation, disclosure or discovery of abuse committed by a staff member. The 2004 policy did not specifically refer to allegations of abuse by staff members.

Child protection policy of 2009

The 2009 child protection policy sets out the school's commitment to the safety and welfare of children.⁹⁶ That policy set out the procedures to follow when sexual (and other) abuse is alleged, detected or suspected. The definition of 'sexual abuse' includes:

a wide range of behaviours that expose or subject a student to sexual activity that is illegal and or inappropriate to a student's developmental level. These behaviours include observations or involvement with inappropriate touching of a student's body, making a student touch an adult's genitalia, showing pornographic material to a student, the use of inappropriate sexual verbal language or non-verbal gestures and sexual penetration of the student.⁹⁷

There are also descriptions of the indicators of sexual abuse. These indicators relate to the alleged victim of the abuse and may be relevant to very serious cases, but not all cases.

Professor Smallbone expressed the view that the 2009 child protection policy (along with its predecessor in 2004) did not address how abuse might occur in a school setting. Also, the policies do not provide a definition/description of grooming, set out how it might be recognised or explain what school staff might do to prevent grooming and abuse from happening. Instead, the focus is on reporting concerns based on a reasonable suspicion that sexual abuse had already occurred.⁹⁸

Professor Smallbone was of the opinion that the school's child protection policies in 2004 and 2009 do not meet the current best practice standards because they provided limited information about how grooming and sexual abuse occurs. The policies also did not deal separately with the procedures for reporting and for handling concerns that fell below the threshold for mandatory reporting.⁹⁹

We are satisfied that the school did not have a dedicated child protection policy until 2004.

We are satisfied that the school's child protection policies in force from 2004 until 2009, although compliant for re-registration standards during the period, were deficient when measured against current standards of 'best practice' because:

- they provided insufficient information about how child sexual abuse occurs
- there was no reference to grooming behaviours, no definition of grooming behaviours and no instruction on how grooming behaviours might be detected and when they should be reported
- there were no separate guidelines for handling reports of (i) suspected child abuse; and (ii) grooming or inappropriate behaviour by staff that did not involve a specific allegation of child sexual abuse or (after 2009) fell below the threshold for mandatory reporting.

3.2 The school's training of teachers and instruction of students in child protection

Before 2009, teachers and staff received no training from the school in child protection or child sexual abuse. The reporting teachers, WG¹⁰⁰, WF¹⁰¹ and WH,¹⁰² gave evidence that they received no

training from the school on identifying or reporting grooming behaviours or child sexual abuse.

The reporting teachers, WG, WF and WH, and the then headmaster, WD, gave evidence that they understood the concept of ‘grooming behaviours’, although they were not familiar with the term.¹⁰³ However, YK, the head of the preparatory school, gave evidence that he did not understand the concept in 2001.¹⁰⁴ The headmaster, WB, was unaware of the term at the time but understood the concept as being where a perpetrator would try to ingratiate himself with a child.¹⁰⁵

The school instructed students on ‘stranger danger’, but there was no emphasis on ‘friendly danger’ or grooming behaviours.¹⁰⁶ WP, a survivor of child sexual abuse at the school, said in evidence that if there had been, it would have been easier for him to report his sexual abuse.¹⁰⁷

Professor Smallbone stressed the importance of staff being trained in the concept of grooming and sexual abuse, with a particular focus on abuse in a school setting. This training should also concentrate on potential barriers to identifying and reporting concerns – for example, the natural tendency to protect colleagues and a school’s reputation; and fears of being ostracised.¹⁰⁸

Senior Counsel for the school submitted that there was no evidence before the Royal Commission to suggest that the standard of education and training on child protection provided by the school from 1999 to 2005 was not in accordance with normal practice at the time. We accept that submission. However, the evidence remained that, during the relevant period, the school provided teachers, staff and the parents of students with no or limited education or training about detecting and reporting child sexual abuse or grooming behaviours.

3.3 Difficulties experienced by teachers and a parent in reporting their concerns about YJ to the school

The Royal Commission heard evidence from WG, WF and WH about the circumstances in which they raised their concerns about YJ and the difficulties they experienced in doing so. WQ, the mother of WP, also gave evidence about the difficulties she encountered in raising concerns with WD, the then headmaster, about YJ’s behaviour towards her son.

The reporting teachers, WG, WF and WH, all gave evidence that they experienced trepidation in raising with the school the offending teacher’s behaviour towards some students. Each teacher gave evidence that they:

- had little or no knowledge of procedures for reporting their concerns¹⁰⁹
- received no training from the school on detecting and reporting suspected child abuse or grooming behaviours¹¹⁰
- were concerned that they would be subjected to rejection, ostracism or bullying/harassment from some staff if they were identified as ‘whistleblowers’ or complainants.¹¹¹

WG

WG, who taught at the school in 1999 and 2000, said she was not aware of any formal procedures for reporting misconduct of staff or suspicions of child abuse.¹¹² WG said in evidence that, if such a policy document had existed, it would have been far easier for her to report her concerns.¹¹³

In 1999, after WG reported her concerns about the offending teacher to YN, the then head of the preparatory school, she felt that some of the older males who had been teaching at the school were nasty to her.¹¹⁴

In 2000, WG spoke to the new head of the preparatory school, YK, and complained that some male teachers had bullied her. WG described an incident where another teacher tried to run her over. WG gave evidence: 'One even attempted to run me over one day. I don't believe he would have, but the intent to make me fearful was there.'¹¹⁵

WG said in evidence she told the head of the preparatory school about the bullying and this particular incident, but he 'did not want to know about it'.¹¹⁶

YK, the then head of the preparatory school, denied that WG ever spoke to him about being bullied.¹¹⁷ WG left the school at the end of that year. WG said she stopped working at the school because of the way she was treated by some colleagues after reporting her concerns about the offending teacher.¹¹⁸

WF

WF was employed at the school from 1998 until 2004. She gave evidence that she did not know of any formal procedures for reporting misconduct of staff or suspicions of child abuse. WF was not aware of any child protection policy during her tenure at the school. WF said that, if such a policy document had existed, it would have been easier for her to report her concerns and she would have felt more confident in doing so.¹¹⁹

When WF first raised concerns about the offending teacher in February 2001, she did so after much 'soul searching'. She was a new teacher at the school and did not want to ruin a man's career.¹²⁰ At the end of 2001, WF wrote a detailed letter to the then head of the preparatory school listing her concerns about the offending teacher's behaviour towards several students. WF said in the letter that she:

thought very long and hard about this issue and whether to raise it once again. It is a very difficult thing to do and I trust there will be no negative repercussions of any kind for me doing what I believe is both morally and professionally ethical.¹²¹

In early 2002, WF met with the headmaster about the concerns expressed in the letter. The

headmaster informed WF of the school's response. The headmaster said that he had met with the offending teacher and given him a written warning, a copy of which had been placed on his file. However, WF says that she observed that the offending teacher continued to act in an inappropriate manner towards YA and WP.¹²² It appeared to WF that little had changed in YJ's conduct after she raised her concerns with the school.¹²³

WH

At the time of the public hearing, WH was still working as a teacher at the school. She had been employed at the school since 2002.¹²⁴ In 2004, WH raised her concerns about YJ in a letter to YK, the then head of the preparatory school. At that time, WH did not know of any formal procedures for reporting concerns of child abuse. WH gave evidence that, if she had known of any formal procedures, it would have greatly assisted her in raising her concerns.¹²⁵

WH said she made her troubling observations of YJ in October 2004 but waited two weeks before writing the letter because she was unsure of the procedures to follow.¹²⁶

In her letter of 27 October 2004, WH made clear her trepidation in raising the concerns with the school. She said:

The incidents I have outlined and the decision to write this letter have caused me personal and professional distress. I am fully aware of the possible repercussions of my actions in writing this letter, and I have thought long and hard about it. However, I have come to the conclusion that my concerns are too serious for me not to share them with you. I trust you will respect my right to professional confidentiality and discretion.¹²⁷

On 7 November 2004, WH wrote a letter to the headmaster, WD, again asking that her name remain confidential.¹²⁸

YK, the then head of the preparatory school, told WH that he had read the letter and would contact the then headmaster, WD. Neither YK nor WD informed WH of any action they may or may not have taken towards the offending teacher.¹²⁹

WQ – the parent of WP

WQ is the mother of WP, a former student of the school.

In 2005, WQ spoke with the headmaster, WD, about the offending teacher's behaviour towards her son, WP.¹³⁰

WQ was not aware of any school procedures or policies to assist her or any parent in making a complaint about a teacher. WQ said she did not know where to find child protection policies or any

policy relevant to her concerns about YJ, even though she had been a liaison parent and president of the Parents and Friends Association and she did volunteer work at the school.¹³¹ WQ did not recall seeing a document that the school produced called the Parents' Worries and Complaints policy.¹³²

WQ said she felt uncomfortable raising the issue of the offending teacher with the headmaster, WD.¹³³ She said she was very scared and concerned she would look stupid.¹³⁴ After WQ raised her concerns with WB, he told her he had spoken with the offending teacher. However, in the years that followed her complaint, she felt uncomfortable seeing the offending teacher, as he was still working at the school and in her mind 'obviously nothing had come out of the complaint'.¹³⁵

We are satisfied that, from 1999 to 2005, the school's environment was such that, in respect of the reporting of sexual abuse, possible sexual abuse or other inappropriate behaviours:

- school staff and one parent who gave evidence were not aware of any written policies or guidance on the procedure to report child sexual abuse or other inappropriate behaviours
- school staff received limited or no training or education in understanding the indicators of child sexual abuse and inappropriate behaviours or reporting child sexual abuse and inappropriate behaviours
- school staff and parents were not always kept informed of the school's response when concerns were raised with the school
- there was evidence of a culture at the school where some of the staff members and one parent felt that, if they raised concerns about another staff member, they may be ostracised by parts of the school community.

4 The school's response to the complaints made about YJ by teachers and a parent

4.1 The school's handling of the complaints

As detailed above, between 1999 and 2005 there were eight separate occasions when a teacher or parent raised concerns with the then head of the preparatory school or the then headmaster of the school about grooming behaviours or inappropriate touching by the offending teacher, YJ.

YK, a former head of the preparatory school, and WB and WD, former headmasters, gave evidence about the manner in which they responded to and handled the concerns that teachers and a parent raised about YJ.

Professor Smallbone, in a statement to the Royal Commission and in his evidence at the public hearing, considered the adequacy of the school's handling of those complaints according to contemporary standards of best practice.

YN's handling of the first and second complaints in 1999

YN, the head of the preparatory school, recorded a meeting with the offending teacher on 17 September 1999 following expressions of concern from two teachers, one of whom was WG. YN's minute of the meeting referred to the fact that he pointed out to the offending teacher that he 'placed [himself] and the School at great risk if this type of incident was allowed'.¹³⁶

On 16 November 1999, YN, the then head of the preparatory school, wrote a letter to the offending teacher. The letter referred to a number of the offending teacher's colleagues having expressed their concern about physical contact between him and students. The letter reiterated the school policy that there can be no physical contact between a teacher and student and that YJ should not be alone with a student.¹³⁷

YN informed the then headmaster, WB, of the concerns that teachers had raised.¹³⁸

Professor Smallbone said that the note of the meeting on 17 September 1999 failed to raise concerns or questions about the risks to students of inappropriate personal/professional boundaries and it did not place children themselves at the centre of concerns about grooming and sexual abuse.¹³⁹ However, the letter of 16 November 1999 was clear and unambiguous and therefore consistent with best practice.¹⁴⁰

YK's handling of the third and fourth complaints in 2001

On 22 February 2001, YK, the then head of the preparatory school, recorded a meeting with the offending teacher during which he expressed his concerns over the offending teacher's degree of familiarity with students.¹⁴¹

YK gave evidence that he did not review the personnel files of his staff when he commenced in his position in 2000. YK did not review the offending teacher's personnel file before his meeting with him on 22 February 2001. Consequently, at the time of his meeting with the offending teacher on 22 February 2001, YK was unaware of the previous concerns documented by YN in 1999 about the offending teacher.¹⁴²

YK resolved to keep the offending teacher under closer supervision and scrutiny.¹⁴³ YK sent a warning letter to YJ, which YJ refused to sign.¹⁴⁴

On 9 April 2001, YK raised new concerns with WB, the then headmaster, about the offending teacher's behaviour towards students on a camp.¹⁴⁵

The offending teacher's inappropriate behaviour had continued beyond February 2001, notwithstanding YK's resolve to keep YJ, the offending teacher, under closer scrutiny. YK did not revise his strategy or implement a new strategy to deal with the concerns raised about YJ despite evidence that there were still concerns about YJ's behaviour.¹⁴⁶ YK did not consult the teachers' union regarding the concerns raised about YJ, as this was the headmaster's role and YK did not consider it his role to discipline a staff member.¹⁴⁷

YK's and WB's handling of the fifth complaint – the letter by WF dated 12 December 2001

In December 2001, WF, a teacher, handed YK, the then head of the preparatory school, a letter dated 12 December 2001 that thoroughly documented WF's concerns about the offending teacher's behaviour towards students.¹⁴⁸

In response, YK simply placed the letter on the offending teacher's file and resolved to keep the offending teacher under closer supervision. In evidence, YK said he did not consider the letter a formal complaint because it did not relate to a specific incident.¹⁴⁹ He considered that, because WF had not made a formal complaint, he was prohibited from taking any action against the offending teacher. YK said he did not view the allegations at the time as serious. He did not raise the letter with the then headmaster, WB,¹⁵⁰ or the offending teacher.¹⁵¹ He did not contact WF and discuss the letter with her¹⁵² or any of the parents of the students named in the letter.¹⁵³

YK, the then head of the preparatory school, agreed in evidence that he realised the letter raised concerns that the offending teacher was sexually attracted to the boys referred to in the letter, but it was too hard to deal with at the time, so he placed the letter on the file.¹⁵⁴ He also said he was unsure of how to act.¹⁵⁵

WB, the then headmaster, said that in early 2002 WF gave him her letter dated 12 December 2001.¹⁵⁶ WB did not ask YK, the then head of the preparatory school, why he had not shown him the letter.¹⁵⁷

WB sought advice from Mr Ivan Sands, the secretary of the union, before meeting with YJ, the offending teacher.¹⁵⁸

WB in a meeting with YJ, the offending teacher, told him that his behaviours could be interpreted in an unhelpful way for himself and the children. The offending teacher responded in a confident manner and maintained that his behaviour was normal and acceptable.¹⁵⁹

WB gave evidence that he did not attempt to speak with any of the boys named in the letter or their families. He did not obtain any advice from any independent bodies or child protection services.¹⁶⁰ WB agreed that he failed to make those inquiries because he did not appreciate the full extent of the risk of sexual abuse to the students referred to in the letter. He also agreed that there was a greater emphasis at that time on not making false accusations than on the welfare of the child.¹⁶¹

Professor Smallbone expressed the view that the letter from WF provided detailed descriptions of grooming behaviours known to be associated with sexual abuse, particularly in a school setting.¹⁶² The content of the letter should have raised serious concerns with the school about YJ.¹⁶³ Professor Smallbone considered that the school's response was a significant and serious failure to recognise and stop what, by December 2001, was a longstanding and persistent problem with the offending teacher's behaviour towards his students.¹⁶⁴

YK's handling of the sixth complaint on 13 June 2002

On 13 June 2002, YK, the then head of the preparatory school, met with the offending teacher to inform him that he was concerned by the offending teacher's inappropriate dealing with students by using terms such as 'give him a good belting'. YK told the offending teacher that the use of this language was not acceptable. YK noted that the offending teacher acknowledged the concern and agreed to refrain from those references.¹⁶⁵

YK's and WD's handling of the seventh complaint by WH – the letter of 27 October 2004

On 27 October 2004, WH wrote a letter to YK, the then head of the preparatory school, about concerns that the offending teacher had favourite boys and had been seen in his classroom alone with children.¹⁶⁶ YK gave the letter to the then headmaster, WD.

WD decided to meet with YJ, the offending teacher. In preparation for the meeting, WD reviewed the offending teacher's file for the first time and became aware of the earlier complaints about YJ. In particular, he became aware of WF's thorough and detailed letter of 2001.¹⁶⁷

WD met with WH on or around 5 November 2004.¹⁶⁸

WD said that, after he read the letter from WH and reviewed the offending teacher's file, he

considered the offending teacher's behaviour to be 'borderline on what might be considered to be sexual behaviour, sexual interest'.¹⁶⁹ The headmaster was aware of the concept of grooming behaviours.¹⁷⁰ He was aware at the time that there was a risk that the offending teacher was sexually attracted to the students referred to in WF's letter of 2001.¹⁷¹

On 10 November 2004, WD spoke with the offending teacher about the concerns raised in WH's letter. Before doing so he contacted the Independent Schools Salaried Officers Association and the Association of Independent Schools of Western Australia about whether he could lawfully dismiss YJ from his employment.¹⁷² He said he was advised he had insufficient evidence to do so.¹⁷³

WD, the then headmaster, gave evidence he did not dismiss the offending teacher in part because of the advice he received but also because he believed that:

there was inappropriate interest, behaviour that was unprofessional and unacceptable, but I did not arrive at the conclusion I had a child molester on my staff, that I had a person who had malicious intent on my staff when it came to the welfare and safety of the children.¹⁷⁴

WD gave evidence that, if he had dismissed the offending teacher, it would have caused distress to a range of individuals.¹⁷⁵ He said there would have been division amongst other teachers.¹⁷⁶ He was also concerned about the reputation of the school, although this concern was at the 'back of the queue'.¹⁷⁷ The headmaster's two main competing concerns were for the children and the staff member against whom the allegations had been made.¹⁷⁸

After his meeting with the offending teacher, the headmaster wrote a letter to YJ in which he confirmed the content of the meeting. The headmaster specifically referred to the letter as the third and final warning.¹⁷⁹ He asked the offending teacher to countersign the letter as an acknowledgement of the meeting. The offending teacher declined to do so.¹⁸⁰

On 14 December 2004, the headmaster wrote again to the offending teacher and asked him to sign the letter. Again YJ declined to do so.¹⁸¹ By that stage, WD was aware of two earlier warning letters sent to the offending teacher, both of which he had refused to sign.¹⁸²

WD did not consult the Western Australian Department of Child Protection, a counsellor, the police or anyone with expertise in child sexual abuse or the protection of children. He did not consult WF or any of the parents of the children referred to in WF's letter.¹⁸³ WD did not take any further action against YJ after YJ declined to sign the warning letters of November and December 2004.¹⁸⁴

Professor Smallbone expressed the view that there were two main problems with the response of WD, the then headmaster.

First, WD regarded his response as the third and final warning when in fact there had been similar concerns raised with the offending teacher on four earlier occasions: 17 September 1999, 16 November 1999, 22 February 2001 and 13 June 2002.

Secondly, the headmaster relied on the offending teacher to modify his own behaviour. There was no behavioural management plan or changes made to the offending teacher's duties that might have precluded his contact with particular children. There was also no follow-up plan to see or test whether the offending teacher's conduct had in fact been modified.¹⁸⁵ This was particularly significant given the offending teacher's history of failing to moderate his behaviour or comply with stated rules.¹⁸⁶ The offending teacher had also declined to sign three warning letters, the first in 2001 and the second and third in 2004.¹⁸⁷

WD's handling of the eighth complaint by WQ on 30 May 2005

WQ, the mother of WP, met with WD, the then headmaster, in his office on 30 May 2005. At the meeting she discussed with him her concerns about the offending teacher's behaviour. WD gave evidence that the meeting did not cause him to reconsider his decision not to dismiss the offending teacher, as WQ had raised no new matters.¹⁸⁸

4.2 Recording of concerns

The school had a record-keeping system for complaints about the conduct of teachers. Both the preparatory school and the senior school had paper-based personnel files for their staff. The files were physically located in the respective preparatory school and senior school administrative areas.¹⁸⁹

YK, a former head of the preparatory school, gave evidence that, when he joined the school in 2000, there were two separate filing systems operating.¹⁹⁰ His understanding was that any documents placed on a preparatory school staff member's file would also be placed on the file held in the senior school.¹⁹¹ Documents from the preparatory school that were to be placed on file in the senior school were given to the secretary of the head of preparatory school, who passed them on to the relevant senior school staff.¹⁹²

WB, a former headmaster, gave evidence there were two sets of personnel files – one kept in the preparatory school for the preparatory school teachers and one kept in the senior school for all teachers in the school. If a note was placed on the preparatory school file, it should also have been sent to the senior school file.¹⁹³

However, WD, a former headmaster, gave evidence that the preparatory school's staff files were only located in the preparatory school.¹⁹⁴

The school recorded and retained the concerns that staff of the school raised between 1999 and 2005. However, in early 2001, when YK, the then head of the preparatory school, received complaints about YJ, he was unaware of the previous concerns documented in 1999 by YN, the former head of the preparatory school.¹⁹⁵

In 2004, when WD, the then headmaster, received the letter and complaint from WH dated 27 October 2004, he had no previous knowledge of the earlier complaints made between 1999 and 2002. WD had not reviewed the personnel file of the offending teacher, YJ, before this time.¹⁹⁶

Professor Smallbone concluded that there was a serious failure by the school to connect various pieces of information concerning the offending teacher's behaviour and to respond properly to concerns about his behaviour.¹⁹⁷

We are satisfied that, from 1999 until 2009, the school's system to record complaints or concerns about inappropriate behaviour by staff members was deficient to the extent that:

- there was no centralised database to (i) record concerns or complaints; and (ii) facilitate a comprehensive review of the file when a complaint is made
- there were two personnel files – one in the preparatory school and one in the senior school – neither of which required reference to the other.

4.3 Failure by the school to place sufficient and correct significance on the complaints

The former head of the preparatory school, YK, and former headmasters WB and WD all acknowledged in evidence that they did not place sufficient and correct significance on the concerns raised with them about the offending teacher.¹⁹⁸ YK, WB and WD each gave evidence they did not receive any guidance or training in detecting or reporting child sexual abuse or grooming behaviour and that they would have benefited from such guidelines or training.¹⁹⁹

Former headmasters WB and WD each agreed in evidence that they did not seek advice from external sources with expertise in child sexual abuse or protection when confronted with the complaints about the offending teacher.²⁰⁰

Upon being faced with the complaints about the offending teacher's conduct, former heads of the preparatory school YN and YK and former headmasters WB and WD did not devise or implement a behavioural management plan or make changes to the offending teacher's duties that might have precluded or limited his contact with particular children. Instead, they relied on the offending teacher to modify his own behaviour. There was no follow-up plan to see or test whether the offending teacher's conduct had in fact been modified.²⁰¹ The offending teacher's refusal to sign the warning letters in 2001 and 2004 suggested a reluctance on the offending teacher's part to modify his own behaviour.²⁰²

In 2004, WD, the then headmaster, did not dismiss YJ from his employment. WD concluded there was an insufficient basis to do so, in part because of legal advice he received and because he thought more evidence was required to establish a case of criminal or sexual misconduct against the

offending teacher. With the benefit of hindsight, WD conceded that it was an error of judgment on his part and he would now do things differently.²⁰³

Overall, Professor Smallbone concluded that, taken together, the history of events indicates ‘a serious systemic failure to protect children in the care of the School’.²⁰⁴

We are satisfied that the then head of the preparatory school (YK) and then headmasters (WB and WD) did not attach sufficient significance to the reports made between 2001 and 2005 about the offending teacher’s inappropriate and grooming behaviours. They did not seek sufficient external advice, make inquiries of the named children (or their parents) or manage the offending teacher’s behaviour. The lack of training and policies in child protection at the school contributed to their failure to do so.

We are satisfied that, between 1999 and 2005, the school did not attach sufficient and correct significance to the reports made to it and concerns raised with it about the inappropriate conduct of the offending teacher, YJ. The school’s policies and limited staff training during that period contributed to its failings in this regard. The school accepts that, had sufficient and correct significance been attached to the reports and concerns when they were raised, the school’s response would have been different and mitigated the risk of the offending teacher, YJ, sexually abusing students.

Additional findings sought by the parties for WP and WQ

Parties for WP and WQ submitted that the Royal Commission should make additional adverse findings against YN and YK, former heads of the preparatory school, and WB and WD, former headmasters of the school, that their individual failures to adequately respond to the complaints were in breach of a duty of care to the students.

The deficiencies of the response by YN, YK, WB and WD are outlined above. It is outside the Royal Commission’s terms of reference to examine whether those deficiencies amounted to a breach of a duty of care to the students.

5 WP discloses allegations of sexual abuse by YJ in 2009

5.1 The initial disclosure by WP

In 2009, WP disclosed to his girlfriend that he had been sexually abused by YJ.²⁰⁵ On or about 31 August 2009, WP also disclosed the abuse to his best friend, who encouraged WP to tell his parents.²⁰⁶

On 1 September 2009, WP told his parents, WQ and WR, about the sexual abuse by the offending teacher. WP was now aged 19 and no longer a student at the school. WP's brother still attended the school.

After WP's disclosure to his mother, WQ telephoned WO, a friend and chair of the school council.²⁰⁷ WQ informed WO of the allegations. WO asked for an opportunity to inform the then headmaster, WD, before WP and his parents contacted police.²⁰⁸

On 1 September 2009, WO informed the headmaster, WD, and the school called a critical incident meeting.²⁰⁹ The school decided to stand down YJ on full pay, report the matter to the police, offer counselling to the victim and his family as well as the offending teacher, report the allegations to the Archbishop's office and prepare a media response.²¹⁰

WD, the then headmaster, also telephoned Mr Bernard Hill from the Professional Standards Office of the Anglican Diocese of Perth to inform him of WP's disclosure and of the school's proposed actions.²¹¹

WD, the then headmaster, advised WQ, the mother of WP, that, if she was not going to report the allegations to police, he would.²¹²

On 2 September 2009, WD, the then headmaster, met with the offending teacher and informed him that he was to take personal leave pending any investigation and, if charges were laid against him, he would be immediately dismissed. The offending teacher was also offered counselling, paid for by the school.²¹³ The then headmaster made a Mandatory Report to the Department of Child Protection under the *Children and Community Services Act 2004* (WA).²¹⁴

On 2 September 2009, WP and his parents contacted the Western Australia Police and WP and WQ met with a detective from the Child Abuse Squad.²¹⁵

On 3 September 2009, WP telephoned the offending teacher, YJ, at the request of the police.²¹⁶ YJ made no admissions in the telephone call. Later that day, the offending teacher was arrested and charged with four offences as a result of WP's complaint.²¹⁷

On 10 September 2009, WD, the headmaster, terminated the offending teacher's employment with the school.²¹⁸ On 14 September 2009, the headmaster notified the Western Australian College of Teaching, pursuant to section 50 of the *Western Australian College of Teaching Act 2004* (WA), that the offending teacher had been charged with four counts of indecent dealing with a child under 13.²¹⁹

YJ, the offending teacher, was later charged with a further 13 offences against another four students or former students of the school, including WT and YA, who, along with WP, had been identified by WF in her letter of 12 December 2001 as 'favourites' of the offending teacher.²²⁰

5.2 Nature of the offending

The teacher's pattern of offending with each of the five victims was similar. All of the victims were pupils in one of YJ's classes between 1999 and 2009. WT, WP and YA were all in year 5 and nine or 10 years old at the time of the abuse. WW and WX were in year 4 and about eight years old when the abuse commenced.

Four of the victims were new to the school when they commenced in the offending teacher's class. As new students, they were vulnerable, as they had not yet been able to form friendships with other students and the offending teacher was able to easily isolate and manipulate them.²²¹ He singled out each complainant at the start of the school year and gave them gifts and additional attention, both in the classroom and while taking part in extracurricular activities.²²²

The victims were bullied by other students because they were perceived as being 'teacher's pets' due to the extra attention that the offending teacher gave them.²²³ This increased their social isolation and vulnerability. The offending teacher also cultivated friendships with the victims' mothers, which made it more difficult for the victims to disclose their abuse.²²⁴

As the school year continued, the offending teacher used a tactile manner to progress from a form of touching the victims on the outside of their clothing to putting his hand inside their clothing.²²⁵ With some victims, the offending teacher put his hand into the pockets of their shorts and rubbed their penises.²²⁶ With others, he put his hand down the back of their shorts, inside their underpants, and rubbed their bottoms.²²⁷ On one occasion, the offending teacher pulled down the victim's shorts and underpants and masturbated him.²²⁸

The majority of offences took place in the offending teacher's classroom. The offending teacher created the impression to those around him, including other teachers, of being open and trustworthy by keeping his classroom door open as much as possible and by touching as many boys as possible in a non-indecent way.²²⁹

6 The school's response to the allegations raised by WP and others from 1 September 2009

6.1 WP's disclosure

In responding to WP's allegations, the school followed the procedures set out in the 2009 child protection policy.²³⁰ The then headmaster and the school also complied with mandatory reporting requirements under the *Children and Community Services Act 2004* (WA).

Before WQ reported the allegations to police, WD, the then headmaster, advised the offending teacher that allegations had been made against him.²³¹ On 3 September 2009 WP, at the request of the police, participated in a telephone call with the offending teacher.²³² By the time the telephone call was made, the offending teacher had been informed by WD, the then headmaster, that a former student had made allegations against him. In those circumstances, the offending teacher was unlikely to speak freely with WP or make any admissions if he had been minded to do so.

The then headmaster had no guidelines to follow to ensure that he did not act in a way that may potentially undermine the police investigation.²³³

6.2 Release of information by the school

In 2009, there were no school policies or procedures on what information should be provided to either a suspect who was a staff member or families of students when a staff member has been charged with sexual offences. There were no written guidelines on the type of liaison that the school should have with police. During the course of the investigation of YJ's offending against WP, the investigation and charges broadened to include another four students. The matter was further complicated by the fact that two of the complainants were still students at the school.

WD, the then headmaster, also gave evidence that he would have appreciated a clear document or 'cheat sheet' on how to deal with allegations of sexual abuse. He said he would have liked a concise list that gave priority and guidance on to how to deal with all matters, including the police.²³⁴

WO, the chair of the school council in 2009, said in her statement that, while there was communication with parents about the investigation and trials, the school was 'acutely cognisant of the paramount importance of maintaining the integrity of the judicial process to ensure that natural justice was not compromised'.²³⁵

Detective Sergeant Troy Kendall (the police officer investigating the offending teacher's charges) said in a statement that he had numerous contacts in person and over the phone with WD, the then headmaster, and the school's bursar. During the course of those discussions, both men sought advice on the release of information to parents of children enrolled at the school.²³⁶ Detective Sergeant Kendall said he requested that the school keep the details of the investigation broad. He also advised that the contact details of the Child Abuse Squad be provided to parents if they had any concerns about their children.²³⁷

After he gave this advice, Detective Sergeant Kendall received information from sources outside the school that teachers were discussing the investigation amongst themselves and with parents. He expressed his concerns to the school bursar and advised the school that these discussions could jeopardise the investigation.²³⁸

The Western Australia Police emphasised to the school that the release of information to parents could undermine a successful prosecution.²³⁹

A school can be subject to laws that protect the identity of alleged victims of sexual offences. This further complicates the issue of what information should be released to the school community. In the case of YJ, the school was potentially subject to section 36C of the Evidence Act 1906 (WA), which restricts the release of information to the wider school community and public. In those circumstances, policies and procedures that give guidance on the release of information can be all the more important.

In formulating these policies and procedures, there is an obvious need to balance the preservation of the integrity of the investigation in order to assist the prospect of a successful prosecution and the welfare of other children who have had contact with the alleged perpetrator.

Professor Smallbone gave evidence that best practice requires clear procedures for the school and persons in authority at the school to follow in circumstances of a police investigation concerning child sexual abuse.²⁴⁰

The school has since developed templates for letters that are sent to parents for any future police investigations.²⁴¹ The school's current procedure for the release of information to a suspect and liaison with police is that the headmaster will first seek advice from the police and/or the Western Australian Department of Child Protection on the appropriate action to take in respect of the alleged offender, the child and the child's parent(s)/caregiver(s).²⁴²

In 2013, the Western Australia Police, the Western Australian Department of Education Services, the Training Accreditation Council Western Australia and the Teacher Registration Board of Western Australia agreed to develop an MOU on the sharing of child protection information. This MOU relates to information sharing in non-government schools. It was signed by all parties as of May 2014.²⁴³

We are satisfied that, before 2009, the school had no procedures or guidelines about the release of information to (i) a suspect; or (ii) individual parents of alleged victims; or (iii) the wider school community during a police investigation about child sexual abuse.

7 The school's review of its child protection policies since 2009

7.1 Child Protection Policy Review Committee

In September 2010, in response to the offending teacher's conviction on 30 June 2010, the school formed the Child Protection Policy Review Committee to review the child protection policies in place at the school.²⁴⁴ The committee comprised six people and was headed by an independent external chair, Mrs Audrey Jackson – a former independent school principal and a member of the Western Australian State Training Board. Other members of the committee were a fellow of the school council, a senior member of staff and a parent representative from each of the Parents and Friends and Boarding Parents' Associations.²⁴⁵

The committee delivered its report to the school council in December 2010.²⁴⁶ On 13 April 2011, the chair of the school council, WN, informed the parents of all students at the school of the recommendations of the Child Protection Policy Review Committee, all of which had been supported by the school council.²⁴⁷ The recommendations were:²⁴⁸

- The council retains a 'third party support group' to provide counselling and legal support to the family of any child involved in a case of sexual abuse.
- The school is proactive in the provision of education for members of staff, parents and students.
- All relevant policies are made available through a parent portal on the school's website.
- Protocols for interaction between students and staff are added to the staff handbook.
- An electronic security system is installed in the halls of residence.
- The reception/administration office in each hall of residence is attended at all times.
- Programs to educate students on cyber safety are introduced and made compulsory for all boarders.

The committee did not conduct a full analysis of the adequacy of the school's policies and practices in the context of YJ's offending. Professor Smallbone believes that a frank review is necessary to properly understand what has occurred and to build the kind of knowledge needed to properly inform best practice.²⁴⁹

Professor Smallbone was also of the view that the committee's work would have been strengthened if a person with expertise in child protection or child sexual abuse had been part of the committee.²⁵⁰

The committee also recommended a system of recording informal concerns about staff behaviour. Professor Smallbone said that these recording systems may be improved by including a direction that required the staff member about whom the concern is raised to acknowledge concerns and accept behavioural management plans, special monitoring and supervision provisions and associated disciplinary procedures.²⁵¹

7.2 Other initiatives developed by the school

The school adopted a new child protection policy on 21 February 2011. This was revised on 1 March 2013.²⁵² The revised policy is the current child protection policy of the school.²⁵³ The policy is supplemented by parts of the staff handbook dealing with child protection protocols and mandatory reporting. The current policy makes a clear distinction between the requirements for mandatory reporting and those for reporting concerns that fall below the threshold of mandatory reporting.

Professor Smallbone expressed the view that the current child protection policy is an improvement on previous policies, but it could be further improved by including a section on how to understand and identify grooming behaviours. This is particularly pertinent in the context of the offending teacher's conduct, where numerous persons observed these grooming behaviours.²⁵⁴

WL, the current headmaster of the school, gave evidence that all staff are now required to participate in protective behaviours training.²⁵⁵ The practice is that staff are required to do mandatory reporting training only once, but there is a refresher at the annual professional development day at the start of the year.

The school is also developing a system for performance indicators called CompliSpace, which allows a staff member to be tested on their understanding and application of policy and procedures. The system will be implemented in 2015.²⁵⁶

We are satisfied that the school has implemented significant improvements to its relevant child protection policies and procedures.

We are satisfied that the current child protection policy could be further strengthened by including a section on detecting and reporting grooming behaviours.

We are satisfied that the school's current system for recording concerns would be strengthened by including directions that require staff (about whom the concern is raised) to acknowledge concerns and accept behavioural management plans, special monitoring, supervision provisions and associated disciplinary procedures.

8 History of the registration of the school under Western Australian legislation

The *School Education Act 1999* (WA) commenced on 1 January 2001. Section 154 of that Act requires non-government schools to be registered and the Minister is empowered by section 156 to register non-government schools.

Matters that the Minister must take into account in determining an application for registration of a non-government school include the school's curriculum; the qualifications of the teachers; the procedures for reporting critical and emergency incidents to the Minister; and the arrangements for the separation of the day-to-day management and control of the school by the principal of the school from the overall governance of the school by the governing body of the school.

The school was on the register when the *School Education Act 1999* commenced. The school was taken to be registered under section 160 for a period of three years following the commencement of the *School Education Act 1999* on 1 January 2001.²⁵⁷

8.1 Registration of the school in 2004

The school applied for renewal of its registration in February 2004. The school was inspected on 2 March 2004 and a registration report dated 19 April 2004 recommended that the school be registered for a period of between five and seven years.²⁵⁸ The report stated that the school had developed and implemented a child protection policy and that its documented policies and procedures were of a very high standard.²⁵⁹ The school was registered for the period of 1 January 2004 to 31 December 2010.²⁶⁰

At the time the initial registration visit took place on 2 March 2004, the school had issued two warnings to YJ for inappropriate behaviour with his students: on 16 November 1999 and 22 February 2001. In particular, the then head of the preparatory school, YK, and the then headmaster, WD, had received the detailed letter from WF dated 12 December 2001.

By January 2004, schools were required to have a child protection policy that included procedures for dealing with allegations of misconduct and reporting situations of abuse and neglect to outside agencies. There was no legislation in Western Australia that mandated reporting of child sexual abuse.²⁶¹ It was also not a requirement that these allegations or situations be reported to the Western Australian Department of Education Services. There was no requirement at the time for the school to inform the department about a warning for inappropriate behaviour or sexual misconduct or to report critical incidents to the Minister.²⁶²

In 2004, there was also no legislative requirement for the school to alert the Western Australian College of Teaching, as it did not come into existence until September 2004. Neither the *Western Australian College of Teaching Act 2004* (WA) nor the *Teacher Registration Act 2012* (WA) requires a school to notify the department of a warning that did not result in the separation of the teacher from the school.²⁶³

8.2 Registration of the school in 2010

On 17 August 2010, the school was inspected and a registration report dated 27 October 2010 recommended that the school be registered until 31 December 2015.²⁶⁴ Amendments to the *Children and Community Services Act 2004* (WA), which commenced on 1 January 2009, introduced mandatory reporting.²⁶⁵ The registration report recommended that the wording of the school's child protection policy on mandatory reporting be altered to comply with the amended legislation on mandatory reporting. These changes were completed as required by 1 August 2011.²⁶⁶ The school was registered for the period 1 January 2011 to 31 December 2015.²⁶⁷

At the time of the re-registration visit in August 2010, the offending teacher had been dismissed from the school – this had happened in September 2009²⁶⁸ – and had been convicted of 13 child sexual abuse offences (as at 30 June 2010).²⁶⁹ The department does not have any records indicating that, during the registration process in 2004 or 2010, the school disclosed any concerns about any inappropriate conduct between teachers and students, YJ's criminal conviction for sexually abusing students or the apparent failure of the school's child protection policies, procedures and practices. Also, there was no record of the school disclosing these concerns to the department at any other time.²⁷⁰

There was no legislative requirement in 2004 or 2010 for the school to disclose the reported concerns about the offending teacher during the registration process.²⁷¹

Mr Strickland, Chief Executive Officer of the Western Australian Department of Education Services, said in his supplementary statement that he would have expected the school to have notified the reviewer about the apparent systemic failure of the school's child protection policies, procedures, practices and the action and priority being given to addressing the issue.²⁷²

8.3 Inspection notice on the school

On 21 September 2012, the school was notified that an Inspection on Notice under section 176 of the *School Education Act 1999* (WA) would be conducted on the school.²⁷³ The Minister issued a Certificate of Authority to Mr Gregory Clune, an independent education consultant, to undertake an inspection.²⁷⁴

The Inspection on Notice by Mr Clune took place on 29 October 2012. The provisions of the Act limited the purpose of the inspection to an examination of the current practice at that time and did not extend to an examination of previous policies and procedures.²⁷⁵

Mr Clune concluded that:

- the school appeared to satisfy the Level of Care requirements for registration

- the school had the appropriate policies and procedures in place to ensure that the students attending the school were protected and safe
- the current policies and procedures were fit for the purpose and reflected best practice.²⁷⁶

The term ‘best practice’ as used by Mr Clune and the department means that:

- the school has policies and procedures that cover all aspects of child protection as required by the Registration Standards and that are clearly related to and appropriate in the context of the school
- the policies and procedures are in accord with legislative requirements, educational requirements, governance requirements and management requirements.²⁷⁷

Mr Clune made 21 recommendations, principally around the issue of mandatory reporting, to assist the school to refine its child protection policy.²⁷⁸

After considering the inspection report, the Minister determined that it was not necessary to take any further action on the school’s registration.²⁷⁹

The school did not receive a written report as a result of the inspection. However, Mr Clune advised the school that he had concluded that the school had in place a satisfactory child protection policy and that staff were familiar with that policy.²⁸⁰ In a meeting between WL, the current headmaster, and Mr Clune after the inspection, Mr Clune provided verbal advice of his recommendations.²⁸¹ Twenty of the 21 recommendations have been implemented and form part of the school’s revised child protection policy of 2013. The only recommendation that the school did not implement involved relaxing the school’s requirement that all staff make a report of suspected child abuse to reflect the legislative requirement that only teachers are mandated to report.²⁸²

8.4 Current registration standards for non-government schools in Western Australia

The 2013 Registration Standards introduced a requirement for non-government schools to report to the department all critical and emergency incidents. This requirement was retained in the 2014 Registration Standards. Critical and emergency incidents are described as:²⁸³

- circumstances that pose a critical risk to the health, safety or wellbeing of one or more students or staff
- incidents that require school closure, lockdown or reduction in the number of students or staff attending
- death or life-threatening injury of a student or staff member at school or following an incident that occurred at the school or through a related school-based activity or circumstance.

Mr Strickland, Chief Executive Officer of the Western Australian Department of Education Services, stated that in his view the definition of ‘critical and emergency incidents’ could be improved by making clear that circumstances that pose a critical risk to the health, safety or wellbeing of a student include an allegation of sexual abuse against a student.²⁸⁴

The Western Australian Department of Education Services will also consider how to incorporate the concept of grooming behaviours into the Registration Standards. Mr Strickland suggested that one approach would be to require a school to report to the department where a staff member had received a formal warning for breaching the school’s code of conduct for grooming behaviour.²⁸⁵ This change would need to be accompanied by a requirement in the Registration Standards for non-government schools to have a code of conduct that included a prohibition of grooming behaviours.²⁸⁶

Mr Strickland expressed the view that consideration should be given to the development of a stand-alone child protection standard which, in addition to other requirements, covers grooming behaviours directly.²⁸⁷ A separate standard may, for example:

- draw the child protection related criteria, requirements, evidence and guidance from the 2014 Registration Standards into one place²⁸⁸
- address grooming behaviours by requiring all non-government schools to adopt a code of conduct and compliance guidelines benchmarked to those published by the Western Australian Department of Education Services in 2011²⁸⁹
- require evidence of annual staff professional development training on grooming behaviours, the school’s reporting procedures and teachers’ mandatory reporting obligations.²⁹⁰

Mr Strickland considered it appropriate to review the Registration Standards to ensure that non-government schools meet contemporary standards of best practice as set out by Professor Smallbone in his statement and evidence to the Royal Commission. Mr Strickland expressed his intention to establish a strong base of evidence for a child protection standard by seeking expert advice and research.²⁹¹

The Registration Standards developed by the Western Australian Department of Education Services should clearly state that an allegation of sexual abuse against a student is a ‘critical and emergency incident’ that should be reported to the department. A school should be required to report to the department where a staff member has received a formal warning for grooming behaviour.

A clearly enunciated and sufficiently detailed stand-alone child protection standard should be introduced for registration of non-government schools and should include grooming behaviour.

The Western Australian Registration Standards should clearly articulate the current standards or benchmarks for child protection policies and procedures against which best practice is assessed and a school registered.

9 Civil litigation

After the offending teacher was sentenced on 3 September 2010, the then headmaster, WD, and the chair of the school council, WO, met with the families of the victims. Three of the families indicated that they might seek monetary compensation from the school.²⁹²

On 8 September 2010, YG, the school bursar, notified the school's insurer that there might be a potential claim as a result of the offending teacher's actions.²⁹³

On 9 November 2010, the headmaster wrote to the parents of the five victims to inform them that a counselling fund had been created for any ongoing counselling requirements of the victims or their families.²⁹⁴

On 29 November 2010, the school made an offer of a full and final ex-gratia payment from the school to the victims' parents. The payment was to be made without admission of liability and required a formal deed of settlement to be entered into.²⁹⁵ The payment was to the victims' parents in their personal capacities and was not intended to cover any prospective claim by their sons in their personal capacities.²⁹⁶

On 6 July 2011, the five victims commenced civil claims for compensation from the school.²⁹⁷

On 2 September 2011, the school requested that each victim provide a comprehensive medical report and psychiatric assessment.²⁹⁸ On the same day, the school increased its ex-gratia payment offer to the victims' parents. On 18 October 2011, the victims' parents accepted the ex-gratia offers.²⁹⁹

The school made offers of compensation to WW and WX on 15 May 2012³⁰⁰ and to WP, WT and YA on 24 July 2012.³⁰¹

A settlement for compensation was agreed for WW and WX on 23 August 2012.³⁰² Settlements for compensation were agreed for WP, WT and YA in December 2012.³⁰³

The Royal Commission received documentary material showing that all civil claims were settled with a deed of release.

WP and WQ questioned the length of time it took for settlement to occur and the school's request for a psychiatric assessment. However, the school ultimately based its assessment on the psychological reports that were provided to it about the victims. The reports gave the school council more tangible evidence upon which it could assess damages. The amounts paid in compensation were greater than comparable reported Australian decisions and were not completely indemnified by the school's insurer.

The documentary material on the civil claims will form part of the material that will be considered by the Royal Commission as part of the report on redress.

10 Systemic issues

This case study considered whether the school's systems for:

- reporting allegations internally and to relevant external agencies
- recording allegations
- responding to those reports
- monitoring the conduct of the accused teacher
- releasing information to the suspect, alleged victims and wider school community
- training of staff in child sexual abuse awareness
- creating and maintaining a culture which supports staff and students to report child protection concerns

were adequate to prevent children from being sexually abused by a teacher.

The case study also considered the importance of policies, procedures and training on grooming behaviours.

The Royal Commission will further consider the material received about the victims' civil claims as part of the report on redress.

Appendix A: Terms of Reference

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those sexually abused as a child in an Australian institution can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Counsel and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

- a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- b. 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;
- c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;
- d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them

to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

- f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;
- g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- j. the need to establish investigation units to support your inquiry;
- k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and

avoids unnecessary trauma to witnesses;

- m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

- i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and
- ii. does not include the family.

institutional context: child sexual abuse happens in an **institutional context** if, for example:

- i. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

- ii. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- iii. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

- i. any representative (however described) of the institution or a related entity; and
- ii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and
- iii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and
- iv. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

- n. require you to begin your inquiry as soon as practicable, and
- o. require you to make your inquiry as expeditiously as possible; and
- p. require you to submit to Our Governor-General:
 - i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and
 - ii. then and as soon as possible, and in any event not later than the date Our Prime

Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

- q. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

Letters Patent dated 13 November 2014

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS We, by Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia, appointed you to be a Commission of inquiry, required and authorised you to inquire into certain matters, and required you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 December 2015.

AND it is desired to amend Our Letters Patent to require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 15 December 2017.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, amend the Letters Patent issued to you by omitting from subparagraph (p)(i) of the Letters Patent “31 December 2015” and substituting “15 December 2017”.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia.

Dated 13th November 2014

Governor-General

By Her Excellency's Command

Prime Minister

Appendix B: Public hearing

The Royal Commission	Justice Peter McClellan AM (Chair) Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Robert Fitzgerald AM Professor Helen Milroy Mr Andrew Murray
Commissioners who presided	Justice Jennifer Coate Mr Bob Atkinson AO APM Mr Andrew Murray
Date of hearing	19–23 May 2014 (Perth); 20 June 2014 (Sydney)
Legislation	<i>Royal Commissions Act 1902 (Cth)</i>
Leave to appear	The school State of Western Australia WP WQ WD, WO and YK YJ
Legal representation	S David SC, Counsel Assisting the Royal Commission P Cahill SC, instructed by I Curlewis of Lavan Legal, appearing for the school J O’Sullivan, Ms Hartley, K Glancy and L Warbey, appearing for the State of Western Australia A Anderson and R Williams of Boe Williams Anderson, appearing for WP A Boe and R Williams of Boe Williams Anderson, appearing for WQ

	D Burton of SRB Legal, appearing for WD, WO and YK
	G Yin of DG Price & Co, appearing for YJ
Pages of transcript	646 pages
Summons to attend and produce documents	12 summons to attend issued under <i>Royal Commissions Act 1902</i> (Cth) producing 4,780 documents
Number of exhibits	28 exhibits consisting of a total of 460 documents tendered at the hearing
Witnesses	<p>WP Former student of the school</p> <p>WQ Mother of WP</p> <p>WG Former teacher at the school</p> <p>WF Former teacher at the school</p> <p>WH Teacher at the school</p> <p>YK Former head of the preparatory school</p> <p>Professor Stephen Smallbone Expert witness</p> <p>WD Former headmaster of the school</p> <p>WO Former chair of the school council</p> <p>WL Current headmaster of the school</p> <p>WB Former headmaster of the school</p>

Endnotes

- 1 Exhibit 12-8, Statement of WF, STAT.0253.001.0001_M_R at [22]; Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [27]; Exhibit 12-7, Statement of WG, STAT.0255.001.0001_R at [17].
- 2 Exhibit 12-3, DOC.0002.001.0048_R.
- 3 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [29].
- 4 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
- 5 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0320_R.
- 6 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
- 7 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
- 8 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
- 9 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
- 10 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0322_R.
- 11 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0324_R.
- 12 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0320_R.
- 13 Exhibit 12-3, DOC.0005.001.0020_R at DOC.0005.001.0069_R.
- 14 Exhibit 12-25, DOC.0011.001.0162.
- 15 TWA2311:24–TWA2313:31.
- 16 Exhibit 12-7, Statement of WG, STAT.0255.001.0001_R at [7]–[10].
- 17 Exhibit 12-7, Statement of WG, STAT.0255.001.0001_R at [14]–[15].
- 18 Exhibit 12-15, Statement of YN, STAT.0267.001.0001_R at [12], [17].
- 19 Exhibit 12-3, STAT.0249.001.0106_R.
- 20 Exhibit 12-13, Statement of YN, STAT.0267.001.0001_R at [12].
- 21 Exhibit 12-3, STAT.0249.001.0106_R.
- 22 Exhibit 12-3, DOC.0002.001.0050_R.
- 23 Exhibit 12-13, Statement of YN, STAT.0267.001.0001_R at [16].
- 24 Exhibit 12-11, Statement of YK, STAT.0250.001.0001_R at [13].
- 25 Exhibit 12-3, STAT.0249.001.0108_R.
- 26 Exhibit 12-3, STAT.0249.001.0108_R.
- 27 Exhibit 12-3, STAT.0249.001.0108_R.
- 28 Transcript of YK, TWA2653:16–19.
- 29 Exhibit 12-11, STAT.0250.001.0001_R.
- 30 Exhibit 12-3, STAT.0250.001.0013_R.
- 31 Exhibit 12-3, DOC.0002.001.0147_R.
- 32 Exhibit 12-3, DOC.0002.001.0147_R.
- 33 Exhibit 12-3, DOC.0002.001.0149_R.
- 34 Exhibit 12-8, STAT.0253.001.0004_R.
- 35 Exhibit 12-3, DOC.0002.001.0150_R.
- 36 Exhibit 12-11, STAT.0250.001.0007_R.
- 37 Transcript of YK, TWA2580:40–46.
- 38 Transcript of YK, TWA2574:45–TWA2575:5.
- 39 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [17].
- 40 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [15].
- 41 Transcript of WB, TWA3848:22–25.
- 42 Transcript of WB, TWA3852:15–21.
- 43 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [19].
- 44 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [23]–[24].
- 45 Exhibit 12-3, STAT.0250.001.0018_R.
- 46 Exhibit 12-3, STAT.0250.001.0019_R.
- 47 Exhibit 12-3, STAT.0250.001.0019_R.
- 48 Exhibit 12-11, Statement of YK, STAT.0250.001.0001_R at [43]–[45].
- 49 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [12].
- 50 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [18]–[20].
- 51 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [14].
- 52 Exhibit 12-3, STAT.0249.001.0104_R; Exhibit 12-11, Statement of YK, STAT.0250.001.0001_R at [47]–[48].
- 53 Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [12].

- 54 Exhibit 12-3, STAT.0250.001.0019_R.
55 Exhibit 12-3, STAT.0249.001.0113_R.
56 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [21], [23], [26].
57 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [28].
58 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [28]–[29].
59 Exhibit 12-3, STAT.0249.001.0115_R.
60 Exhibit 12-3, DOC.0002.001.0050_R.
61 Exhibit 12-3, STAT.0249.001.0108_R.
62 Exhibit 12-3, STAT.0249.001.0115_R.
63 Exhibit 12-3, STAT.0249.001.0116_R.
64 Transcript of WD, TWA2780:13–18.
65 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [42]; Exhibit 12-3, DOC.0002.001.0136_R.
66 Exhibit 12-18, Statement of WB, STAT.0249.001.0001_R at [51]; Exhibit 12-3, DOC.0002.001.0136_R.
67 Transcript of WQ, TWA2371:45–WQ TWA2372:4.
68 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [40].
69 Transcript of WQ, TWA2358:8–30.
70 Exhibit 12-4, Statement of WQ, STAT.057.001.0001_M_R at [44].
71 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [110].
72 Transcript of Professor Stephen Smallbone, TWA2671:8–11.
73 Transcript of Professor Stephen Smallbone, TWA26721:1–4.
74 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [62]–[67]; Transcript of Professor Stephen Smallbone, TWA2681:47–TWA2683:28.
75 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [19].
76 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [24].
77 Transcript of Professor Stephen Smallbone, TWA2666:20–30.
78 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [63].
79 Transcript of Professor Stephen Smallbone, TWA2673:27–31.
80 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [64].
81 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [62].
82 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [66]–[67].
83 Transcript of WB, TWA3859:18–44.
84 Transcript of WQ, TWA2368:10–13; Transcript of WG, TWA2426:5–13; Transcript of WF, TWA2470:13–30; Transcript of WH, TWA2498:23–32.
85 Exhibit 12-3, DOC.0003.001.0013_R.
86 Exhibit 12-3, DOC.0004.003.0001_R, DOC.0004.003.0011_R and DOC.0004.003.0021_R.
87 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [59].
88 Exhibit 12-3, DOC.0004.003.0007_R; Exhibit 12-3, DOC.0004.003.0015_R; Exhibit 12-3, DOC.0004.003.0025_R.
89 Exhibit 12-3, DOC.0003.001.0015_R.
90 Exhibit 12-3, STAT.0249.001.0033_R; Exhibit 12-3, STAT.0249.001.0054_R.
91 Exhibit 12-3, DOC.0003.001.0015_R at DOC.0003.001.0017_R.
92 Exhibit 12-3, DOC.0003.001.0015_R at DOC.0003.001.0019_R.
93 Exhibit 12-3, DOC.0003.001.0015_R at DOC.0003.001.0016_R.
94 Exhibit 12-3, DOC.0003.001.0211_R.
95 Exhibit 12-3, STAT.0249.001.0058_R.
96 Exhibit 12-3, STAT.0249.001.0060_R.
97 Exhibit 12-3, STAT.0249.001.0058_R at STAT.0249.001.0061_R.
98 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [94].
99 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [95].
100 Transcript of WG, TWA2427:5–13.
101 Transcript of WF, TWA2470:13–43.
102 Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [22].
103 Transcript of WG, TWA2425:4–26; Transcript of WF, TWA2467:17–34; Transcript of WH, TWA2497:15–30.
104 Transcript of YK, TWA2577:35–YK TWA2587:1.
105 Transcript of WB, TWA3855:8–43.

106 Transcript of WG, TWA2428:47–TWA2429:5.
 107 Transcript of WP, TWA2343: 32–37.
 108 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [64].
 109 Exhibit 12-7, Statement of WG, STAT.0255.001.0001_R at [13]; Exhibit 12-8, Statement of WF,
 STAT.0253.001.0001_M_R at [30]; Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [10].
 110 Exhibit 12-7, Statement of WG, STAT.0255.001.0001_R at [24]–[26]; Exhibit 12-8, Statement of WF,
 STAT.0253.001.0001_R at [30]–[31]; Exhibit 12-9, Statement of WH, STAT.0258.001.001_R at [18].
 111 Exhibit 12-7, Statement of WG, STAT.0255.001.0001_R at [19]; Transcript of WF, TWA 2462:21–27; Transcript of
 WF, TWA2482:40–TWA2483:19; Transcript of WH, TWA2504:16–26; Exhibit 12-3, STAT.0250.001.0019_R.
 112 Transcript of WG, TWA2427:5–13.
 113 Transcript of WG, TWA2428:7–13.
 114 Exhibit 12-7, Statement of WG, STAT.0255.001.001_R at [19].
 115 Transcript of WG, TWA2447:29–31.
 116 Transcript of WG, TWA2431:8–10.
 117 Transcript of YK, TWA2626:13T–WA2627:12.
 118 Transcript of WG, TWA2431:24–33.
 119 Transcript of WF, TWA2473:5–14.
 120 Exhibit 12-8, Statement of WF, STAT.0253.001.0001_M_R at [15].
 121 Exhibit 12-3, DOC.0002.001.0147_R.
 122 Exhibit 12-8, Statement of WF, STAT.0253.001.0001_M_R at [28]–[29].
 123 Transcript of WF, TWA2486:16–30.
 124 Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [5].
 125 Transcript of WH, TWA2499:16–30.
 126 Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [10], [18].
 127 Exhibit 12-3, STAT.0250.001.0019_R.
 128 Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [12].
 129 Exhibit 12-9, Statement of WH, STAT.0258.001.0001_R at [11], [14].
 130 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [42].
 131 Transcript of WQ, TWA2368:10–13.
 132 Transcript of WQ, TWA2368:24–34; Exhibit 12-18, Statement of WD, Annexure WD-2, STAT.0249.001.0033_R.
 133 Transcript of WQ, TWA2358:8–19.
 134 Transcript of WQ, TWA2369:21–32.
 135 Transcript of WQ, TWA2358:41–TWA2359:2.
 136 Exhibit 12-3, STAT.0249.001.0106_R.
 137 Exhibit 12-3, DOC.0002.001.0050_R.
 138 Exhibit 12-13, Statement of YN, STAT.0267.001.0001_R at [20].
 139 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.001 at [70].
 140 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [71].
 141 Exhibit 12-3, STAT.0249.001.0108_R.
 142 Transcript of YK, TWA2563:8–TWA2564:4.
 143 Transcript of YK, TWA2591:1–30.
 144 Exhibit 12-3, STAT.0249.001.0108_R.
 145 Exhibit 12-3, STAT.0250.001.0013_R.
 146 Transcript of YK, TWA2638:7–42.
 147 Transcript of YK, TWA2604:25–47; TWA2606:4–10.
 148 Exhibit 12-3, DOC.0002.001.0147_R.
 149 Transcript of YK, TWA2572:41–TWA2573:7.
 150 Transcript of YK, TWA2573: 28–30.
 151 Transcript of YK, TWA2580:45–46.
 152 Transcript of YK, TWA2581:1–3.
 153 Transcript of YK, TWA2578:28–30.
 154 Transcript of YK, TWA2587:9–15.
 155 Transcript of YK, TWA2589:28–30.
 156 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [17].

157 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [19].
 158 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [20].
 159 Exhibit 12-27, Statement of WB, STAT.0289.001.0001_R at [23]–[24].
 160 Transcript of WB, TWA3857:2–7.
 161 Transcript of WB, TWA3857:28–39.
 162 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [75].
 163 Transcript of Professor Stephen Smallbone, TWA2706:26–42.
 164 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [76].
 165 Exhibit 12-3, STAT.0250.001.0018_R.
 166 Exhibit 12-3, STAT.0250.001.0019_R.
 167 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [12], [18].
 168 Transcript of WD, TWA2768:1–2.
 169 Transcript of WD, TWA2772:16–18.
 170 Transcript of WD, TWA2775:44–TWA2777:2.
 171 Transcript of WD, TWA2772:30–38.
 172 Transcript of WD, TWA2770:12–21.
 173 Transcript of WD, TWA2761:37–43.
 174 Transcript of WD, TWA2781:10–24.
 175 Transcript of WD, TWA2788:40–TWA2789:25.
 176 Transcript of WD, TWA2789:21–25.
 177 Transcript of WD, TWA2789:36–40.
 178 Transcript of WD, TWA2789:42–TWA2790:6.
 179 Transcript of WD, TWA2779:36–38.
 180 Transcript of WD, TWA2780:1–14.
 181 Transcript of WD, TWA2780:1–14.
 182 Transcript of WD, TWA2780:20–23.
 183 Transcript of WD, TWA2781:34–TWA2783:23.
 184 Transcript of WD, TWA2780:16–23.
 185 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [83].
 186 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [83].
 187 Transcript of WD, TWA2780:1–14.
 188 Transcript of WD, TWA2797:9–23.
 189 Transcript of WD, TWA2751:1–15, TWA2751:45–47.
 190 Transcript of YK, TWA2612:29–31.
 191 Transcript of YK, TWA2612:12–19.
 192 Transcript of YK, TWA2612:4–31.
 193 Transcript of WB, TWA3848:11–20.
 194 Transcript of WD, TWA2752:5–15.
 195 Transcript of YK, TWA2563:8–TWA2564:4.
 196 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [18].
 197 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [5].
 198 Exhibit 12-11, Statement of YK, STAT.0250.002.0001_R at [5]–[7]; Transcript of WB, TWA3857:9–14; Transcript
 of WB TWA3866:8–14; Exhibit 12-19, Statement of WD, STAT.0249.002.0001_R at [5].
 199 Transcript of YK, TWA2578:32–39; Transcript of WB, TWA3857:16–26; Transcript of WD, TWA2791:31–47.
 200 Transcript of WB, TWA3857:2–7; Transcript of WD, TWA2781:34–TWA2783:23.
 201 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [83].
 202 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [83].
 203 Transcript of WD, TWA2790:34–37.
 204 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [5].
 205 Exhibit 12-1, Statement of WP, STAT.0256.001.0001_R at [25].
 206 Exhibit 12-1, Statement of WP, STAT.0256.001.0001_R at [27].
 207 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [48]; Exhibit 12-21, Statement of WO,
 STAT.0248.001.0001_R at [29].
 208 Exhibit 12-21, Statement of WO, STAT.0248.001.0001_R at [30].

209 Exhibit 12-21, Statement of WO, STAT.0248.001.0001_R at [31].
 210 Exhibit 12-18, Statement of WD, STAT.0249.001.0001_R at [60].
 211 Exhibit 12-3, STAT.0249.001.0121_R.
 212 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [48].
 213 Exhibit 12-3, DOC.0002.001.0129_R.
 214 Exhibit 12-3, STAT.0249.001.0121_R.
 215 Exhibit 12-4, Statement of WQ, STAT.0257.001.0001_M_R at [49]–[51].
 216 Exhibit 12-4, Statement of WG, STAT.0257.001.0001_M_R at [51].
 217 Exhibit 12-4, Statement of WQ, STAT.257.001.0001_M_R at [52].
 218 Exhibit 12-3, DOC.0002.001.0128_R.
 219 Exhibit 12-3, DOC.0002.001.0124_R.
 220 Exhibit 12-25, DOC.0011.001.0002.
 221 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
 222 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0320_R.
 223 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
 224 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
 225 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
 226 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0321_R.
 227 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0322_R.
 228 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0324_R.
 229 Exhibit 12-3, DOC.0001.001.0318_R at DOC.0001.001.0322_R.
 230 Exhibit 12-3, STAT.0249.001.0058_R.
 231 Transcript of WD, TWA2855:2–9.
 232 Exhibit 12-4, Statement of WG, STAT.0257.001.0001_M_R at [51].
 233 Transcript of WD, TWA2856:5–20.
 234 Transcript of WD, TWA2856:5–20.
 235 Exhibit 12-21, Statement of WO, STAT.0248.001.0001_R at [42], [48].
 236 Exhibit 12-24, Statement of T Kendall, STAT.0293.001.0001_R at [8].
 237 Exhibit 12-24, Statement of T Kendall, STAT.0293.001.0001_R at [13]–[14].
 238 Exhibit 12-24, Statement of T Kendall, STAT.0293.001.0001_R at [18].
 239 Exhibit 12-24, Statement of T Kendall, STAT.0293.001.0001_R at [17]–[18].
 240 Transcript of Professor Stephen Smallbone, TWA2705:18–32.
 241 Exhibit 12-3, DOC.0003.001.0556, DOC.0003.001.0557 and DOC.0003.001.0558_R.
 242 Exhibit 12-3, DOC.003.001.0085_R at DOC.0003.001.0091_R–DOC.0003.001.0093_R.
 243 Exhibit 12-28, STAT.0254.001.0220.
 244 Exhibit 12-3, DOC.0003.001.0543_R.
 245 Exhibit 12-3, STAT.0249.001.0175_R.
 246 Exhibit 12-3, STAT.0246.001.0013_R.
 247 Exhibit 12-3, STAT.0246.001.0078_R.
 248 Exhibit 12-3, STAT.0246.001.0013_R.
 249 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [96].
 250 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [96].
 251 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [99].
 252 Exhibit 12-3, DOC.0007.002.0060_R.
 253 Exhibit 12-26, Statement of WL, STAT.0246.001.0001_R at [18].
 254 Exhibit 12-14, Statement of S Smallbone, EXP.0001.003.0001 at [97].
 255 Transcript of WL, TWA3813:21–24.
 256 Transcript of WL, TWA3814:25–29.
 257 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [77]–[79].
 258 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [80], [83].
 259 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [85].
 260 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [86].
 261 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [12].
 262 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [12].

263 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [13].
264 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [90].
265 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [92].
266 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [92].
267 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [94].
268 Exhibit 12-3, DOC.0002.001.0128_R.
269 Exhibit 12-3, DOC.0001.001.0318_R.
270 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [94].
271 Exhibit 12-25, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [12].
272 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [16].
273 Exhibit 12-3, STAT.0246.001.0080_R.
274 Exhibit 12-3, WA.0013.001.0059_R; Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [112];
Exhibit 12-28, Statement of R Strickland, Annexure RS-13, STAT.0254.001.0263_R.
275 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [114].
276 Exhibit 12-28, Statement of R Strickland, Annexure RS14, STAT.0254.001.0264_R.
277 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [22].
278 Exhibit 12-28, Statement of R Strickland, Annexure RS-14, STAT.0254.001.0267_R.
279 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [123].
280 Exhibit 12-26, Statement of WL, STAT.0246.001.0001_R at [18].
281 Transcript of WL, TWA3806:3–TWA3807:14.
282 Transcript of WL, TWA3808:1–26; Exhibit 12-28, Statement of R Strickland, Annexure RS-14,
STAT.0254.001.0267_R.
283 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [63]–[64].
284 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001_R at [3].
285 Exhibit 12-28, Statement of R Strickland, STAT.0254.001.0001_R at [65].
286 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001_R at [3].
287 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [5].
288 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [6].
289 Exhibit 12-22, Statement of R Strickland (Supplementary), Annexures RS1 and RS2, STAT.0254.002.0009 and
STAT.0254.002.0014.
290 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [5]–[6].
291 Exhibit 12-22, Statement of R Strickland (Supplementary), STAT.0254.002.0001 at [24].
292 Exhibit 12-3, DOC.0003.001.0515_R.
293 Exhibit 12-3, DOC.0003.001.0515_R.
294 Exhibit 12-3, STAT.0249.001.0176_R.
295 Exhibit 12-3, STAT.0245.001.0042_R.
296 Exhibit 12-3, STAT.0245.001.0053_R.
297 Exhibit 12-3, STAT.0245.001.0061_R.
298 Exhibit 12-3, STAT.0245.001.0078_R.
299 Exhibit 12-3, STAT.0245.001.0085_R.
300 Exhibit 12-20, Statement of WN, Annexure WN-33, STAT.0245.001.0092_R.
301 Exhibit 12-3, STAT.0245.001.0099_R.
302 Exhibit 12-3, DOC.0001.001.0868_R.
303 Exhibit 12-3, DOC.0001.001.0928_R.



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