



CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

Sexual Contact With Children By Persons in Authority in the Department of Education and Training of Western Australia

16 October 2006

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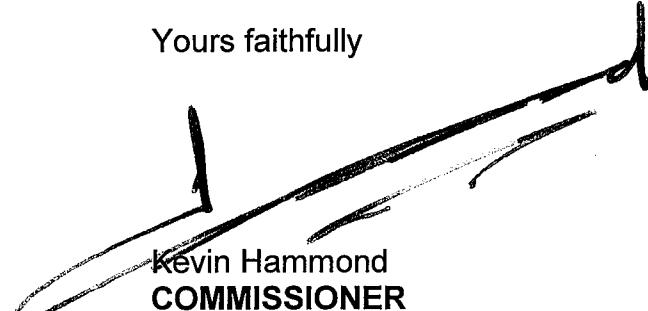
Dear Mr President
Dear Mr Speaker

In accordance with section 93 of the *Corruption and Crime Commission Act 2003*, I am pleased to present the Corruption and Crime Commission's report in the matter of sexual contact with children by persons in authority in the Department of Education and Training of Western Australia.

The opinions contained in this report are those of this Commission.

I recommend that the report be laid before each House of Parliament at your earliest convenience.

Yours faithfully



Kevin Hammond
COMMISSIONER

16 October 2006

FOREWORD

The Department of Education and Training is one of the most significant organisations in the public sector. It is numerically large, controls substantial financial resources, operates schools in every corner of the State and, most importantly, supervises and cares for school children during school hours. In view of its significance it is imperative that the department has in place a reasonably sophisticated and capable misconduct management mechanism. That is, a mechanism with the following features:

- the capacity to identify and effectively deal with misconduct risks;
- the capacity to effectively and efficiently deal with alleged and suspected instances of misconduct; and
- demonstrable and effective commitment to transparent and accountable misconduct management processes.

It is incumbent on the Commission to assist the department to develop its misconduct management mechanism. Over the past two and a half years it has taken the following steps to assist the department:

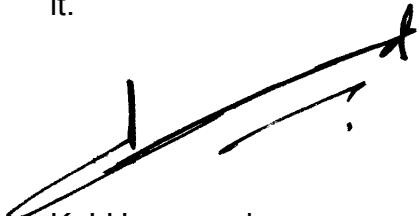
- conducting seminars about how to identify and deal with misconduct
- providing input into the department's review of its Complaints Management Unit
- providing a discussion paper to the department about how to deal with preliminary investigations into misconduct allegations
- participating in regular meetings with the department
- providing advice on a case-by-case basis.

Some progress in developing an appropriate misconduct management system has been made by the department. There was a slight increase in notification levels from 220 matters in 2004/2005 to 243 matters in 2005/2006. The department has also committed itself to establishing a professional standards portfolio to assist it in managing misconduct. Although, to date no substantive progress appears to have been made to do so.

Against this background particular instances of misconduct and misconduct issues have arisen. Sexual contact between children and departmental staff is one such issue. The Commission has chosen to highlight this particular issue for two main reasons:

- First, because of the very considerable public interest in ensuring that children in the care of public bodies are safe and secure.
- Second, because it highlights the serious consequences for the department in not having in place a reasonably sophisticated and capable misconduct management mechanism.

The Commission remains committed to assisting the department establish a reasonably sophisticated and capable misconduct management system. I hope that the report is the catalyst for increased resolve on the department's part to achieving it.

A handwritten signature in black ink, appearing to read "K J Hammond". The signature is fluid and cursive, with a prominent "K" at the beginning and a "J" at the end.

**K J Hammond
COMMISSIONER**

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EXECUTIVE SUMMARY

As noted in the Foreword, the Commission believes that it is imperative that the Department of Education and Training (DET) has in place a reasonably sophisticated and capable misconduct management mechanism. That is, a mechanism with the following features:

- the capacity to identify and effectively deal with misconduct risks;
- the capacity to effectively and efficiently deal with alleged and suspected instances of misconduct; and
- demonstrable and effective commitment to transparent and accountable misconduct management processes.

The Commission has assisted DET to develop its misconduct management by:

- conducting seminars about how to identify and deal with misconduct
- providing input into the department's review of its Complaints Management Unit
- providing a discussion paper to the department about how to deal with preliminary investigations into misconduct allegations
- participating in regular meetings with the department
- providing advice on a case-by-case basis.

With this in mind, this report examines five allegations of sexual contact with children handled by DET in the last few years, in the light of its stated safe and secure learning environment principle. The Commission considers that, based on the cases examined, there are grounds for concern about DET's capacity to achieve this principle.

The five case studies examined in the report include:

- DET's decision to reprimand and transfer to a new teaching position a teacher convicted of indecently dealing with a 13-year-old girl.
- The actions of a number of DET supervisors in allowing a teacher with a known history of sexual contact with students while on overseas excursions to attend another overseas excursion, failing to intervene when he was observed by them engaging in inappropriate conduct with a 15-year-old student, and failing to report such inappropriate conduct to the Complaints Management Unit until some 12 months later when the student filed a complaint about the teacher.
- DET's decision to not conduct inquiries into allegations about a teacher engaging in sexual contact with students at school camps and outside school hours over a number of years.
- DET's management of the circumstances surrounding the resignation of a teacher who was romantically involved with a 15-year-old student.
- DET's decision to conduct an investigation into poor performance rather than allegations of inappropriate behaviour towards children, and its view that, on

the evidence, a school gardener removing nude photographs from a school bin, showing them to someone else and claiming that they were of a female student did not amount to a breach of discipline.

The case studies were selected from the sexual contact matters reported to the Commission since 1 January 2004. They demonstrate a number of aspects of DET's response to the allegations discussed and are not isolated examples of DET's handling of sexual contact matters.

These case studies are illustrative of the following problems in DET's approach to dealing with sexual contact allegations:

- greater weight appears to have been given to employee welfare than to DET's safe and secure learning environment policy;
- too much responsibility for dealing with sexual contact allegations being assumed by local and district managers;
- insufficient attention being paid to identifying and managing risks;
- non-adherence to policies and procedures;
- failure to give practical effect to the *Western Australian College of Teaching Act 2004*;
- senior managers not holding local and district managers to account for their decisions;
- insufficient attention to ensuring that police are notified and consulted; and
- poor record-keeping.

The report makes the following six recommendations to address these problems:

Recommendation One

In relation to roles and responsibilities within DET for dealing with sexual contact allegations, the Commission recommends that:

- a. all responsibility for dealing with suspected or alleged sexual contact be removed from local and district managers and transferred to the Complaints Management Unit;
- b. as part of the process of change arising from the review of the Complaints Management Unit, DET employ within the Complaints Management Unit appropriately qualified and experienced staff to deal with sexual contact allegations; and
- c. DET enter into a process of planned and continuous improvement of its policies and procedures aimed at giving effect to its stated safe and secure learning environment policy. This process should be aimed at building a robust system capable of identifying high-risk behaviour and circumstances.

Recommendation Two

In relation to DET policy on sexual contact allegations, the Commission recommends that DET:

- a. develop an ongoing training programme to ensure that policies and procedures relating to sexual contact are well known and understood by DET staff;
- b. develop procedures to ensure that non-compliance with policies and procedures is identified and dealt with by way of management and/or disciplinary actions; and
- c. ensure that all internal investigation reports address compliance and/or non-compliance with relevant policies.

Recommendation Three

In relation to its responsibilities under the *Western Australian College of Teaching Act 2004*, the Commission recommends that, as a matter of priority, DET review compliance with this Act. This review should include:

- a. the development of policies and procedures to ensure compliance with *Western Australian College of Teaching Act 2004* and its intentions (for example, reference to the Act in all internal investigation reports);
- b. ensuring that such policies and procedures include informing the Western Australian College of Teaching of all matters that may be relevant to the registration of teachers, whether or not teachers have been suspended or dismissed;
- c. reviewing records of matters identified by the *Western Australian College of Teaching Act 2004*, with a view to advising the college about those teachers currently employed by DET, whose actions cast into doubt their suitability for registration; and
- d. reviewing records of matters identified by the *Western Australian College of Teaching Act 2004*, with a view to advising the college about teachers who have left DET's employ because of conduct that casts into doubt their suitability for registration.

Recommendation Four

In relation to its responsibilities under the *Working with Children (Criminal Record Checking) Act 2004*, the Commission recommends that prior to implementation of this Act on 1 January 2007, in conjunction with the Department of Community Development, DET review its policies and procedures to ensure that they comply with the Act and its intentions.

Recommendation Five

In relation to managerial commitment to deal with misconduct, the Commission recommends that DET implement a system of review at executive level of serious misconduct cases, particularly sexual contact allegations, as part of the changes stemming from its review of the Complaints Management Unit.

Recommendation Six

In relation to the involvement of police in sexual contact allegations, the Commission recommends that DET review its approach to matters involving alleged sexual contact by:

- a. ensuring that all relevant matters are notified to police with comprehensive information;
- b. ensuring that sufficient documentation is maintained to demonstrate notification and interaction with police; and
- c. developing appropriate policies and procedures to ensure co-operation with police, and to ensure that internal decision-making about investigating allegations is made on the basis of departmental risk assessment, as distinct from police prosecuting decisions.

DET Representation

Pursuant to section 86 of the *Corruption and Crime Commission Act 2003*, an earlier draft of this report was provided to DET in order to enable it to make representation to the Commission. DET's representation is appended. As a result of DET's representation, one case study was removed, and a number of additional minor changes were made to the report. Two recommendations were removed in the light of actions taken by DET after receiving the draft report. The case studies have been rearranged in order, which impacts on the referencing of case studies in DET's response. To facilitate cross-referencing, DET's submission for each case study has been summarised and included under a sub-heading in the relevant case. The Commission's response to each submission is also included.

CHAPTER ONE – INTRODUCTION

The Department of Education and Training (DET) is a unique organisation. With a staff of 28,000 full-time employees (excluding TAFEWA), DET is the largest public sector employer in Western Australia. It has daily responsibility for the safety and security of over a quarter of a million school children for a significant part of their lives each year for up to 12 years. In order for DET to operate effectively it must build and maintain public confidence in its capacity to operate some 776 learning facilities across the State. (DET Annual Report, 2004/2005 pp.19-20). Those learning facilities must be safe and secure environments for school children. This is an onerous responsibility.

In discharging this responsibility, DET has issued many policies and procedures. Of particular interest to the Commission are DET's policies and procedures for making decisions about misconduct – its misconduct management system. There are a number of factors that impact on misconduct within DET, but most pertinent is that its schools are complex, relatively closed environments in which a significant power imbalance exists between teachers and students. This power imbalance creates environments in which problems such as inappropriate relationships between students and teachers, bullying, harassment and sexual contact can arise.

The extent of the risk of this type of misconduct occurring is revealed by the fact that between 1 January 2004 and 18 March 2006, of the 449 notifications and complaints dealt with by the Commission involving DET, 49% involved alleged physical action, abuse, threats, bullying or inappropriate language. Twelve percent involved alleged inappropriate behaviour of a sexual nature.

This report explores this risk by examining the way DET has handled five cases over the past few years. The case studies highlight a range of problems in DET's approach to dealing with sexual contact allegations, including the following:

1. greater weight appears to have been given to employee welfare than to DET's safe and secure learning environment policy;
2. too much responsibility for dealing with sexual contact allegations being assumed by local and district managers;
3. insufficient attention being paid to identifying and managing risks;
4. non-adherence to policies and procedures;
5. practical effect not being given to the *Western Australian College of Teaching Act 2004*;
6. senior managers not holding local and district managers to account for their decisions;
7. insufficient attention to ensuring that police are notified and consulted; and
8. poor record-keeping.

1.1 Scope

In addition to this introduction, this report has two other chapters. Chapter Two describes five case studies that have been reported to the Commission and examines the allegations and the action taken by DET in each case. The case studies were selected from a range of sexual contact matters before the Commission as being illustrative of DET's handling of such matters.

Chapter Three contains a discussion about what needs to be done to resolve the problems highlighted by the case studies. This discussion results in six recommendations.

1.2 Purpose

To date the Commission has liaised with DET about sexual contact allegations on a case-by-case basis. When the Commission has identified shortcomings in the investigation process, and/or outcomes, and lack of attention to risk identification and management, it has advised DET, and where appropriate, made recommendations or suggestions to address those issues. In the Commission's view, DET has resisted these recommendations and suggestions.

The Commission believes that a shift is needed in the way DET tackles sexual contact allegations in order to bring it into line with community expectations about how it should deal with staff against whom such allegations are made. Rather than continue to try and tackle this problem on a case-by-case basis, the Commission considers that it is in the public interest to table this report because the benefits of public awareness outweigh any potential prejudice to DET. This approach is consistent with the Commission's purpose to help public authorities develop their capacity to deal with misconduct.

1.3 DET's Response to Draft Report

On 30 June 2006, in accordance with section 86 of the *Corruption and Crime Commission Act 2003*, DET was provided with a draft of this report in order to afford it the opportunity to respond to the issues raised. DET provided a detailed response to each of the case studies in the draft report. DET's response is appended. A summary of its response relevant to each case is provided at the end of each case study, together with the Commission's comment on DET's submission.

The Commission has examined DET's response and has made some changes to this final version of the report including removing a case study and two recommendations. The remaining cases have been reordered as follows:

- Case One – Teacher A (unchanged)
- Case Two – Teacher B (formerly Case Five Teacher D)
- Case Three – Teacher C (formerly Case Six Teacher E)

- Case Four – Teacher D (formerly Case Four Teacher C)
- Case Five – Gardener E (formerly Case Two Gardener B)

These changes impact on the referencing in DET's response to the draft report.

DET's response to the draft report focused on particulars in each case study rather than on a strategic view of the matters raised. Although DET has dealt with the individuals, the issues that gave rise to these matters remain to be reviewed and rectified to ensure that similar problems do not arise in future.

The Commission also notes that to a considerable extent DET's response relies upon information it has gathered since receiving the draft report. As a result of the draft report, DET has acted to address issues raised previously by the Commission in case studies One, Three and Four.

CHAPTER TWO – THE CASE STUDIES

2.1 Case Study One

On 2 May 2005 police advised the Commission that Teacher A had been charged with two counts of Indecent Dealing of a Child Under 13 Years arising from an incident on 21 April 2005. Teacher A, employed at a suburban high school, had taken a friend's 12-year-old daughter to a vacant property to undertake repairs to ready it for sale.

At the property Teacher A placed his hands under the girl's shirt and rubbed her abdomen. The girl objected but he kissed her on the mouth, using his tongue, before the girl retreated. Police told the Commission that Teacher A said that he was "*testing the waters*" with the girl, and that he would have "*gone all the way*" if the girl had not resisted. Teacher A pleaded guilty to the charges and was fined \$1000 on each count.

DET notified the Commission of the incident on 6 May 2005, adding that Teacher A had attempted suicide after he was charged. On his discharge from hospital he was to work at a local District Education Office pending the outcome of a DET investigation into a suspected breach of discipline.

On 11 October 2005, DET notified the Commission that pursuant to section 92 of the *Public Sector Management Act 1994* [PSM Act] DET was not required to undertake an investigation into the teacher's behaviour because the matter had been proven in a criminal court. The conviction empowered DET to act under the PSM Act to dismiss, reprimand and/or transfer Teacher A. DET reprimanded him and seconded him to another school for the remainder of the year, before transferring him to another teaching position for the 2006 school year.

DET considered a number of issues in making this decision. Factors said to mitigate in Teacher A's favour included that:

- the child was a family friend not a student;
- Teacher A's conduct did not occur during school hours; and
- the parties were not in a student-teacher relationship.

DET also considered Teacher A's suicide attempt, noting that while it has an "...*overriding responsibility for the safety and welfare of students, there is also legal requirement to protect the safety and well-being of employees...The [department], being extremely conscious of the impact of further undue stress being placed on [Teacher A] in relation to revisiting this incident...acknowledged that there was minimal risk [to students]...*"

The Commission queried the outcome of this matter, recommending that:

- an urgent investigation be carried out into the risk posed by Teacher A to the health and welfare of students, including a psychiatric assessment;
- Teacher A be removed from duties that allowed him access to children whilst the investigation took place; and
- if, at the completion of the investigation it was decided to return Teacher A to duties with student contact, a risk management plan be put into place with high level monitoring and reporting apparatus.

DET disagreed with these recommendations and defended its decision by citing excerpts of the judge's decision, including that:

- the matter appeared to be an isolated one-off situation;
- Teacher A had no prior convictions;
- he was remorseful;
- there was no element of repetition or force or coercion; and
- the judge felt that Teacher A was unlikely to re-offend.

DET also pointed out that Teacher A was not listed as a sex offender and that psychological analysis cited during his sentencing stated that he was at a low risk of re-offending.

2.1.1 Comments

The Commission's overriding concern about this matter is that prior to receiving the draft report DET was unwilling to properly assess the risks to students posed by Teacher A and act decisively to minimise or eliminate those risks.

DET's response to the Commission's recommendation places great weight on the judge's decision. This is inappropriate for two reasons. Firstly, the response appears to overlook an important consideration taken into account by the judge. That is, the detailed submission made by Teacher A's counsel at trial that as a result of his conviction Teacher A could no longer practise in the teaching profession.

Secondly, it is DET's responsibility, not the judge's, to determine the risks associated with retaining Teacher A as a teacher. Indeed, more important than the judge's comments are DET's own safe and secure learning environment policy and the views of the wider community. On this second issue the community, through Parliament, has already expressed a view.

The *Western Australian College of Teaching Act 2004* (the WACOT Act) was enacted on 15 September 2004. It requires all current teachers to be registered. Under this legislation, Teacher A's conviction renders him ineligible to be registered as a teacher in Western Australia.

2.1.2 DET's Submission

In its response to the Commission's draft report, DET made the following points about this case:

- The department had properly considered the risks posed by Teacher A to students.
- The department had acted within the range of discretion provided by the PSM Act.
- DET acted within the WACOT Act. Because it had neither suspended nor dismissed Teacher A, it was not required to notify the WA College of Teaching of his conviction.
- Notwithstanding this, the department notified WACOT of Teacher A's charges on 10 May 2005.
- Teacher A's conviction was recorded prior to the necessity for registration, which was not until March 2006.
- Teacher A's application for registration was entered on the WACOT database on 29 November 2005 in a pending status.
- Teacher A was lawfully employed by DET until WACOT refused his registration on 19 July 2006.
- Since December 2005 DET has included the consideration of notifying WACOT of disciplinary matters in its processes. This is included in an action check list for each file.
- DET advised the Department of Community Development (DCD) Working With Children Unit of the situation regarding Teacher A and received no adverse comments.
- It was not the department's decision to transfer Teacher A – Teacher A had requested a compassionate transfer.
- *“...The Department notified the College of Teacher A’s conviction on the 10 May 2005. The College refused Teacher A registration on the 19 July 2006...”*
(Note: The Commission assumes this is an error – that this refers to Teacher A's charges in May rather than his conviction in July 2005).

2.1.3 The Commission's Response to DET's Submission

The Commission's opinion about DET's response is as follows:

- DET's lack of compulsion to notify the college only arose because DET chose not to dismiss Teacher A in the full knowledge that his conviction rendered him ineligible to be registered to teach.
- DET did not advise WACOT on 10 May 2005. College records show that on that day it advised DET that it had been informed by police that Teacher A had been charged. Records obtained from DET in March 2006 show that DET had no record of any contact with WACOT about Teacher A up to that time.
- In the final event, DET officially notified WACOT of Teacher A's conviction after it received a copy of the draft of this report for comment. The College moved to decline Teacher A's application for registration within 24 hours of that notification.

- WACOT records confirm that Teacher A's application for registration was recorded in its database on 29 November 2005. DET's records show that a criminal record check was conducted for Teacher A on 14 November 2005, and 3 days later his conviction details were clarified by email with police. Neither WACOT nor DET have any record of WACOT being advised of the results of that criminal check.
- The DCD WWC Unit is not responsible for the management of DET risk or DET employees. DET does not state at what stage it advised the DCD WWC Unit of "...*the situation regarding Teacher A...*" , however, even without any "adverse" or otherwise comment from the DCD Unit, the nature of Teacher A's conviction was sufficient basis for DET to dismiss him without any need for endorsement of its decision by an external agency.

2.2 Case Study Two

The Commission was notified on 10 September 2004 of the following allegations:

- During July 2003, Teacher B inappropriately touched a 15-year-old female student during an overseas excursion.
- On or around Monday 14 July 2003, Teacher B supplied alcohol to the girl on a flight home from the overseas excursion.
- During August 2003, when the teacher and student were to be questioned about their relationship after the deputy principal observed their body language while they were talking in the car park, Teacher B allegedly advised the student to lie so that he didn't lose his job.

On 10 September 2004, DET advised the Commission that the teacher had been placed in a role that did not involve contact with children and was directed not to attend school premises. In accordance with the PSM Act, the allegations were being compiled to be put to the teacher, and the Australian Federal Police (AFP) were to be notified following advice from local police that the matter was outside their jurisdiction.

DET formed a suspicion that breaches of discipline may have occurred and conducted an investigation into the allegations. The outcome of this investigation led to an inquiry that found the allegations against Teacher B were sustained and that Teacher B had breached:

- the Western Australian Public Sector Code of Ethics;
- the Department of Education & Training Staff Conduct Policy;
- the Department of Education & Training Child Protection Policy; and
- the Department of Education & Training Duty of Care Policy.

DET dismissed the teacher on 26 August 2005.

Although records show DET clearly intended to do so, there is no evidence that the AFP were notified of this matter. The AFP have conducted a thorough check of their holdings, including incoming fax telephone call logs, and found no record of notification from DET or the WA Police. Ultimately the Commission notified the AFP of the matter and Teacher B was subsequently charged with several counts of indecent dealing relating to this and historical matters.

DET's investigation revealed that Teacher B has a history of inappropriate behaviour with students. On four separate occasions prior to the excursion he was verbally counselled by his line manager for inappropriate behaviour towards female students. The line manager did not document any of this counselling or the circumstances.

In 2001, Teacher B was the subject of a similar complaint by a student's father who came across inappropriate emails to his 15-year-old daughter from Teacher B. This interaction also began on an overseas excursion and included kissing and touching. The behaviour continued upon return to Perth, with the girl taking time from classes and weekend activities to meet up with the teacher. The situation progressed to the point where the girl had diarised that she was considering agreeing to pressure from Teacher B to engage in sexual intercourse.

The matter was dealt with by Teacher B's supervisor. In a letter dated 27 February 2001 to Teacher B, the supervisor concluded the matter in the following terms:

“...I believe that you are fully aware of the seriousness of the situation, which placed your professional career as a teacher at risk, and in slightly different circumstances might have resulted in criminal charges being laid...I acknowledge that you now accept responsibility for the consequences of your actions, and the damage that has been done to a number of people as a result. You have taken steps to apologise to the student, her family and the school. You are prepared to accept the conditions placed on your continuing involvement with [the high school], and have sought counselling in order to understand the motivation for your actions and to ensure that your future behaviour is impeccable. [The high school] is also considering what additional steps, if any, need to be taken in order to ensure that you are not placed in any situation where accusations of improper conduct could be made in the future...”

The letter then details the respect and support offered to Teacher B by his colleagues and management:

“...Your professional colleagues at [High School 1 and 2] and here at [the school] have held you in high esteem. Your talent, enthusiasm, commitment, hard work and achievement are recognised by all. Their belief in you is measured by the willingness with which all concerned have offered to support you through what will undoubtedly be a very difficult time. I am hopeful that, despite the current pain, the long term result will be a positive one for you, your family, your present and future students and your professional colleagues. As your line manager, I have a responsibility both to you and the Education Department to monitor developments. I expect your full cooperation, and in return, offer you my utmost support...”

There is no other documentation in relation to this matter, and no record of the “conditions” that were placed on Teacher B. The girl’s father stated that he understood “...[Teacher B] would be suspended from school. The assurances I was given were that [Teacher B] would never be alone with a child and would not be allowed to tour again. That included [the high school] where he was also teaching...”

Successive managerial staff claimed that they were either not briefed about the matter or only knew about it from anecdotal information from other staff. From evidence given by teachers on the second excursion, the matter was well known anecdotally among excursion staff.

The 2003 excursion manager stated to the DET investigator that he was briefed about the 2001 incident involving Teacher B when he started at the school. He assigned Teacher B’s former line manager to share accommodation and the same bus with Teacher B. He then took little interest in Teacher B’s behaviour.

When told of a situation on the flight home where Teacher B shared a blanket with the student he:

“...ensured that they were observed and that their behaviour was scrutinised. Given this was the case, I did not intervene...It was brought to my attention that [Teacher B] was sitting next to [the student] with a shared blanket over their laps. I wandered into a position where I could observe it. I stood where I could observe it. There did not appear to be anything inappropriate happening...”

The teacher assigned by the excursion manager to share accommodation with Teacher B was the former supervisor who had counselled Teacher B on four previous occasions about his inappropriate behaviour with students. He did not intervene because “...Supervisors on the plane were aware of the situation and I take it they dealt with the matter in a manner they saw fit...”

Another teacher stated:

“...It was quite blatant that [the student] and [Teacher B] had changed seats to be next to each other. They were both awake. There was only one blanket over the two of them. I thought this situation was inappropriate but relatively harmless. I did not intervene. I ensured that I monitored the situation and saw no physical activity occur between the two of them...Upon our return to Australia, I felt that [Teacher B’s] behaviour was such that it needed to be reported to the Principal. This I did...”

However, this teacher did not report Teacher B’s behaviour until she was aware that the deputy principal had raised concerns with the principal when he observed interaction between the student and teacher in the school car park after the excursion returned to Perth. No action was taken by the principal about the incidents on the excursion until the student lodged a formal complaint, some 12 months after the excursion.

Perhaps the most surprising aspect of this matter is that after observing Teacher B and the student talking in the car park, it was arranged for a female teacher to speak with the student. The teacher said to the student:

“...that it had been noticed that her and [Teacher B] had been spending some time together and she should think how that was coming across to other people, i.e. that it looked inappropriate. I think I recommended to her that she try to detach herself a little bit. I put this to [the student] without trying to seem that I had made a judgement about her behaviour...”

Including the excursion manager, there were a total of six witnesses to Teacher B's behaviour. Four of these were aware of the previous allegations. All of them “kept an eye on him” but no one acted. It is not clear why their failure to act has not been identified by DET as possible breaches of discipline.

2.2.1 Comments

The Commission's overriding concern about this matter is DET's inability over a period of years to take appropriate action to deal with Teacher B's conduct. Had they acted decisively in 2001, events in 2003 might have transpired differently.

DET's record keeping in relation to these matters is inadequate. Aside from the letter to Teacher B quoted above, there is no record of the allegations made against Teacher B, or the managerial or disciplinary action that followed the 2001 complaint. There is no adequate basis upon which the decision to allow Teacher B to go on subsequent excursions was made. There is no evidence of an adequate management or supervisory plan to ameliorate the risks associated with Teacher B.

Once he was on the excursion, even in the face of identifiable inappropriate behaviour, there was no appropriate managerial intervention to protect the student. On one view, it would appear that the student was, at least at one point, held to blame. DET did not identify or form a suspicion about possible breaches of discipline by Teacher B's supervisors and colleagues while on excursion.

2.2.2 DET's Submission

In its response to the Commission's draft report, DET made the following points:

- Although DET acknowledges that there is no fax receipt to verify that it notified the AFP of this matter, it maintains that it notified the AFP of this matter, and that the WA Police Child Abuse Unit also notified the AFP. DET cites several handwritten, unsigned and undated notes, and an email dated 22 April 2004 from its records to support this contention. DET states that on 19 July 2006 the Officer In Charge of WA Police Child Protection Squad (formerly Child Abuse Investigation Unit) confirmed that police had “...referred the matter to the AFP on the 7 September 2004...”

- DET quotes a letter received from the Commission acknowledging receipt of the notification as reason for it to assume that either the Commission had notified the AFP of the matter, or that the Commission had no jurisdiction over the matter.
- DET notified WACOT of Teacher B's dismissal on 9 September 2005.
- As the 2000 incident occurred prior to the appointment of the current Director General he cannot be held responsible for the management of this disciplinary matter.
- The Director General cannot be held responsible for inadequate record keeping prior to his appointment.
- *“...Had the 2000 principal acted in accordance with department policy at the time, it is highly unlikely that the 2003 matter would have arisen...”*
- DET's management of the student's complaint in 2003 has been in strict accordance with its statutory requirements resulting in Teacher B's dismissal and exclusion from working with children.
- Current practices would not allow a matter like this to be resolved at the local level.
- In current times principals who did not make the appropriate notifications would be subject of disciplinary action.
- The excursion manager was briefed about the 2000 incident when he commenced in 2001. After the 2003 excursion he became aware there was more to that incident than he was initially told.
- It is incorrect that the principal did not take action until twelve months after the incident when the student lodged a complaint because the principal spoke to Teacher B about his relationship with the girl after the deputy principal reported an incident he observed in the school park. Both the teacher and the girl denied any inappropriate relationship.
- The excursion manager did not observe inappropriate behaviour on excursion, none of the staff brought anything to his attention until the blanket sharing or on the plane, and whilst *“...he took steps to observe them...”* he *“...did not see anything happening of an inappropriate nature...”*
- The Commission has overstated *“...the issues of the past concerns of the teacher who shared accommodation with Teacher [B]...”*
- None of the teachers on excursion *“...witnessed any acts of impropriety...”* and on the flight none witnessed anything *“...that caused any concern beyond the foolishness of sharing a single blanket...”*
- It would be *“...an extremely powerful dissuader...”* if DET employees felt they could be disciplined arising from information they gave in the course of a disciplinary investigation process.
- Hearsay knowledge is *“...not an adequate basis on which the department can or should plan excursions...”*
- DET acknowledges that *“...normal excursion management practices should not allow for any teacher/student relationship to become blurred and that seating/sleeping arrangements should always reflect this professional distance...”*
- At the time of his dismissal Teacher B had not been charged with any offence.
- DET notified the Ministerial Council for Employment, Education, Training and Youth Affairs (MCEETA) National Check of Employment Status database of his dismissal for sexual misconduct.

- The failure of two principals in two of the case studies does not indicate that DET has a systemic problem of non-compliance to policy.
- *“...It is an invalid overgeneralisation to interpret record keeping as being a systemic problem on the basis of the information contained in the Draft report...”*

2.2.3 The Commission’s Response to DET’s Submission

The Commission’s opinion about DET’s response is as follows:

- DET’s insistence that it notified the AFP relies upon unsubstantiated records. An email dated 22 April 2004 from an officer to his manager stating that a copy of the CCC letter had been faxed on 10 September 2004 to the AFP to be screened by a committee, and several of the handwritten notes that DET quotes in support of its argument were not contained in the records that it supplied the Commission in response to a Notice to produce all documents relating to Teacher B issued under Section 95 of the Act. The Commission is satisfied that the AFP has no record of notification from DET.
- DET has offered no explanation as to why, if it believed that the AFP had been notified by some agency if not itself, that it did not contact the AFP to ensure that its own investigation and inquiry processes were not intruding upon the criminal investigation. Neither does DET explain why it did not query whether the AFP was going to charge the teacher when its own investigation had substantiated the allegations.
- The Commission does not accept DET’s submission that the Director General cannot be held responsible for matters that occurred prior to his appointment. The issues raised in this report are directed at DET, not individuals or individual sectors of the department. All of the case studies have been subject of decisions both before and after the appointment of the current Director General and the setting up of the CMU. In this particular case the Commission considers that DET’s records since 2002, and to date, continue to lack the transparency and accountability required of DET.
- DET’s contention that none of the staff on the excursion witnessed any impropriety or inappropriate behaviour is contradicted by both the witness statements obtained during its own investigation and by its own argument that *“...normal excursion management practices should not allow for any teacher/student relationship to become blurred and that seating/sleeping arrangements should always reflect this professional distance...”*. In particular, the Commission notes that the excursion manager who saw the teacher and student sharing a blanket did not find that action to be inappropriate.
- In this case and Case Studies One and Four, DET’s record keeping was poor.
- The notion that DET employees might be dissuaded from speaking the truth because of the possibility of disciplinary action does not obviate their obligation to speak truthfully or DET’s obligation to take disciplinary action as a result of this disclosure, if necessary.

- It is not clear why information about Teacher B's past conduct should be put in the category of hearsay when the 2003 excursion was being planned. After all, his principal had written to him reinforcing that by his behaviour he had placed his profession at risk and narrowly escaped criminal charges.

2.3 Case Study Three

The Commission is aware of three matters involving Teacher C, two of which were initially reported to the Anti-Corruption Commission (ACC).

The first two allegations were notified to the Anti-Corruption Commission by DET on 14 February 2000. Teacher C had been charged with unlawful carnal knowledge in the period 1 January 1985 and 14 October 1985 of a woman who was a 17-year-old student at the time. He was also charged with two counts of Indecent Dealing with a 16-year-old, involving the same girl. DET removed him from contact with children.

The complainant, aged 32 years when Teacher C was charged, explained that she did not make a report at the time of the incidents because she didn't think she would be believed as Teacher C was a popular teacher. She also didn't want her father to know, so she made her complaint after her father died.

She alleged that the incident occurred at a bush school camp when she was 15 years old. She claimed that Teacher C invited her into his panel van one night, partly undressed her, placed his head inside her shirt, touched her breasts and penetrated her digitally. When he had difficulty removing her jeans he suggested she go to her tent, change into her nightie and return to his van. The girl left the van and did not return. There were no witnesses and the girl did not tell anyone of the incident.

On 25 January 2002, in the absence of corroborating evidence Teacher C was acquitted.

On 11 April 2002, DET advised the ACC that Teacher C had been acquitted of both charges, and that it was "...currently seeking the transcript of the hearing in order to establish whether the department has any further concerns regarding [Teacher C]..." .

DET then fell silent on the issue, despite regular requests from the ACC for a status update. On 3 June 2003 with still no response, the ACC notified DET that unless an immediate response was received there was no other recourse than to report the matter to the Minister for Education. DET replied a month later stating that it considered the matter closed "...Arising from the difficulty of being unable to access the transcript as well as other reasons, particularly the public interest and utilisation of departmental resources..." .

The ACC was dissatisfied with the outcome, advising DET that "...it is not appropriate the file on this matter be closed merely because [Teacher C] was acquitted, particularly as there are similar allegations against him in another matter being dealt with by the Child Abuse Investigation Unit..." . It gave DET two months to conduct an inquiry to determine whether Teacher C was suitable to remain as a teacher and supplied DET with a copy of the trial transcript to assist in its investigation.

DET responded on 26 August 2003. It said that it had clarified the ACC's request for an investigation by telephone to determine whether it was being directed to investigate by the ACC, or whether an investigation was being recommended. The letter then stated that after having read the transcript "...*the department has resolved not [sic] take this particular matter any further as, with the considerable effluxion of time, it is highly likely that the outcome of any investigation will prove inclusive...*". However, as Teacher C was still subject of further police charges, DET would monitor this and was "...*likely to recommence disciplinary proceedings against [Teacher C] following the outcome of this criminal matter...*".

The ACC wrote to the Manager of the Complaints Management Unit on 18 September 2003 stating that it was concerned by DET's misunderstanding of the ACC's position and that unless a good reason could be supplied, the ACC did require DET to investigate the matter fully. The ACC pointed out that:

"...*it takes a serious view of allegations such as those made in this case and the mere fact that a jury was not satisfied that the allegation was proved beyond reasonable doubt does not necessarily mean the allegation is not true... In a disciplinary proceeding the standard of proof requires the lesser standard namely whether the allegation is established on the balance of probabilities...*"

By December 2003, the ACC again sought a status update from DET. In January 2004 DET advised that the disciplinary process had been commenced and the allegations had been put to Teacher C.

In May 2004, with no response from DET, the ACC closed its file and advised DET that it had referred the matter to the then newly formed Corruption and Crime Commission.

In November 2004, DET advised the Commission that Teacher C was on long-term sick leave and as such could not be interviewed in relation to disciplinary matters.

In January 2005, DET wrote to the Commission advising that Teacher C was to have appeared in the Perth District Court in November 2004 in relation to a second batch of charges against him, but the trial had been postponed due to him attempting suicide.

The second matter was reported by the Police Child Abuse Unit to the Anti-Corruption Commission on 27 March 2003. A female student had alleged that Teacher C had indecently dealt with and sexually penetrated her in 1996. The girl, aged between 15 and 16 at the time, did work experience with him in his secondary employment. The incidents occurred when he drove the girl home.

Teacher C was charged with:

- 1 x Sexual Penetration of a Child Over 13 Years and Under 16 Years;
- 2 x Indecent Dealing of a Child Over 13 Years and Under 16 Years;
- 3 x Sexual Penetration of a Child Over 16 Years by a Person in Authority;

- 1 x Attempted Sexual Penetration of a Child Over 16 Years by a Person in Authority; and
- 1 x Indecent Dealing of a Child Over 16 Years by a Person in Authority.

DET did not notify the ACC of the matter until 1 May 2003. A file note shows that a telephone call was made to DET by an ACC officer to determine if Teacher C was still employed as a teacher. The person was advised by the Manager of Investigations that Teacher C had been transferred to a District Office with no contact with children until these latest allegations were fully investigated.

In May 2004, the ACC also closed its file on this matter and referred it to the Commission.

In January 2005, the Commission requested advice from DET as to the outcome of the hearing at Perth District Court. DET advised that due to Teacher C's attempted suicide, the trial had been postponed. A suppression order prevented DET from ascertaining the rescheduled date.

Teacher C was found not guilty on all charges on 14 October 2005. As in his first trial there was a lack of corroborating evidence. Evidence presented to the court was very similar to the evidence presented during the first trial.

The Commission was advised by DET in October 2005 that Teacher C was currently working part-time in a non-teaching role at a District Office and was deemed by his medical practitioner to be unfit to undergo any disciplinary process. Due to no change in his status, disciplinary inquiries remain suspended.

The third matter arose on 2 February 2005, when DET notified the WA Police Child Abuse Investigation Unit and the Commission of a complaint against Teacher C by another former student. The student alleged that during school camps in 1983 and 1984 Teacher C inappropriately touched and kissed her when they were alone together. She alleged that this led to a sexual relationship with him in 1985, the year after she left school.

She stated that the relationship continued for some time, that her parents were aware of it and that after she finished the relationship her mother took the telephone calls from Teacher C until he eventually stopped calling. She also stated that "...*During my time with him I met another girl older than myself who had been through a similar time with [Teacher C]...*".

It is not clear how this complaint came about. There are a number of emails between the girl and the CMU which involved some direct questioning prior to police and the Commission being informed. In any event, the complainant was not prepared to make a police complaint and on 3 February 2005 police advised that they would not be able to pursue the matter.

2.3.1 Comments

The Commission's overriding concern about this matter is DET's unwillingness to act decisively to assess the risks posed by the allegations made against Teacher C by conducting some form of inquiry into his behaviour. It is now 11 months since the outcome of the last trial. At the time of writing this report some six-and-a-half years have elapsed since DET became aware of the first set of charges against Teacher C. So far as the Commission is aware, no substantive action has been taken by DET about the matter in that time. Teacher C's health and the impact of pending trials are relevant to this delay, but not sufficient to explain all of it.

In making this observation the Commission notes and acknowledges the difficulties associated with investigating events of 15 years prior. However, these are not valid reasons to decide not to investigate. Moreover, it is not necessary to limit an investigation to a traditional fact finding mission. Investigating risks to student welfare is at least as important. For example, DET could arrange for an appropriate psychiatric assessment to be conducted. An investigation might also usefully consider what camps Teacher C attended in recent years, whether attendees at these camps have anything to say about Teacher C's conduct and what conclusions can be drawn from analysing the evidence presented at Teacher C's trials.

Since receipt of the draft report, DET has moved to arrange for an independent assessment of Teacher C's health.

2.3.2 DET's Submission

In response to the Commission's draft report, DET made the following points:

- It is incorrect to state that DET did not respond to ACC correspondence from 11 April 2002 and 3 June 2003 "despite regular requests". On 14 May 2002 the ACC acknowledged that DET was seeking a copy of the transcript. On 11 June 2002 DET advised the ACC it was still waiting the court transcript. "*...The ACC did not forward further correspondence to the Department until 3 June 2003...*"
- The ACC did not provide DET with a copy of the court transcript until 15 months after DET had "*...first advised ... that it was seeking a copy... and 14 months after it advised it was having difficulties...*"
- DET experienced an eight week delay in commencing disciplinary action because it sought legal advice from the State Solicitor's office "*...in relation to the applicability of the School Education Act 1999 in this matter...*" because the Act had been superseded.
- Teacher C has been removed from contact with children since February 2000.
- DET "*...consideration of matters affecting Teacher [C] have been characterised by delay outside of the control of the Department...*"
- "*...To have progressed these disciplinary matters in the face of these imperatives would almost certainly have rendered proceedings unlawful, resulting in successful appeals on all three matters in the Industrial Relations Commission...*"

- DET has three ongoing disciplinary proceedings in place – one of which has been through the investigation phase, the other two are likely to be reactivated in the future.
- *“...All three matters have been unavoidably delayed initially due to the impact of criminal proceedings against Teacher [C]...”*
- As Teacher C has not been proven to have committed a breach of discipline, DET cannot lawfully carry out risk management strategies suggested by the Commission.
- On the 3 July 2006 Teacher C’s treating psychiatrist confirmed his unfitness to participate in disciplinary proceedings. DET *“...is currently seeking other specialist medical opinion...”*
- DET is concerned that the Commission’s proposal to report to Parliament on this as yet unresolved case *“... is premature and will possibly prejudice future disciplinary proceedings...”*
- *“...The Department continues to reflect its social responsibilities with respect to managing matters affecting Teacher [C] ...”*

2.3.3 The Commission’s Response to DET’s Submission

The Commission’s opinion about DET’s response is as follows:

- It is not reasonable to hold the ACC responsible for supplying DET with a copy of the trial transcript. ACC records show that once DET made it clear that it had been denied a copy, the ACC responded with a copy within the month. The lack of a transcript should not have prevented DET from making its own investigations into the activities of Teacher C whilst on camps during his employment with DET.
- ACC records show that DET’s assertion that it did not hear from the ACC between 14 May 2002 and the 3 June 2003 is incorrect. On 24 October 2002, the ACC wrote to DET requesting an updated status report and advice on whether the trial had been completed. On 13 February 2003 the ACC wrote to DET enclosing a copy of its letter dated 24 October 2002, asking for an immediate response to its query on whether DET had further concerns regarding Teacher C and what actions it proposed to take. On 3 June 2003 the ACC wrote to DET stating that unless an immediate response was received the matter would be reported to the Minister for Education. DET responded on 2 July 2003, stating that DET considered the matter closed due to *“...the difficulty of being unable to access the transcript as well as other reasons, particularly the public interest and utilisation of departmental resources...”*.
- The argument that the delays experienced in this matter are outside DET’s control is invalid. Interviewing or corresponding with Teacher C may have been problematic, but there were also other inquiries to undertake (interviewing witnesses for example).
- It is unclear to the Commission why it would have been unlawful to progress the matter.

- It is not clear to the Commission what law prevents DET managing risks when a disciplinary offence has not been proven against Teacher C. Discipline and risk management are different functions.
- After six-and-a-half years of inaction, it is not clear to the Commission how including this case study in a tabled report could be regarded as premature, nor is it clear how it could prejudice future disciplinary proceedings.

2.4 Case Study Four

On 23 June 2005, the Commission was advised by DET that a disciplinary investigation into allegations of an inappropriate relationship between Teacher D and a female student was to be reopened. Teacher D, employed at a suburban high school, resigned on 29 April 2001 before an investigation was conducted into an allegation that he had an improper association with a 15-year-old student.

The circumstances of his resignation were that after disclosing details of his association to another teacher, Teacher D met with the school principal and deputy principal. When the meeting occurred the deputy principal was aware of a 1996 investigation into an allegation that Teacher D engaged in inappropriate conduct with an under-age girl at another school. The three agreed that Teacher D would resign from DET - to quote the deputy principal, “...[Teacher D] was *leaving the school and terminating his employment with the Department under the pretext that he had been given the prospect of other employment...*”.

In his statement to the investigator, the principal said, “...*I also would have said to him that this needed to be dealt with immediately because if there is a continuation of this association and it becomes public his career as a teacher is certainly over. I would have also said that the reputation of the school was severely at risk. I think this happened the last day before a two week break so there was a real sense of urgency about dealing with this matter...*”.

On the available evidence the girl’s welfare was not adequately considered. The Department for Community Development (DCD) has no record of being notified of this matter, even though DET’s policy covering principals’ responsibilities in cases of allegations of sexual contact against employees stated that “...*a further call may be required to the local divisional office of the Department for Community Development...*” (page 1). This lack of notification occurred despite the fact that when the principal spoke to her parents they told him that they felt powerless to act because their daughter had threatened to leave home.

Although Teacher D admitted “*there was a relationship*”, he denied sexual contact with the girl, but there were witnesses, including the girl’s parents, to intimate touching and kissing.

Notification of the matter to police in 2001 is not certain. However, when the investigation was re-opened in 2005, police were notified. The student was reluctant to pursue a complaint with police because she had moved to Victoria to “...*put it all behind her...*” and “...*she also expressed concern about what would happen to any information she provided to the Education Dept...*” She would not confirm if there had

been sexual activity, but stated that when she was sixteen Teacher D took her away for a long weekend. She also said that at no time did anyone from the Police Child Protection Unit or DET speak to her “...to ever ask me if it was consensual or not...”.

After his resignation in April 2001, Teacher D continued his relationship with the girl for another 12 months. The girl stated that she ended the relationship, at which point Teacher D began a relationship with another of her school friends.

This matter was not reported to the then Anti-Corruption Commission [ACC] until after Teacher D had resigned, by which time DET’s investigation had ceased. DET advised the ACC that the teacher’s personal records were to be endorsed “...not to be re-employed without reference to Director Workplace Relations...” and that the national screening database would be similarly endorsed. As there was no investigation at this stage, the ACC closed its file.

Teacher D was re-employed by DET in May 2005. In late June it came to DET’s attention that his personal record was flagged not to be re-employed. Once this came to light the Complaints Management Unit reopened the disciplinary investigation, however it is clear that the annotation to Teacher D’s records did not prevent him being re-employed.

Teacher D resigned again on 1 July 2005. Through his solicitor he advised the Department’s investigator that he would not respond to the allegations against him. DET completed its investigation and closed its file, again stating that Teacher D’s employment record is to note that he is not to be re-employed without prior reference to the Manager, Complaints Management Unit.

Upon reviewing the matter, in a letter to DET dated 20 December 2005, the Commission recommended that:

- DET reinforce the requirement of school administrators to report such matters to the Complaints Management Unit to ensure rapid notification to the Commission and timely investigation;
- in all cases where employees resign before allegations can be tested, either through the internal disciplinary process, police investigation, or investigation by the Commission, that the employee’s history clearly show there is an unresolved matter; and
- the then principal and deputy principal of the high school be informed of the events that followed their decisions of 12 April 2001, to ensure that they are fully aware of the ramifications arising from these decisions to enable them to deal more holistically with any similar situation that may arise in the future.

At the date of the draft report the Commission had not received a response to this letter.

It was only because of the time lapse since Teacher D’s first resignation that the Commission refrained from recommending that DET conduct an investigation into possible breaches of discipline by the principal and his deputy. It is unfortunate that the Commission did not recommend such an investigation as part of its review of this matter. With the benefit of hindsight it is clear that it should have done so.

Following receipt of the draft report, DET wrote to the Commission apologising for its lack of response to its letter of recommendation, explaining that the Commission's letter was lost during an intra-office move.

2.4.1 Comments

The Commission's overriding concern about this matter is that greater weight appears to have been given to the reputation of the school and Teacher D than the safety and well being of the student.

Central to the Commission's concern about this matter is the apparent disregard for the illegality of the relationship between the teacher and the student. Policy of the day stated that the principal must report the matter to police and encouraged reporting to the Department of Community Development. The principal did not follow policy and report the matter to police, neither was the DCD notified.

DET's decision not to notify DCD meant that there was no opportunity for intervention on behalf of the student. The principal and deputy principal appear to have actively assisted Teacher D prevent DET from making him account for his actions, and they were not held to account for their own. Little or no regard was paid to the interests of the girl involved or the risks to other girls at the school.

DET's employment screening process failed in this case. Despite the flagging of his personnel record and his name being registered in the national screening database, Teacher D was re-employed.

2.4.2 DET's Submission

In its response to the Commission's draft report, DET made the following points:

- DET contends that this case study should be deleted from the report because Teacher D's conduct preceded the appointment of the current Director General and creation of the CMU, and DET's handling of the matter was subject of consideration by the ACC at the time without adverse comment.
- DET acknowledges that it should not have re-employed Teacher D in May 2005. Whilst his records had been flagged "...not being permitted to be re-employed without reference to the Director, Workplace Relations..." his re-employment papers were "... not processed until some time after he had commenced his fixed term contract duties..."
- DET records show that Teacher D "... filled out and dated his resignation ... on the 9 April, 2001, citing that he had lost interest in teaching. He submitted it to the principal on the morning of 9 April 2001. The principal became aware later that day from a teacher on staff that rumours were circulating ...that Teacher [D] was having an affair... The principal informed his deputy principals of the rumours and spoke with Teacher [D] who assured him that there was no truth in the rumours...On the 11 April 2001 the principal informed Teacher [D] that under the circumstances he should leave the school at the earliest possible opportunity rather than serve out the notice

period given in his previously submitted resignation... Teacher [D] agreed to terminate his employment the following day..."

- *"Therefore...Teacher [D] had already submitted his resignation and was not as a consequence of the principal (and deputy principal) 'actively assisting' Teacher [D] to avoid the Department from making him account for his actions..."*
- DET records indicate that the girl's welfare was paramount at the time. On the 12 April 2001, Teacher D admitted that his relationship with the girl was inappropriate, the principal instructed Teacher D to cease contact with the student and that he would contact the student's parents and the district director to inform them of the situation.
- The principal immediately took steps to organise counselling support for the family and the student
- The principal advised the student's father that Teacher D would not be returning to the school, that the District Director had been notified and that disciplinary action would be taken
- The District Director advised the student's father that the Police Child Abuse Unit would be notified and that DET would conduct a disciplinary investigation.
- The student was offered ongoing counselling for her remaining enrolment at school.
- In accordance with DET policy, the principal notified the District Director who in turn "...arranged for an officer in Workplace Relations to contact the Police Child Abuse Unit..."
- *"...it was discretionary whether the matter was reported to DCD or not..".*
- DET had no control over Teacher D's actions once he resigned, even if it had been known because "...When a teacher is not in a position of authority over a student, there is no lawful impediment prohibiting a teacher from forming a relationship with a student. Clearly, a student would need to be over 16 years of age if the relationship was sexual in nature..."
- *"...the ACC did not reflect adversely on any aspect of the Department process at the time...The Department questions whether it is appropriate for the Commission to comment adversely to Parliament on a matter previously finalised by the Anti-Corruption Commission particularly when no new information has come to light.."*
- *"...The Commission is not fully aware of the circumstances surrounding the purported actions and motives of the principal and deputy principal at the time as is evident from preceding paragraphs..."*

2.4.3 The Commission's Response to DET's Submission

The Commission's opinion about DET's response is as follows:

- DET's handling of the matter, rather than when the conduct occurred, is of concern to the Commission. The issues of accountability and supervisory responsibility came to light in the re-opened investigation conducted in 2005. Whilst the matter was reported to the ACC in 2001, it could not conduct oversight of investigation process or outcome because DET did not conduct an investigation as Teacher D had resigned.

- The Commission notes the sequence of events surrounding Teacher D's resignation, but also notes the statements made by the principal about Teacher D leaving the school on the pretext of alternative employment and leaving the school immediately to protect his career.
- The argument that the girl's interests were paramount is at odds with the facts that the principal did not notify police, that on her account no-one from DET spoke to her about whether what transpired between her and Teacher D was consensual, that the principal chose not to notify DCD and that no apparent substantive action was taken to stop the relationship. Organising counselling was positive, but not sufficient.
- The Commission's observations are based on DET's 2005 investigation which included statements made by the principal and the deputy principal about what occurred in 2001. On the basis that DET has fully disclosed its investigation, it is not clear to the Commission how it can be said that it is not now fully aware of all of the circumstances in this case.
- The Commission notes that the principal's instructions to Teacher D to cease any further contact with the student were given on the day he terminated his employment.
- The Commission notes under DET policy the principal was responsible for notifying police, and that undertakings were given to notify police, however it is unclear whether these undertakings were carried out. DET has not provided any evidence of notification, and records show conflicting accounts of which sector of police DET notified – the Child Abuse Unit, or the Public Sector Investigations Unit. Neither Unit has a record of being notified.
- The Commission finds DET's submission in defence of the principal's choice not to involve police contradictory. It had reasonable grounds for believing the relationship was of a sexual nature. Although DET acknowledge that a sexual relationship would be illegal if the student was not 16 years of age, DET argues that once out of its employment DET had no authority over the teacher, overlooking that the girl was 15 years old at the time.
- It is difficult to assess what disciplinary action the principal was proposing when he advised the girl's father that this would occur, given that he had already accepted the teacher's resignation.

2.5 Case Study Five

On 10 November 2004 DET notified the Commission about an allegation that school Gardener E disobeyed a written directive from the principal of a suburban primary school instructing him to maintain a professional distance between the children and himself. This directive arose from an incident in 2003 in which a child's parent overheard Gardener E making arrangements to meet the boy later. The child was aged three to four years. The parent reported the matter to the principal who issued the directive.

The notification also advised the Commission of an incident on 20 October 2004 in which Gardener E asked a year six student to meet him in the garden shed several days later, outside of school hours, ostensibly to give the boy a toy. A teacher, who was alerted by the presence of the child in the empty school grounds, intervened before the meeting occurred.

Prior to this notification DET had engaged a consultant to investigate the “*Alleged Substandard Performance*” of Gardener E. This investigation proceeded but the allegations of disobeying a directive and inappropriate behaviour in the notification were never investigated.

The investigator’s report, dated 26 November 2005, consequently focussed on Gardener E’s work performance and his inability to work without supervision. Some care was taken to explain that Gardener E’s poor performance was partly due to some degree of intellectual disability. In a covering letter to the Executive Director, Human Resources, the investigator stated “*...When considering my report, I am sure that the Department will continue to show this support, given the time [Gardener E] has worked for the Department and the fact that he is due to retire in January 2006...*”

At the end of the work performance investigation, in a letter dated 7 December 2004, the Director General advised the Commission that in relation to the “*...allegedly inappropriate conduct of [Gardener E]... The Department has elected not to proceed with the matter...*” The letter went on to state, “*...Prior to the receipt of this complaint, [Gardener E] was the subject of an investigation into an allegation that his performance as a gardener was substandard... Taking into account the findings of the investigator in relation to [Gardener E’s] mental capacity and the fact that there was no harm inflicted on any students, the decision was taken not to progress with the disciplinary matter...*”

DET also wrote to the parents of the year six boy, noting that “*...the Department has taken appropriate action in relation to [Gardener E] and now considers this matter closed....*”. Unfortunately, the Commission did not thoroughly review this matter at the time and DET’s decision not to investigate Gardener E’s conduct was accepted.

Gardener E was transferred to a suburban high school where his work performance could be closely supervised.

In June 2005, after he was transferred, police received a complaint from the manager of a local service club that Gardener E had shown him a number of photographs depicting a nude female. He alleged that Gardener E had claimed that the nude female was a student at the high school.

Police notified the Commission of the incident. When no notification was received from DET about the allegation, the Commission met with the Manager of the Complaints Management Unit to express concern at the lack of notification and to urge that an investigation take place. Subsequently DET lodged a formal notification to the Commission and commenced an investigation into the matter.

Police searched Gardener E’s home without finding the photographs. Gardener E admitted having once had the photographs, but said that he had found them in the street. He denied telling the service club manager that they were of a student.

The police search did locate a photograph of a female student on school grounds. The student was clothed. The head gardener later corroborated Gardener E’s claim that the photograph was accidentally taken by the head gardener when he was photographing garden beds.

The search also found two videotapes of children playing sport. These videos turned out to be submissions to the school by the parents of children wishing to join a specialist sporting programme. Gardener E stated that he found the videos in a rubbish bin at school. The school principal confirmed that the videos had been disposed of (in an unknown manner) once they were no longer required.

Police advised that there was insufficient evidence to charge Gardener E.

Although he was aware of the police investigation in June 2005, the principal did not immediately notify DET's Complaints Management Unit (CMU) of the issue. In his email to CMU he said "...*No complaint has ever been lodged at this school as far as I am aware and I was left with the impression from the police that there was nothing from their end... since [26 July 2005] I have heard nothing... Had there been any suspicion of concern or had a complaint been lodged this school would have followed due process and contacted CMU immediately...*"

DET did not officially notify the Commission of the matter until 6 October 2005, albeit that there was some correspondence about the incident prior to that time. An email dated 24 August 2005 from DET's Complaints Management Unit (CMU) to the Commission offers some explanation. DET explained that its lack of notification was because "...*the School were not informed of the specifics of the complaint lodged with the police and in addition, that the Police did not as is their usual process – inform the Complaints Management Unit of the complaint... Given the lack of details the Principal did not form any suspicion of wrong doing therefore did not report the matter to CMU...*"

A consultant was appointed by DET on 1 November 2005 to investigate these more recent allegations against Gardener E. Her report dated 26 November 2005 notes that Gardener E has "...*some intellectual disability...*" and was described by his sister-in-law as "...*a bit of a magpie...*" as a possible explanation as to why he had the items in question in his possession.

Gardener E's explanation to the investigator of how he found the photographs differed to what he told police. He said that he found the nude photographs in a disposal bin at school and had taken them because he didn't want the students to find them. He said he'd had them for a day or two at least before he showed them to a couple of people, and that when he gave them to these people he asked them to get rid of the photos.

On 6 January 2006, DET advised the Commission that Gardener E was found not to have committed a breach of discipline and the matter was finalised. Gardener E retired on 26 January 2006.

2.5.1 Comments

The Commission's overriding concern about this matter is DET's unwillingness to address the problem of inappropriate behaviour from the outset. Both the principal and the Complaints Management Unit relied on the decision of police not to prosecute, instead of considering risks posed to students to determine what action to

take. The original issue of inappropriate behaviour towards children was never addressed, because DET concentrated on performance management instead.

The Commission has no doubt that DET believes that its approach to the incidents involving Gardener E are consistent with its interpretation of the law and its human resource management responsibility to Gardener E – that much is evident from the decisions taken on the analysis provided by the investigators.

However, this response was inadequate. At no stage did the CMU connect these incidents and explore possible risks to the student population. Its decision not to take action in circumstances where, on the evidence, Gardener E removed nude photos from a school bin, showed them to someone else and claimed that they were of a student is a concern to the Commission.

DET's correspondence to the parents of the primary school student was misleading. Contrary to the message contained in the letter, DET had not taken any action in relation to what is alleged to have occurred with their son.

2.5.2 DET's Submission

In its response to the Commission's draft report, DET made the following points:

- *“...it is important for the Commission to note that the Department’s former employee, Gardener [E] has a noticeably diminished capacity to understand societal norms and expectations, to follow instructions and to recognise the potential seriousness of situations, including the consequences of not following work instructions...”*
- DET acknowledges that it advised the Commission it would conduct a disciplinary investigation into the allegation that Gardener E had disobeyed a lawful directive.
- The investigator for the poor performance investigation was appointed two months prior to the disciplinary related incident.
- *“...[the department] is rigorous in maintaining the distinction between the unsatisfactory performance process and disciplinary processes...”*
- *“...[the department] intended to address the misconduct allegations...However, in the intervening period the investigator...submitted her [unsatisfactory performance] report...As he had determined to transfer Gardener E to a new school into a position in which he could be supervised at all times as a consequence of his consideration of this...report...the [department] exercised [its] discretionary power not to progress the disciplinary matter.*
- DET *“...acknowledges that the parent complaint ought to then have been addressed through a procedurally fair local complaints management process...”*
- *“...It is important to note that once the transfer was effected, no further complaints of this nature arose at his new school up until the time that Gardener [E] retired...”*
- Prior to receipt of the draft report DET was unaware that the Commission had any problem with this matter.

- It is not correct for the Commission to state that the principal and the CMU relied on the police decision not to prosecute prior to deciding what action to take.
- *“...The principal stated that he did not realise that given that police found no evidence to support the allegation he was required to report the contact by police to the CMU...”*
- No impropriety was found in the first parent complaint.

2.5.3 The Commission’s response to DET’s Submission

The Commission’s opinion about DET’s response is as follows:

- In relation to the argument that DET was not aware that the Commission had concerns regarding this matter, the Commission met with DET in September 2005 to request both an official notification of the matter and that an investigation be carried out.
- DET’s performance management investigation was not a valid basis to decide not to investigate the alleged misconduct issue, notwithstanding that Gardener E was to be transferred.
- DET’s assertion that no impropriety was found in the first parent complaint is difficult to sustain as no investigation was carried out.
- The submission offers confused information about the principal’s obligation to notify the CMU. It is unsatisfactory that the principal was unaware of DET’s policy, and also of concern that DET adds *“...given that police found no evidence to support the allegation...”* Notification to the CMU is neither contingent upon, nor secondary to notification to police. It should occur simultaneously to ensure the CMU undertake its disciplinary responsibilities as well as discharge its reporting obligations to the Commission.
- DET also states that once Gardener E was transferred to another school where he could be supervised, there were no further allegations of misconduct. There was however the matter of the complaint from a member of the public, following his transfer, alleging that Gardener E had showed him photographs of a nude girl whom he claimed was a student at the High School.

2.6 General Observations About the Case Studies

The case studies cover a number of aspects of DET’s response to the allegations discussed and are not isolated examples of DET’s handling of sexual contact matters. As the case studies demonstrate, DET’s handling of these matters has been a problem over a number of years and has drawn criticism from other oversight bodies. There has been no significant change in DET’s approach to such matters despite internal structural changes to centralise complaint handling and reporting. Chapter Three addresses these shortcomings in further detail.

The Commission has not undertaken any empirical analysis of DET, and cannot estimate to what extent there is a lack of reporting of sexual contact matters. Therefore, it is not in a position to comment with authority about the extent of sexual misconduct within DET. The five case studies in this report were selected from the 12% of all DET matters reported to the Commission that related to alleged sexual contact.

However, the case studies illustrate problems in the way DET handles sexual contact allegations. These problems appear to exist both locally with managers of schools and at the Complaints Management Unit.

CHAPTER THREE – WHAT NEEDS TO BE DONE

In considering solutions to the issues raised in the case studies the Commission has considered:

- findings of the Wood Royal Commission;
- relevant DET policy;
- relevant legislation;
- DET's willingness to act; and
- role of police.

3.1 The 1997 Wood Royal Commission

DET's inadequate response to sexual misconduct allegations has similarities to the problems identified by the Wood Royal Commission in 1997 in the New South Wales Department of School Education.

Of the New South Wales experience, Justice Wood found that “*...by reasons of inadequacies of their procedures, and lack of co-operation or joint focus, paedophiles have very often been protected from investigation and prosecution...*” He stated that the agencies investigated by the Royal Commission shared similar beliefs:

- *“...A disbelieving and disparaging attitude towards complainants, particularly those in vulnerable positions;*
- *a disinclination to accept that any of its officers would engage in wrongful conduct;*
- *a concern as to the possible scandal arising from the police or an external agency being brought in to investigate the matter;*
- *a belief that it was better to ‘fix’ the problem from within; and on occasions*
- *a readiness to penalise an officer or employee who reported possible misconduct by a fellow worker...”*

(Wood Royal Commission Report. 8.3-Vol 4, p. 237)

In order to address the problem he observed that:

“...As the DSE [Department of School Education - NSW] and non-government school systems together employ the largest number of employees in the State with direct supervision and care of children on a daily basis, it is imperative that there be a proper system for screening out those teachers who pose an unacceptable risk, and for the prompt and thorough investigation of any complaints of sexual abuse...”

(Wood Royal Commission Report. 10.160-Vol 4, p.363)

Justice Wood went on to observe that in order to deal effectively with sexual misconduct allegations a complaint handling system in an education setting should have appropriately qualified and experienced staff to handle complaints. Further, that sexual misconduct – physical or verbal – must be reported to a central body whose

dual role is both to record information for risk analysis and intelligence purposes and to investigate and resolve complaints.

The Commission shares this view in the Western Australian context. Local and District managers should shoulder the major responsibility for the day-to-day behaviour of staff. They should be well supported by sound policies and procedures. However, local and District managers should not be expected to deal with the complexity of alleged or suspected sexual contact. The problems associated with local and District managers dealing with sexual contact issues are illustrated by the following examples:

- In Case Study Two, local managers allowed the teacher to go on an overseas excursion, despite a history of complaints and identified behaviour. In the face of inappropriate behaviour on the excursion they took no action. Upon identifying problematic behaviour back in Australia they acted against the child.
- In Case Study Four, the principal and deputy principal actively assisted the teacher to resign, thereby avoiding a disciplinary investigation, and took no substantive action to protect the child.
- In Case Study Five, the high school principal took no action, despite his knowledge that a police investigation was underway.

The role of managing sexual misconduct allegations is more properly assigned to a central body with sufficient expertise and capacity to deal with such matters in an objective and well informed way. DET recently completed a comprehensive review of its Complaints Management Unit. The Review Committee, comprised of a range of stakeholders, also identified problems in the way in which DET handles complaints. This review resulted in a report containing a series of recommendations to rectify these problems.

Therefore, it is timely to ensure that the changes that stem from the review take account of the risks to the agency from sexual contact. Adopting a robust approach capable of identifying high-risk behaviour and circumstances is imperative if DET wishes to satisfy its stated safe and secure learning environment policy.

3.1.1 Recommendation One

In relation to roles and responsibilities within DET for dealing with sexual contact allegations, the Commission recommends that:

- a. all responsibility for dealing with suspected or alleged sexual contact be removed from local and district managers and transferred to the Complaints Management Unit;
- b. as part of the process of change arising from the review of the Complaints Management Unit, DET employ within the Complaints Management Unit appropriately qualified and experienced staff to deal with sexual contact allegations; and

- c. DET enter into a process of planned and continuous improvement of its policies and procedures aimed at giving effect to its stated safe and secure learning environment policy. This process should be squarely aimed at building a robust system capable of identifying high-risk behaviour and circumstances.

3.2 Departmental Policy

DET has a number of policies and procedures in place to aid managers to deal with sexual misconduct. These include:

- the circumstances under which police, parents, the Complaints Management Unit and the Department for Community Development must be notified;
- codes of conduct;
- management of off-site activities; and
- procedures for dealing with complaints.

DET's current policies have developed over time from policies that have recognised the right of children to be protected, and the responsibility of all staff to ensure that protection. Since 1994, this has included detailed policy for notifying external agency stakeholders, and comprehensive instructions for actions relevant to managerial level.

In relation to these policies, the Commission notes the following:

- In Case Study Two, neither the police nor DCD were notified of the initial incident in 2000. CMU claim that they notified the Australian Federal Police following the 2004 complaint, but DET, AFP and WA Police records do not support this.
- In Case Study Two, the teacher's supervisors took no substantive action in accordance with policy to deal with sexual assault allegations made against the teacher over a long time. No action was taken to deal with contact between student and teacher on the 2003 excursion until a complaint was lodged twelve months later – despite that contact being witnessed by other teachers.
- In Case Study Three, some six-and-a-half years after initial allegations were received, no substantive effort has been made to assess the risk of the teacher sexually assaulting children.
- In Case Study Four, DCD was not notified and it is not clear whether police were notified.
- In Case Study Four, no effort was made to treat the teacher's conduct as sexual assault.
- In Case Study Five, the principal did not notify the CMU despite his knowledge that police were investigating the matter.

3.2.1 Excursions: Off School Site Activities

Until 2005, there was not a specific policy in relation to child protection during off-site activities. However DET's policy has since 1994 consistently stated the responsibilities of staff and managers to act on sexual misconduct allegations.

In 2005 a specific policy was issued in relation to off-site activities:

“...Principals are responsible for ensuring that the management plan for an excursion addresses the risk factors that may exist for both students and supervisors...”

(2005, Section 1.4)

“...For overnight and extended excursions, supervisory and accommodation arrangements are to be such that supervisors are not placed in a position where there is potential for allegations of improper conduct. In particular, sleeping and ablution arrangement must not place any supervisor in situations where the propriety of their behaviour could be questioned...”

(2005, Section 4.2)

“...International travel has the following additional requirements:

- *The principals of the schools attended by participating students must:*
 - *Be satisfied that the plan appropriately addresses safety standards and duty of care responsibilities before forwarding the information to parents/guardians*
 - *Be satisfied that the teacher-in-charge has the appropriate skills and experience to organise the excursion and provide for the management of events that may arise during the excursion...”*

(2005, Section 4.9.1)

In relation to these policies the Commission notes that in Case Study Two, despite the obvious risks associated with this teacher (in particular that he had been found to have acted inappropriately towards another girl on a similar excursion) the principal allowed him to go on the excursion. The excursion manager and other staff took no action when they witnessed improper conduct.

3.2.2 Disputes and Complaints Policy and Procedures

The Disputes and Complaints Policy and Procedures states the following:

“...The following principles apply to the management of all complaints:

- *Complaints are monitored and their management evaluated so as to reduce the occurrence of systemic and recurring problems*
In all matters, the educational well being of students is the first priority...”

(2005, Section 2.2)

In relation to this policy the Commission notes the following:

- In Case Study Three no action has been taken to deal with a number of allegations stretching back over many years.
- In Case Study Five the potential problems identified in the first two matters were not even addressed. That a recurring problem might exist after the gardener's transfer to a high school was never considered.

3.2.3 Code of Conduct

Prior to 2005, when the current Code of Conduct was introduced, the Commission notes that the expected behaviours and responsibilities of school staff are evident in the policy of the day. For example:

“...Employees are in a position of special trust and authority with respect to children. It is unacceptable and illegal for an employee to have any form of sexual contact with a student...”

(1994, p.1)

“...Everyone working in a school is responsible for the care and protection of the students... The community expects schools to provide a safe, secure and pleasant environment for learning. The community also expects principals of schools to take every available course of action to ensure that students are protected from abuse and neglect...Department of Education staff are in a position of special trust with respect to the students in their care...It is unacceptable and illegal for staff to have any form of sexual contact with a student...”

(2002, Section 2.1)

DET's current *Code of Conduct* is based upon core values that staff must adhere to:

- *learning, where a positive approach to learning is taken for ourselves and others;*
- *excellence, reflecting high expectations for students and ourselves;*
- *equity, where the different circumstances and needs of others are recognised; and*
- *care, fostering a relationship based on trust, mutual respect and acceptance of responsibility...”*

(2005, Section 2.3.1)

The Department's Code of Conduct refers to the Western Australian Public Sector Code of Ethics to define responsible care as:

“...protecting and managing with care the human, natural and financial resources of the State...decisions and actions do not harm the short and long-term well-being of people and resources.”

(2005, Section 2.3.3)

To comply with this, the WA Public Sector Code of Ethics ascribes: “*minimise risk and harm*” and “*co-operate to achieve what is best for the community*”

(2005, Section 2.3.3).

Based on these principles, DET's Code of Conduct states:

"Duty of care is a duty imposed by the law to take care to minimise the risk of harm to another. Under common and statute law, employers and employees have an obligation and duty of care to maintain safe working environments, which includes minimising the risk of physical, mental and emotional harm."
(2005, Section 3.3)

In relation to these policies, the Commission notes the following:

- In Case Study One the decision to retain the teacher is heavily reliant on DET's duty of care towards him. It does not appear to reflect the idea that the duty of care owed to students outweighs the duty of care owed to staff. Neither does it appear to take into account the need to foster relationships based on trust, mutual respect and acceptance of responsibility. Nor does it appear to reflect any obligations to maintain safe working environments, in which risks to physical, mental and emotional harm are minimised.
- In Case Study Two it is difficult to see how any of the teacher's supervisors, could be said to have been guided by social responsibilities owed to the student or her parents.
- In Case Study Three DET's inaction over six-and-a-half years does not appear to be consistent with its values that reflect social responsibilities.
- In Case Study Four it would appear that maintaining the reputations of the school and teacher were given much greater weight than duty of care issues, or fostering relationships based on trust, mutual respect and acceptance of responsibility.
- In Case Study Five the duty of care towards children was overlooked in DET's decision to investigate performance issues rather than the allegations of inappropriate behaviour and disobeying a lawful instruction.

This problem needs to be tackled head-on in conjunction with recommendation 1(c). This requires DET continuously improve policies and procedures to ensure that it is able to comply with its stated safe and secure learning environment policy. There would appear to be a number of aspects to the problem:

- the relevance, accessibility and coverage of existing policies;
- knowledge of policies within DET;
- lack of action taken by DET when identifiable non-compliance with policies occurs; and
- compliance with policy and the Code of Conduct is not routinely considered when internal investigation files are compiled.

3.2.4 Recommendation Two

In relation to DET policy on sexual contact allegations, the Commission recommends that DET:

- a. develop an ongoing training programme to ensure that policies and procedures relating to sexual contact are well known and understood by DET staff;

- b. develop procedures to ensure that non-compliance with policies and procedures is identified and dealt with by way of management and/or disciplinary actions; and
- c. ensure that all internal investigation reports address compliance and/or non-compliance with relevant policies.

3.3 Western Australian College of Teaching Act 2004

This legislation was enacted on 15 September 2004, in part to administer the registration of teachers. It requires that by 15 March 2006 all teachers currently working in both the private and public sector be registered to be employed in education. Non-registered teachers are unable to be employed to teach. There are financial penalties for schools that employ unregistered teachers.

The Western Australian College of Teaching is governed by a board that includes representatives of universities; schools; relevant unions; the WA Council of State School Organisations (Inc); the Catholic Education Commission of WA; and the Parents and Friend's Association of WA. DET's Executive Director of Human Resources is its representative on the board.

Pursuant to section 35, the requirements for registration include:

*“...**(b) has not been convicted of an offence the nature of which render the person unfit to be a teacher...**”*

Section 55 requires that:

*“...**The College is to cancel the membership [that is, registration] of a person as soon as possible after the College becomes aware that the person has been convicted or found guilty of a sexual offence involving a child...**”*

Sexual offences includes all sexual offences under the *Criminal Code* and the *Prostitution Act 2000*. Pursuant to section 31, DET is prevented from employing people to teach in schools unless that person is a registered teacher.

The Act requires that the college be notified of all suspensions and dismissals of teachers due to incompetence or serious misconduct, civil legal actions and convictions of statutory offences when the penalty is, or includes, imprisonment. Notification is required by the DPP; the Commissioner of Police; the employer and the member of the college. There are financial penalties for non-compliance.

Upon notification of any of the above, the college must consider whether to cancel the registration of the person, or to hold an inquiry.

Disciplinary action may also be taken by the college against any teacher who is found by an inquiry conducted by the college to have behaved unprofessionally. This includes conviction of an offence which renders the person unfit to be a teacher; incompetence; engaging in serious misconduct or contravention of the Act.

Unprofessional conduct includes language or behaviour that is profoundly offensive, indecent or improper.

In relation to this legislation, the Commission notes the following:

- In Case Study One the decision to transfer the teacher to a new teaching position is in direct contravention of the Act. DET cannot currently lawfully employ him to teach in Western Australia because his conviction in July 2005 renders him ineligible to be registered as a teacher.

The Commission is deeply concerned about this issue. As the employer of public school teachers in Western Australia, DET is a key stakeholder in the Western Australian College of Teaching. DET is also the screening body for conducting criminal record checks for teachers wishing to be registered. The WA College of Teaching registers teachers based upon advice from DET about teachers' criminal convictions.

In the Commission's view, DET ought to have policies and procedures in place to satisfy the intent of the legislation, as a matter of priority. This priority ought not to have been delayed because of the Act's phasing in provisions.

This Act does not guarantee that convicted child sex offenders will not be able to work with children in the Western Australian education system. Once registered, the Act relies upon self-reporting by registered teachers who become subject of civil action arising from their work, or are convicted of an offence for which the penalty includes imprisonment, and notification by police and the DPP when a teacher is charged or convicted. DET is not required to report to WACOT unless a teacher is dismissed or suspended for serious incompetence or serious misconduct, which includes criminal activity. There is no requirement to report teachers to WACOT who take leave or resign during disciplinary proceedings (as occurred in Case Study One, for example). The Commission believes that DET must take a proactive position in relation to ensuring that offenders are not able to "play" the system and remain in contact with children.

Moreover, reference to the relevant provisions of this Act ought to be a routine aspect of all internal investigation files and information provided to the Commission for review. After all, how can decisions be reasonably made about whether or not a teacher should be retained without reference to it?

3.3.1 Recommendation Three

In relation to its responsibilities under the *Western Australian College of Teaching Act 2004*, the Commission recommends that, as a matter of priority, DET review compliance with this Act. This review should include:

- a. the development of policies and procedures to ensure compliance with the *Western Australian College of Teaching Act 2004* and its intentions (for example, reference to the Act in all internal investigation reports);

- b. ensuring that such policies and procedures include informing WACOT of all matters that may be relevant to the registration of teachers, whether or not teachers have been suspended or dismissed;
- c. reviewing records of matters identified by the *Western Australian College of Teaching Act 2004*, with a view to advising the College about those teachers currently employed by DET, whose actions cast into doubt their suitability for registration; and
- d. reviewing records of matters identified by the *Western Australian College of Teaching Act 2004* with a view to advising the college about teachers who have left DET's employ because of conduct that casts into doubt their suitability for registration.

3.4 *Working with Children (Criminal Record Checking) Act 2004*

This legislation was proclaimed on 1 January 2006. Its purpose is to assist in the protection of children by preventing people who have been charged with, or convicted of serious criminal offences from working in areas involving children. The Act specifies two schedules of offences that prohibit people from working with children. These include sexual offences.

According to the website of the Department of Community Development which administers the Act, Working with Children checks differ from current national police checks in that “...juvenile criminal records, spent convictions and criminal charges that have not been finalised by a court or that did not result in a conviction can be assessed...” The check is valid for three years and is updated as required. “...It is compulsory, has set obligations and penalties for non-compliance...”

The checks will be phased in over five years. Teachers registered with the West Australian College of Teaching prior to 2007 must complete a Working with Children Check either upon renewal of their registration or by the end of 2010, whichever comes first. New teachers and other workers in educational institutions must complete a check from 1 January 2007.

Although teachers registered under the *Western Australian College of Teaching Act 2004* before 1 January 2007 do not have to apply for Working with Children checks until 2009, they are still bound by the Act. From 1 January 2006, any changes to an employee's criminal record must be notified to the employer even if it is prior to the relevant phasing-in date. Importantly, if the change involves either a Schedule 1 or 2 offence, the employee “...must cease child-related work immediately...”

Employers “...must not employ a person in child-related employment if [they] are aware that he or she has: a conviction or pending charge for a Class 1 or Class 2 offence...”

From 1 January 2007, DET will become one of the approved screening agencies for the Working with Children checks. The Commission is concerned about DET's suitability to undertake this role. The Commission's concern is based on the following factors:

- the case studies illustrate that DET has a poor history of dealing with allegations of sexual misconduct against children by its employees;
- DET has not apparently given practical effect to the *Western Australian College of Teaching Act 2004*;
- the case studies illustrate that DET does not appear to understand how to properly assess risks as they relate to the protection of children from sexual misconduct.

Having said that, the Commission believes that DET ought to be an approved screening agency. Indeed it is contrary to reason that the largest employer of people who work with children in Western Australia cannot apparently adequately screen the suitability of these employees. To that end urgent work is required within DET to ensure that its policies and procedures are adequate to enable it to adequately carry out this screening role.

3.4.1 Recommendation Four

In relation to its responsibilities under the *Working with Children (Criminal Record Checking) Act 2004*, the Commission recommends that prior to implementation of this Act on 1 January 2007, in conjunction with the Department of Community Development, DET review its policies and procedures to ensure that they comply with the Act and its intentions.

3.5 Willingness To Act

Whatever the policy and legal environment in which misconduct management decisions are made, critical to an effective system is the notion of organisational will to act. The will to act on misconduct is a function of a number of factors, including organisational cultural issues and demonstrable management commitment. In organisations where cultural factors tend to protect employees who engage in misconduct, clear and unequivocal commitment to dealing with misconduct from senior management is imperative.

This report neither purports to analyse in any detail the organisational culture of DET nor the commitment of senior management to act on misconduct. Nevertheless, on these issues, the Commission notes the following:

- In Case Study One the decision to place the teacher in question back in the classroom was made by the Executive Director of Human Resources.
- In Case Study Two the teacher was permitted to go on the overseas excursion despite previous allegations. No action was taken about his behaviour while on excursion, despite first hand knowledge of it by his supervisors. No action has been taken by DET senior management to sanction these supervisors.

- In Case Study Four the teacher's supervisors arranged with him to resign on palpably false grounds before the relevant disciplinary inquiry made any progress. DET has not undertaken any investigation into the actions taken by the staff who dealt with this matter.
- In Case Study Five the high school principal took no action in relation to the allegations of inappropriate behaviour, despite his knowledge that police were investigating the gardener's conduct. No action has been taken by DET senior management to correct the principal's omission.

These case studies are not consistent with the notion that senior management within DET is committed to dealing with inappropriate organisational cultural responses to sexual contact allegations. Action is required by the DET executive to demonstrate to employees and the wider community that they take seriously their responsibilities to both manage misconduct and give effect to DET's safe and secure learning environment policy.

The Commission acknowledges that DET has responded to its draft report by acting to address problems posed by individuals in Case Studies One, Three and Four. In these cases the immediate risk posed by individuals has been addressed to the extent that DET is able at this time. However, DET must also act to address the critical processes that occurred in each case which allowed these individuals to either continue in the classroom, or avoid being held accountable for their actions. For risk to be properly addressed beyond removing individuals, DET must demonstrate its willingness to take a strategic view of risk management.

Some form of ongoing review at the executive level of more serious misconduct cases, particularly sexual contact cases, needs to occur as a matter of routine procedure. Such executive review could usefully be implemented as part of the changes stemming from the review of the Complaints Management Unit.

3.5.1 Recommendation Five

In relation to managerial commitment to deal with misconduct, the Commission recommends that DET implement a system of review at executive level of serious misconduct cases, particularly sexual contact allegations, as part of the changes stemming from its review of the Complaints Management Unit.

3.6 Police Involvement

In cases of alleged or suspected sexual misconduct it is imperative that DET always notify police of the matter at the earliest possible stage. It is also imperative that DET co-operate fully with police by providing them with all the information available to it about an incident. DET must be able to demonstrate that they have fulfilled these obligations by keeping adequate records.

The Commission is confident that DET does seek to fulfil these imperatives, but notes the following:

- In Case Study Two although it is clear that DET intended to notify the AFP of the matter, it failed to do so, and failed to maintain contact with the AFP to inform itself of whether a criminal investigation was in progress and ensure that its own investigation did not impact upon any criminal investigation.
- In Case Study Two when dismissing the teacher for a serious breach of discipline, DET did not contact the AFP to inform itself whether the teacher was to be charged.
- In Case Study Four it is not certain that police were notified of the matter.

Notifying police of possible criminality is not the end of DET's obligations. Police investigations have a different function to departmental inquiries. Police principally concern themselves with criminality. Further, they are required to make decisions on whether to proceed with cases on the basis of their prosecution policy. Work load considerations, the difficulty of obtaining evidence from children, lack of corroborating evidence and lack of witnesses all play their part in determining what is and is not investigated, and what is and is not prosecuted. Police do not base their investigating and prosecuting decisions on DET risk factors.

These factors mean that DET cannot reasonably rely on police decisions to determine their own risk assessments and whether or not they should conduct their own investigations. DET should work collaboratively with police in order to fully inform itself of the basis for police decisions, as this information may be useful for its own risk assessment functions.

3.6.1 Recommendation Six

In relation to the involvement of police in sexual contact allegations, the Commission recommends that DET review its approach to matters involving alleged sexual contact by:

- a. ensuring that all relevant matters are notified to police with comprehensive information;
- b. ensuring that sufficient documentation is maintained to demonstrate notification and interaction with police; and
- c. developing appropriate policies and procedures to ensure co-operation with police, and to ensure that internal decision-making about investigating allegations is made on the basis of departmental risk assessment, as distinct from police prosecuting decisions.

3.7 DET's General Submissions

In its response to the Commission's draft report, aside from its case specific comments, DET made the following general points:

- *“...The Department is of the view that the processes employed were appropriate and that the Commission’s criticisms largely arise from factual misunderstandings...”*

- “...Some of the case studies referred to in the Draft Report arose some six years ago and the Department is confident that processes have been implemented since those times which address the Commission’s concerns...”
- “...any resulting Report regarding the Department’s management of disciplinary matters should be confined to concerns that have arisen since the creation of the CMU in February 2002...”
- “...of the remaining four finalised matters none of the respondents are still employed by the Department;
 - two employees had their employment ceased as a **direct** result of Department processes [Case Study Four and Two]
 - one employee had his employment ceased as an **indirect** result of Department processes (Case StudyOne)
 - one employee retired having been found not to have breached discipline or, any State law [Case Study Five] ...”
- “...These case studies as they relate to matters arising since February 2002 do not indicate systemic problems...Rather, the problems that have arisen are isolated instances of human error with no commonality of occurrence...”
- “...the Department conducts its disciplinary processes in the knowledge that [DCD] ... has statutory responsibility for assessing complaints of suspected child abuse and providing support and protective services where appropriate, and also, that the police are required through Routine Orders to ensure that DCD are informed of any relevant matters...”

3.7.1 The Commission’s Response to DET General Submission

The Commission’s opinion about DET’s response is as follows:

- The Commission notes that DET offers contradictory explanations for the issues raised in the five case studies. DET states that the processes employed were appropriate and the Commission’s perspective is due to factual misunderstandings, whilst also stating the human error has caused the issues that concern the Commission, and that processes implemented in the last six years have resolved any of the historical matters raised. The Commission’s experience is that no matter what the cause of the issues that have arisen, the reluctance of DET to act has been common in these case studies.
- The Commission’s concerns in each of the cases relate to decisions and actions that have been made since the CMU’s inception in 2002. Some of those decisions are about events that occurred prior to its inception. DET has chosen to focus its response on the case studies, overlooking the strategic concerns that these cases illustrate.
- The Commission notes the contradictions in DET’s summing up of its actions in relation to the five case studies since receiving the draft report. DET states that aside from Case Study Five, the remaining four individuals are no longer employed by DET. The Commission acknowledges that in Case Study Two DET dismissed Teacher B. However,
 - Although DET’s submission argues that the principal and deputy principal in case Study Four did not encourage Teacher D to resign in their meeting because he had already handed in his notice, DET also

- argues that Teacher D's employment ceased as a direct result of its processes.
- DET appears to be taking credit for Teacher A's employment ceasing as an indirect result of its processes, when in effect, Teacher A's employment only ceased because the Commission's draft report prompted DET to report his conviction to WACOT.
- DET also states that in Case Study Five, Gardener E retired after being found not to have breached discipline or a statutory law. The Commission notes that there was no investigation into whether or not Gardener E had breached discipline.
- The Commission acknowledges that it is important for DET to work with both the DCD and police when allegations are made of sexual contact with children by employees. However the Commission is mindful that DET alone is responsible for the management and risk assessment of its employees.

3.8 Conclusions

As one of the largest public sector employers in Western Australia and with daily responsibility for the safety and security of over a quarter of a million school children, DET has onerous responsibilities to effectively identify and deal with misconduct. DET has a body of relevant policies and procedures to deal with the responsibility.

Perhaps the most significant misconduct risks faced by DET is misconduct stemming from the power imbalance between teachers and students. This gives rise to such problems as inappropriate relationships between teachers and students, bullying, harassment and sexual contact.

This report explored DET's capacity to manage this misconduct risk by examining the way it handled five cases over the past few years in the light of its stated safe and secure learning environment policy.

In the Commission's opinion the case studies indicate that at the present time DET does not adequately manage sexual contact cases. On the evidence of the case studies it appears to the Commission that the following problems exist in DET's approach:

1. greater weight appears to have been given to employee welfare than to the safety and security of children policy;
2. too much responsibility for dealing with sexual contact allegations being assumed by local and district managers;
3. insufficient attention being paid to identifying and managing risks;
4. non-adherence to policies and procedures;
5. failure to give practical effect to the *Western Australian College of Teaching Act 2004*;
6. senior managers not holding local and district managers to account for their decisions;
7. insufficient attention to ensuring that police are notified and consulted; and
8. poor record-keeping.

In all of these circumstances, the Commission concludes that there are grounds for concern about DET's capacity to ensure that learning environments are safe and secure for school children, insofar as sexual contact by DET staff is concerned. As demonstrated by the Wood Royal Commission in New South Wales a decade ago, such a deficiency leads to an ideal environment in which those who choose to sexually abuse children are likely to thrive.

APPENDIX

Attached is the full response of the DET (edited only for anonymity) to the draft report submitted by the Commission to the DET. The Commission has summarised the main points of DET's response to the report in general and to each case study, and responded to these points where the comments were not covered by the initial case study or commentary.

It should be noted that following DET's response, the Commission removed Case Study Three from its report, and has changed the order in which the cases are reported. The case studies in this final report have been renumbered accordingly, and staff identification codes reflect this new positioning.

Therefore DET's response to Case Study Three is no longer applicable. The referencing has changed as follows:

- Case One – Teacher A (unchanged)
- Case Two – Teacher B (formerly Case Five Teacher D)
- Case Three – Teacher C (formerly Case Six Teacher E)
- Case Four – Teacher D (formerly Case Four Teacher C)
- Case Five – Gardener E (formerly Case Two Gardener B)

Two recommendations have been removed from the report following DET's action since receiving the draft report. Recommendation Six (a) which recommended that DET executive review the case studies cited in the report and take appropriate action to rectify the identified problems, has been removed because DET has taken action in the cases presented. As a result of DET's action in relation to Teacher A, the Commission has removed Recommendation Four and renumbered recommendations Five to Seven accordingly.

01914/2006



Department of Education and Training
Government of Western Australia

Your ref:

Our ref: D006/193313

Enquiries:

PRIVATE AND CONFIDENTIAL

Mr Kevin Hammond
Commissioner
Corruption and Crime Commission
PO Box 7667
Cloisters Square
PERTH WA 6850



Dear Commissioner Hammond

**SEXUAL CONTACT WITH CHILDREN BY PERSONS IN AUTHORITY IN THE
DEPARTMENT OF EDUCATION AND TRAINING, WESTERN AUSTRALIA**

Thank you for the opportunity for comment on the draft report regarding the above matter.

Because of the significant implications associated with a report of this nature, it is incumbent upon me to provide a comprehensive response to all adverse matters raised by the Commission with respect to its capacity to manage effectively, issues pertaining to this highly sensitive area of operation.

Given that the draft report contains adverse comment about the Department, legal advice from the State Solicitor's Office has been sought in preparing the Department's response.

Whilst I acknowledge the authority of the Commission to raise such matters with the Department, I am of the view that the Department's response to the issues identified will allay any concerns the Commission has with respect to perceived systemic issues and its capacity to manage sensitive matters of a sexual nature involving children and Department employees. It appears that the Commission formed a view on matters without all the relevant facts associated with the identified cases. As such, it is my view that there is nothing in the draft report to sustain a position that warrants the matters being reported to Parliament. The Department is committed to a process of continuous improvement to ensure the welfare and safety of children is not at risk.

I would be pleased to discuss any matters associated with the Department's response to the draft report should the Commission deem it necessary.

Yours sincerely

PAUL ALBERT
DIRECTOR GENERAL

Att.

- 7 AUG 2006

Corruption and Crime Commission	Obj Ref
Commissioner	<input type="checkbox"/>
Exec. Director	<input checked="" type="checkbox"/>
General Counsel	<input type="checkbox"/>
Director	<input type="checkbox"/>
Manager - JRCIA	<input checked="" type="checkbox"/>
Case Officer	<input type="checkbox"/>
Other	<input type="checkbox"/>

CCC 31436

DEPARTMENT RESPONSE TO THE CORRUPTION AND CRIME COMMISSION DRAFT REPORT ENTITLED:

Sexual Contact with Children by Persons in Authority in the Department of Education and Training.

Introduction

I refer to the Draft Report compiled by the Corruption and Crime Commission ("the Commission"), *Sexual Contact with Children by Persons in Authority in the Department of Education and Training* ("the Draft Report"). The Draft Report addresses concerns by the Commission in respect of the response of the Director General of the Department of Education and Training ("the Director General") into instances of alleged sexual contact by employees towards children.

The Draft Report fulfils an obligation of the Commission to inform Parliament if it forms a view, on reasonable grounds, that an agency is acting contrary to law with respect to the management of disciplinary matters and/or if there appears to be systemic decisions in the way such matters are managed.

In the Draft Report the Commission has cited six case studies which the Commission believes 'highlight a commonality of weaknesses in DOET's approach' in ensuring the welfare and security of children.

The Draft Report was forwarded to the Director General for comment on the 30 June 2006

On considering the cases referred to in the Draft Report, the Department is of the view that the processes employed were appropriate and that the Commission's criticisms largely arise from factual misunderstandings. The Department proposes to respond to each case and, at various points, provide clarification and further relevant information. For ease of reference, the Department has extracted and highlighted in bold the particular paragraphs in the Draft Report about which it seeks to provide comment.

The Department is confident that this response to the Draft Report will serve to allay many of the Commission's concerns.

RECENT CHANGES IN THE DISCIPLINARY PROCESS

At the outset, the Department would like to clarify recent changes in the disciplinary process. Some of the case studies referred to in the Draft Report arose some six years ago and the Department is confident that processes have been implemented since those times which address the Commission's concerns.

In February 2002, the current Director General established the Complaints Management Unit ("CMU") and sought to centralise the management of the disciplinary process. One of the principal functions of the CMU was to assist the Director General in implementing a fair, lawful and just disciplinary process.

The creation of the CMU represented a pro-active response by the Director-General, some two months after his initial appointment, to adverse comment from external monitoring agencies regarding complaints management received by the Department between late 1999 and late 2001. This included the Special Inquiry conducted in late 1999 by the Office of the Public Sector Standards Commissioner to which the Commission refers to in the Draft Report.

It is the Department's view that since CMU was created, there has been a tangible improvement in the conduct of disciplinary processes within the Department. This conduct is measurable in that the Department now maintains a 0.002% 'failure' rate in the WA Industrial Relations Commission with respect to all initiated disciplinary processes. This suggests that the Department's strict compliance with the Discipline Public Sector Standard and the statutory regime has ensured that employees have not been able to avoid sanctions, where imposed, on the basis of proving the Department's disciplinary processes to be procedurally unsound or flawed.

The fact that the Department has such an exemplary record in this regard serves to reinforce its commitment with respect to assisting the Commission to achieve its Objects by ensuring that proven incidents of misconduct, as defined in section 4 of the *Corruption and Crime Commission Act 2003*, are addressed in such a way so as to minimise the chances of successful appeal.

In the event that the Commission elects to proceed with its stated intention to present the Draft Report to Parliament, it is the Department's view that any resulting Report regarding the Department's management of disciplinary matters should be confined to concerns that have arisen since the creation of the CMU in February 2002.

Clearly the current Director General had no control over cases, practices and events that occurred prior to his appointment. By way of further illustration of this point it would also be procedurally unfair, in the view of the Department for the Parliament to hold the current Commissioner of the Corruption and Crime Commission accountable for the perceived failings of the Anti-Corruption Commission.

CASE STUDY ONE

'At the property Teacher A placed his hands under the girl's shirt and rubbed her abdomen. The girl objected but he kissed her on the mouth, using his tongue, before the girl retreated. Police told the Commission that Teacher A said that he was "testing the waters" with the girl and would have "gone all the way" if the girl had not resisted. Teacher A pleaded guilty to the charges and was fined \$1000 on both counts.'

The Department was not aware of the information provided by the Police to the Commission prior to the finalisation of the disciplinary process.

I also note that the Commission did not provide the Department with this information when the matter was referred to the Department pursuant to sections 33 and 37(3) of the *Corruption and Crime Commission Act 2003 (WA)*.

'The Commission's overriding concern about this matter is DOET's unwillingness to properly assess the risks to students posed by Teacher A and act decisively to minimise or eliminate those risks.'

The Executive Director, Human Resources did exercise proper consideration of the risks posed by Teacher A to students. Department records demonstrate that the Executive Director, Human Resources carefully considered all aspects of the Court transcript and the leniency of the Court imposed sentence, amongst several other factors.

The Executive Director, Human Resources gave due weight to the following factors:

- despite prosecuting counsel's submissions to the contrary, Wisbey DCJ did not regard Teacher A as a danger to children in the community stating:
'it is unlikely in my view, having regard to the information before me, that it is extremely unlikely that you will offend again. Certainly you have not offended in this or in any other significant matter during your adult life'.
- Teacher A was not listed as a sex offender, or made the subject of any community supervision order;
- psychological reports referred to be Wisbey DCJ indicated that Teacher A was a low risk of re-offending;
- a term of imprisonment was not considered appropriate;
- Teacher A had no previous convictions of this sort;
- in his 9½ years of his employment with the Department, Teacher A had not been the subject of any disciplinary process in relation to a complaint of this nature, or for that matter, been the subject of any prior disciplinary process. Therefore there was nothing in his past employment history that would give rise to any concerns that were unknown to the sentencing judge; and

'DOET's response to the Commission's recommendation places great weight on the magistrate's decision. This is inappropriate for two reasons. Firstly, the response appears to overlook an important consideration taken into account by the magistrate. That is, the detailed submission made by Teacher A's counsel at trial that as a result of his conviction Teacher A could no longer practise in the teaching profession.'

The Department decision gave due weight to the Judge's decision. It did not 'overlook' the assumption of Teacher A's counsel that he made mention, almost as an aside, that he could no longer practice in the teaching profession. The Department noted that, notwithstanding the submissions of defence counsel and prosecuting counsel, that the judge expressly imposed his sentence upon Teacher A on the basis of the facts surrounding the incidents. The judge states, *'It is on those facts that you're to be sentenced'*, with reference to the actual conduct of Teacher A as identified in each count in the indictment.

'Secondly, it is DOET's responsibility, not the magistrate's, to determine the risks associated with retaining Teacher A as a teacher. Indeed, more important than the magistrate's comments are DOET's own safe and secure learning environment policy and the views of the wider community. On this second issue the community, through Parliament, has already expressed a view.'

The Department acknowledges that it is responsible for determining the risks associated with retaining Teacher A as a teacher. As indicated above, the Executive Director, Human Resources carefully brought his own mind to bear on considering the risk posed by Teacher A to students. As part of this consideration process it was entirely reasonable for him to consider the Court transcript and the leniency of the Court imposed sentence, amongst other factors.

In light of the specific factors described above and also, in the knowledge that the appropriate line managers had been notified of the circumstances and outcome of Department deliberations on this matter the Department is of the view that the risks to children presented by Teacher A were properly assessed at the time.

It is important for the Commission to note that State Solicitors Office advice is that the decision of the Executive Director, Human Resources in respect of Teacher A did not proceed on the basis of any erroneous finding of fact, nor was it outside the range of the reasonable exercise of discretion conferred upon him in determining the disposition permitted under section 92 of the PSMA.

'The WA College of Teaching Act 2004 was enacted on 15 September 2004. It requires current teachers to be registered. Under this legislation, Teacher A's conviction renders him ineligible to be registered as a teacher in Western Australia. There is no record of DOET advising the WA College of Teaching of this teacher's conviction, as it compelled to do under legislation. DOET's Executive Director of Human Resources is a member of the Board of the WA College of Teaching. He made the decision to reprimand and transfer Teacher A to a new teaching position. There is no record indicating that this legislation was considered when the Executive Director made this decision.'

The employer's reporting requirements are provided under section 50 of the *Western Australian College of Teaching Act 2004* (WACOT Act). Section 50(1) requires the Department to notify the College of a teacher who has been suspended or dismissed from teaching at a school. Teacher A was not suspended or dismissed from teaching at a school.

There is no requirement in the WACOT Act for the employer to inform WACOT of an employee's conviction where the conviction has not led to dismissal or suspension from duties.

Reporting convictions and charges is provided for under section 49 of the WACOT Act which states as follows:

'The Director of Public Prosecutions, or where the matter is conducted by a police prosecutor, the Commissioner of Police, is, where practicable, to give written notice to the College if he or she becomes aware that any of the following situations exist or believes, on reasonable grounds, that any of the following situations exist –

- (a) a teacher is charged with, or committed for trial or sentence before any court for, an offence described in Schedule 2;*
- (b) a teacher is convicted or found guilty of an indictable offence in this State;*
- (c) in the case of a charge referred to in paragraph (a), the charge is withdrawn or does not result in a committal for trial or sentence, or there is an acquittal, mistrial or presentation of *nolle prosequi* to a court;*
- (d) in the case of a committal referred to in paragraph (a), there is an acquittal, mistrial or presentation of *nolle prosequi* to a court.'*

Notwithstanding the absence of statutory compulsion, having become aware of the pending charges against Teacher A on 29 April 2005, the Executive Director, Human Resources did instruct the Manager, CMU to contact WACOT. The Manager, CMU notified WACOT of Teacher A's charges on the 10 May 2005.

As the Commission is aware, during the transition processes of this Act, teachers were not required to be registered until March 2006. Teacher A's conviction was recorded prior to the necessity for teacher registration.

In the knowledge that WACOT was obliged to act in relation to Teacher A's conviction should he subsequently make application for registration, the Executive Director, Human Resources, nevertheless brought his own mind to bear on this matter in deciding the matter under the PSMA as he was required to do in order to discharge his responsibilities. In discharging his responsibilities the Executive Director, Human Resources clearly delineated his responsibilities as the delegate of the Director General in respect of managing Department disciplinary matters from his responsibilities as a Board Member of the WA College of Teaching established under a separate Act of Parliament. In exercising his disposition under section 92 the Executive Director, Human Resources acted in strict accordance with his responsibilities under the relevant statutory regime as he was bound to do.

'The Working with Children Act 2004 was enacted on 1 January 2006. Although this act is being phased in, teachers employed prior to 2006 are not subject of scrutiny until 2009, as of 2009, Teacher A's conviction prevents him from being employed to work with children.'

At the time of making his decision in relation to Teacher A on the 6 October 2005, the Executive Director, Human Resources was aware that the *Working with Children Act 2004 (WWC Act)* was due to come into force on 1 January 2006. There is no retrospectivity associated with the WWC Act. The Executive Director, Human Resources, therefore, correctly brought his own mind to bear on this matter in deciding the matter under the PSMA which was the applicable Act at the time.

In light of the Commission's inference that the Executive Director, Human Resources has acted unlawfully in relation to the decision he took in relation to Teacher A, State Solicitor's Office advice is that the decision of the Executive Director, Human Resources did not proceed on the basis of any erroneous finding of fact, nor was it outside the range of the reasonable exercise of discretion conferred upon him in determining the disposition permitted under section 92 of the *Public Sector Management Act 1994*.

It is the view of the Department that it would be entirely inappropriate to report upon this matter in an adverse light given that the Executive Director, Human Resources acted lawfully, responsibly and within power in discharging his responsibilities as the Director General's delegate in respect to Teacher A.

CASE STUDY TWO

In responding to this aspect of the Draft Report it is important for the Commission to note that the Department's former employee, Gardener B has a noticeably diminished intellectual capacity and hence, a diminished capacity to understand societal norms and expectations, to follow instructions and to recognise the potential seriousness of situations, including the consequences of not following work instructions.

An investigator appointed to review his performance of his functions in relation to an unsatisfactory performance process stated that he showed no animosity or resentment and was 'very open and guileless' in responding to questions. The investigator stated that staff 'recognised his limitations and also the positive aspects of his personality'

In short, Gardener B is a simple man who, according to his sister-in -law '*was in the habit of collecting and keeping things for no apparent reason-he did not throw anything out*', requiring his family to occasionally go through his flat and throw things out.

Prior to the conclusion of disciplinary proceedings against him, Gardener B gave notice of his retirement from the Department on the 18 November 2005 to take effect on the 26 January 2006.

* * *

'On 10 November 2004 DOET notified the Commission about an allegation that school Gardener B disobeyed a written directive from the principal of a suburban primary school instructing him to maintain professional distance between the children and himself. This directive arose from an incident in 2003 in which a child's parent overheard Gardener B making arrangements to meet the boy later. The child was aged three to four years. The parent reported the matter to the principal who issued the directive.'

It is acknowledged that the Department notified the Commission on the 10 November 2004 that it was intending to subject Gardener B to a disciplinary process as it suspected that Gardener B had disobeyed a lawful directive in relation to the nature of contact he should make with children.

It is also necessary to highlight that the directive in 2003 was issued as a precautionary matter. The Commission does not appear to acknowledge that there was no finding of impropriety at that time.

'DOET engaged a consultant who was briefed to investigate the "Alleged Substandard Performance" of Gardener B. The allegations of disobeying a directive and inappropriate behaviour were not addressed. The consultant was not told of the 2003 incident.'

The Department appointed an investigator to examine allegations that Gardener B's work performance was unsatisfactory in certain specified areas relating to the performance of his gardening duties. The investigator for this separate process was appointed on the 20 September 2004 (two months prior to the Department advising the Commission of the disciplinary related concerns in its advice of 10 November 2004). The unsatisfactory performance process was initiated to examine issues related to Gardener B's following of directions with respect to raking, weeding, watering etc.

It is important to note that, even if the issue relating to Gardener B's alleged contact with a child occurred before the unsatisfactory performance investigation was put in train, it would still have been inappropriate to address a potential disciplinary issue through the mechanism of an unsatisfactory performance process. It was therefore appropriate that the investigator was not told of the 2003 incident as it was outside the scope of her sub-standard performance investigation.

The Executive Director, Human Resources was rigorous in maintaining the distinction between the unsatisfactory performance processes and disciplinary processes in respect of its management of issues affecting Gardener B as required by the Performance Management and Discipline Public Sector Standards.

Following the above bolded extract from the Draft Report are three paragraphs concerned with expanding upon this unsatisfactory performance process which, as stated above, was irrelevant to considerations as to whether Gardener B had committed acts of misconduct pursuant to section 4 of the Corruption and Crime Commission Act 2003 and as notified to the Commission on the 10 November 2004. In light of this irrelevancy the Department has elected not to comment further on those paragraphs.

'DOET also wrote to the parents of the year six boy, noting that "...the Department has taken appropriate action in relation to [Gardener B] and now considers this matter closed...'

Department records indicate that the Executive Director, Human Resources intended to address the misconduct allegations relating to Gardener B allegedly arranging to meet a Year 6 boy in order to give him a toy at his gardener's shed at 7.00 am, October 2004 through a formal disciplinary process. However, in the intervening period the investigator appointed to examine the issue of Gardener B's unsatisfactory performance submitted her report to the Executive Director, Human Resources regarding the same employee.

After carefully considering the contents of the substandard performance report the Executive Director, Human Resources became aware of the limited capacity of Gardener B to clearly understand formal Department processes. As he had determined to transfer Gardener B to a new school into a position in which he could be supervised at all times as a consequence of his consideration of this unsatisfactory performance matter, the Executive Director, Human Resources exercised his discretionary power not to progress the disciplinary matter. However, having decided not to address the complaint through a formal disciplinary process, the Department acknowledges that the parent complaint ought to then have been addressed through a procedurally fair local complaints management process to bring closure to that particular issue and possibly, to guide the Department's future actions with respect to this employee. It is important to note that once the transfer was effected, no further complaints of this nature arose at his new school up until the time that Gardener B retired.

The Department explained its rationale for the above decision to the Commission on the 7 December 2004. The Commission considered this correspondence and closed its file on the matter without adverse comment to the Department. As the Commission made its decision to close its file in the full knowledge of all of the facts and circumstances at the time and there was no evident error of law associated with this final determination, the Department contends that any adverse comment of the Department in relation to the management of this particularly disciplinary matter ought to be deleted from the Draft Report.

'On 6 January 2006, DOET advised the Commission that Gardener B was found not to have committed a breach of discipline and the matter was finalised.'

The Department notified the Commission of this matter 7 months prior to the receipt of this Draft Report. It ought to be noted that prior to the receipt of the Draft Report, the Department was unaware that the Commission perceived any difficulties with the Department's management of this matter.

'The Commission's overriding concern about this matter is DOET's unwillingness to address the problem of inappropriate behaviour from the outset. Both the principal and the Complaints Management Unit relied on the decision of police not to prosecute, instead of considering risks posed to students, to determine what action to take. The original issue was reinterpreted into a performance management matter.'

The Department maintains that it addressed the misconduct and unsatisfactory performance issues related to Gardener B appropriately, with the acknowledged exception of its failure to address the parent's complaint regarding the October 2004 incident through an alternative complaints process. Its management of this matter, however, was accepted as adequate by the Commission at the time.

It is incorrect to state that the principal and the Complaints Management Unit relied on the decision of police not to prosecute prior to deciding what action to take. The acting principal was made aware by police on the 22 July 2005 that they had investigated a matter regarding the alleged possession of child pornography by Gardener B. The principal was informed that police had executed a search, found no evidence to support this allegation and therefore, would not be progressing the matter. Notwithstanding this to be the case, the principal informed police that he would monitor Gardener B's performance and movements around the school. The principal stated that he arranged for Gardener B not to be on his own in the work situation and that he be accompanied by the Head Gardener at all times. In making this work arrangement the principal ensured that Gardener B was not on his own with any child for the remaining 3 months of his employment at the school. The principal stated that he did not realise given that police found no evidence to support the allegation he was required to report the contact by police to the CMU. Neither did the police on this occasion, report their interest in Gardener B directly to the CMU as is the normal agreed practice/protocol between the police and the Department.

It is acknowledged that any known police investigation of a Department employee ought to be reported to the CMU for consideration and the principal was reminded of this reporting obligation at the time.

The CMU became aware of this matter as a result of a telephone call from a Commission officer. Based on the information provided by the Commission officer, the Department contacted the principal, obtained a copy of the police report into the matter and initiated disciplinary proceedings against the employee in the full knowledge that police had decided not to prosecute Gardener B.

It is important to note that, since the creation of the CMU the Department has, without exception, considered the appropriateness of initiating disciplinary proceedings against employees who have been the subject of police or Court investigations, including in circumstances where a Court has dismissed charges against an employee. In the case of Gardener B, the Department initiated disciplinary proceedings in relation to matters arising from the police report once it was brought to CMU's attention.

The original issue, that is the suspicion that Gardener B may have committed an act of misconduct in arranging to meet a boy to give him a toy in October 2004, was not '*re-interpreted into a performance management matter*'. Rather, the Executive Director, Human Resources separately exercised his discretionary powers not to progress a matter through a formal disciplinary process, a decision that was subsequently endorsed by the Commission.

'The Commission has no doubt that DOET believes that its approach to the incidents involving Gardener B are consistent with its interpretation of the law and its human resource management responsibility to Gardener B – that much is evident from the decisions taken on the analysis provided by the investigators.'

However, this response was inadequate. At no stage did the CMU connect the two incidents and explore possible risks to student population. Their decision to take no action in circumstances where, on the evidence, Gardener B removed nude photos from a school bin, showed them to someone else and claimed that they were of a student is hard to fathom. Its correspondence to the parents of the primary school student was misleading.'

As stated above, the Commission, in the full knowledge of the circumstances, closed its files in relation to the October 2004 misconduct allegation without adverse comment.

In the second matter, Gardener B was not found to have committed an act of misconduct. The Commission's recitation of the evidence in respect of this latter matter as representing confirmed fact is concerning. The complainant in the matter alleged to the DET appointed investigator that Gardener B showed him a single photo of a young woman in a sexual pose and that Gardener B said he *thought* it was a girl from X SHS. However, the complainant told the police investigator that Gardener B showed him 3 photographs, and definitely said that Gardener B said the photographs were of a student at X SHS. Gardener B acknowledged finding two photographs and showing them 'to people'. However, it was not conclusive that the photographs Gardener B said that he got from the bin were the same one/s that the complainant said were shown to him or that the photographs depicted a naked girl. Unfortunately, the photographs had been disposed of and it therefore wasn't possible to rely on this primary evidence to clarify the allegations. In summary, because of the conflicting and indeterminate nature of the evidence the Executive Director, Human Resources resolved that the allegations against Gardener B were not proven. Gardener B was informed of this outcome by letter dated 4 January 2006.

Gardener B submitted notice of his retirement prior to the conclusion of this matter on the 18 November 2005 to take effect on the 26 January 2006. There was therefore, no risk to students to be assessed following the conclusion of this matter.

CASE STUDY THREE

The Children and Community Services Act 2004 and the Child Welfare Act 1947 make investigation of suspected child abuse the legal mandate of officers from the Department of Community Development. The Department's Child Protection policy reflects this legislative responsibility when it states:

'Protection of children is DCD's legal mandate. If a concern of child maltreatment is communicated to the principal by an employee or someone working in the school, the principal must report the matter to DCD. The decision to progress the matter further is the responsibility of DCD.' (page 9); [and]

'The school's role is not investigatory with regard to child maltreatment issues. The school does not need to ascertain that the child has been harmed, that is DCD's responsibility. Investigating the circumstances leading to maltreatment; who is responsible and what needs to happen to make sure the child is safe are likely DCD responses'. (page 12)

The above mentioned policy was developed in consultation with DCD and reflects a collaborative approach between the agencies in order to protect children from abuse whether it happens in the home, community or at school.

The actions of Department staff in relation to Case Study Three complied with all relevant legislation and Department policy. All appropriate notifications were made. That is to say, the Corruption and Crime Commission, DCD and the Police Child Abuse Unit.

Neither DCD nor the Police communicated any view to the Department that it was suspected that a Department employee was responsible for the injury to the student's penis. Nevertheless, school and district staff still continued to monitor and record information about the student and implemented a risk management plan in consultation with the child's parent. The background to this matter is as follows:

The 2003 Incident

In 2003 the child's mother met with the principal regarding the student's apparent foreskin injury. The parent agreed to have the school nurse present at the meeting. The parent said that she had noticed that his foreskin was pulled back and the tip of his penis was red, swollen and bleeding and that she had taken him to the doctor who had corrected it.

The principal explained to the parent that it was the school's policy at the time of always having two staff members present when changing any student, not only for the safety of the student but also for the safety of staff and to reduce the number of injuries to staff. The parent was advised that school staff had not noticed any injury and if they had it would have been reported to the school nurse who would have called home.

At the time the student had just had surgery and Silver Chain nurses were coming to the school with the approval of the family to shower the student.

It was agreed that school staff would report any observable changes to the student's penis to the school nurse and keep the parent informed of any observations made. The school also offered to supervise showering and changing procedures conducted by Silver Chain nursing staff. The principal also raised with the parent that in her view the student was capable of showering himself and also, that there was a possibility that the injuries may be due to the student masturbating. The parent was not prepared to consider that the student may have been masturbating, a common reaction of parents of disabled students. The parent was however, very happy with the outcome of the 2003 meeting.

The September 2005 incident

In September 2005 the parent stated that she had observed that her son's foreskin was pulled back, was very tight and causing swelling and bleeding. Again, the school principal met with the parents and confirmed that school policy was still being observed in that two staff members always changed any student requiring changing.

In the case of this student, there was usually three staff members involved with changing him as he was a large boy and often lashed out at staff. Again, the principal raised with the parent the possibility that the student, at 18 may have been masturbating, a proposition that the parents would not accept. The school reports however, that the student continually had his hands in his nappy. At one stage he wore a full body suit to stop him from reaching his faeces and smearing it over himself. When his hands are observed in his nappy staff tell him to 'X ,hands up' and after washing his hands he is directed to a new activity or back to his current work.

The staff at the school did not observe that the student's penis was sore at any time in September 2005. The principal has stated that the student would have indicated his discomfort very clearly if that had been the case, as he always let staff know when he was not happy about something happening to him.

The parent has never provided the school with any medical documentation of any kind in relation to the parent's claim that a doctor has said that it is physically impossible for the student to have made these injuries upon himself.

Notwithstanding the fact that school staff did not form a suspicion that the student was suffering from abuse, the principal notified DCD and the Police Child Abuse Unit in relation to the 2005 incident.

The Department response therefore to this aspect of the Draft Report is as follows:

'The Commission was notified on 14 October 2005 of an allegation of sexual abuse of an intellectually and physically disabled student, aged eighteen years, at a specialist school. The boy's mother complained that on more than one occasion her son came home from school with his foreskin rolled back and bleeding. She stated that she had medical advice that in light of his disabilities, it is physically impossible for him to injure himself in this way. The school had documentation of a similar incident in 2003 that was managed at the time by the school nurse.'

The mother did not provide any evidence of this claimed medical advice either to DCD or the school. School staff observations were that the child was physically capable of injuring himself in this way. The school principal reports and school records reflect that the student constantly placed his hand/s in his nappy whilst at school necessitating staff action to remove his hand/s whenever it was observed.

'The matter was reported by DOET to the Western Australian Police Child Protection Unit who, based on telephone enquires to DOET and the school, decided not to investigate the matter.'

The parent complaint was reported to DCD, the WA Police Child Abuse Unit and the Commission. If the Commission perceives there to be any inadequacy with respect to police investigation that is a matter to be taken up with that agency.

'On 28 October 2005, DOET advised the Commission that the matter was finalised because the mother was satisfied with the school's practice of ensuring that at least two people were present when her son was changed.'

At the time the Commission was advised of the Department's finalisation of the matter neither DCD nor the police had informed the school and mother that there was evidence of staff at the school being responsible for the injuries caused to the student.

Following notifications to DCD and police, school staff met with the mother and implemented a risk management plan in consultation with her, part of which included continuing the practice of ensuring that two (but generally three) staff members were always present during each nappy change.

'The Commission responded to this notification by pointing out that no investigation had been undertaken into the matter to establish how the injuries were sustained. The practice of ensuring two people were present when he was changed was put in place by the school nurse in response to the first report.'

As stated above, Department staff have no legal mandate to investigate how the injuries were sustained. As required by legislation and Department policy, school staff contacted DCD and the Police Child Abuse Unit upon receipt of the parent's complaint. At no stage was there a reasonable suspicion on the part of either monitoring agency communicated to the Department that a member of school staff was responsible for the student's injury.

Notwithstanding complying with these reporting responsibilities, school and district staff nevertheless put in place a risk management plan which included

- Continuing to remove the child's hands from his nappy whenever it was observed;
- two (and more often, three) staff members being present at all nappy changes;
- rotation of these two staff members with other staff throughout the day/working week.
- requiring all school staff to undergo retraining and professional development in the Protective Behaviour program for students (occurred on the 9 December 2005)
- the provision of additional District psychologist time in 2006 to assist staff in the area of individual case management.

Since reporting her concerns in September 2005 the parent has not raised any further incidents of this nature. The parent continued to have a positive relationship with school staff, was happy with her son's program and attended his Graduation celebration in December 2005.

The Commission expressed the view that DOET had an obligation to establish the cause for the injuries, particularly given the mother's claim that she had a medical opinion that his disabilities prevented himself in the way alleged. The Commission advised that independent, expert advice on this issue is crucial to ascertaining whether or not this student has been sexually assaulted.'

The parent did not present any evidence of this medical advice to DCD or the school. School staff observations were that the child was physically capable of doing these injuries to himself. His hand/s was often in his nappy during the course of a school day and whenever observed were tactfully and sensitively removed. It is the legislative responsibility of DCD /WA Police Child Abuse Unit specialist staff to ascertain whether a child has been sexually assaulted. School and district staff cooperated fully with those agencies in relation to this matter.

'To date no response has been received DOET.'

The Department apologises for the lack of a written response to the Commission's concerns.

Notwithstanding this to be the case, the Department did initiate action in relation to the Commission's response and, on 9 December 2005 requested the school and district to prepare a report on the matter. The information contained in the above paragraphs reflects the information provided.

'The Commission's overriding concern about this matter is DOET's unwillingness to act to establish with as much clarity as possible whether the student has been sexually assaulted.'

It is the legislative responsibility of DCD /WA Police Child Abuse Unit specialist staff to ascertain whether a child has been sexually assaulted. School and district staff cooperated fully with those agencies in relation to this matter. Neither agency conveyed to the Department that they had formed any suspicion that a staff member may have been responsible for the injuries on this student.

Notwithstanding this to be the case, school and district staff reflected upon the complaint positively by reassessing work practices in the school, seeking further District Office support and providing staff with additional training.

'The Commission acknowledges that in this, and similar cases, the possibility of self-harm exists. But this does not mean that there is no risk of sexual assault. It is not appropriate to ignore the possibility of sexual assault on the basis that existing care arrangements are confirmed. In the Commission's view, obtaining independent expert advice on the possibility of self-harm is an obvious and inexpensive step to take to clarify this possibility.'

The Department is unaware as to whether DCD thought it necessary to obtain 'independent expert advice on the possibility of self harm when assessing whether this student had been sexually assaulted'. Certainly school observations were that staff were constantly engaged in removing this student's hands from his nappy though-out the school day and that it is recognised that many children in Education Support facilities have a fascination for their private parts that are not constrained by societal expectations. Neither DCD nor police suspected that a staff member as being responsible for the injuries. All care was taken both at the time and subsequently by the school and district staff to ensure the continuing safety of this student at the school.

CASE STUDY FOUR

It is the strong contention of the Department that this Case Study ought, in all fairness, be deleted in its entirety from any proposed Report to Parliament.

The Commission's concerns with the conduct of Teacher C clearly preceded the appointment of the current Director General and the creation of the CMU. As stated above, the CMU was created by the Director General to assist him to address past Department practices that gave rise to public interest concerns, such as arose with respect to Teacher D in 2000 (see below).

In addition, the Department's handling of this matter was the subject of consideration by the Anti- Corruption Commission at the time and received no adverse comments as a result of that consideration process. The Department questions whether the value in issuing adverse comments to Parliament on a matter previously finalised by the Anti Corruption

Commission on the 13 June 2001, particularly when no new information has come to light. The State Solicitors Office has provided advice in relation to another matter to the effect that the general legal position is that '*where a body is vested with the power of determining an issue a determination made and communicated in terms which are not expressly preliminary or provisional is to be regarded, provided that it is not tainted by fraud or misrepresentations, as final and therefore irrevocable unless there exists an express or implied statutory power to revoke or vary that decision....'*

It is acknowledged however, that Teacher C ought not to have been re-employed by the Department in May 2005. Whilst Teacher C's personnel records had been flagged in 2001 as 'not being permitted to be re-employed without reference to the Director, Workplace Relations', (and indeed, prevented him from seeking re-employment as a teacher in 2002 when he reapplied for employment) it is understood that paperwork relating to his 2005 non-teaching appointment was not processed until some time after he had commenced his fixed term contract duties. When the employing area became aware of the 'not to be employed flag' as a result of attempting to process his employment data, CMU was immediately alerted and his line manager was informed that he was not to have any contact with children in his non-teaching position. In addition, the disciplinary process was commenced anew.

'The circumstances of his resignation were that after disclosing details of his association to another teacher, Teacher C met with the school principal and deputy principal. When the meeting occurred the deputy principal was aware of a 1996 investigation into an allegation that Teacher C engaged in inappropriate conduct with an underage girl at another school. The three agreed that Teacher C would resign from DOET – to quote the principal "...under the pretext that he had been given the prospect of other employment.'

The principal said "I also would have said to him that this needed to be dealt with immediately because if there is a continuation of the association it becomes public his career as a teacher is certainly over. I would have also said that the reputation of the school was severely at risk. I think this happened the last day before a two week break so there was a real sense of urgency about dealing with the matter."

Department records show that on either the 26 or 27 March 2001, Teacher C had informed a colleague that he had decided to tender his resignation. Teacher C filled out and dated his resignation form on the 6 April 2001 citing that he had lost interest in teaching. He submitted it to the principal on the morning of 9 April 2001.

The principal became aware later that day from a teacher on staff that rumours were circulating amongst her year 11 students that Teacher C and a student were 'having an affair'. The principal informed his deputy principals of the rumours and spoke with Teacher C who assured him that there was no truth in the rumours, although he had heard them.

On the 10 April 2001 Department records indicate that the principal resolved to investigate the rumours further and also, that he had informed the district director of the situation and his intended actions in accordance with the Department policy at the time.

On the 11 April 2001 the principal informed Teacher C that under the circumstances (of the rumour causing a potential problem for both Teacher C and the student) he should leave the school at the earliest possible opportunity rather than serve out the notice period given in his previously submitted resignation. Teacher C agreed to terminate his employment the following day.

Therefore the principal's comments quoted in the Draft Report and reprinted above were made within the context that Teacher C had already submitted his resignation and was not as a consequence of the principal (and deputy principal) 'actively assisting' Teacher C to avoid the Department from 'making him account for his actions'. Department records indicates that 'fast tracking' Teacher C's already submitted resignation was in order to protect the student from being subjected to further rumour mongering and gossip.

'On the available evidence the girl's welfare was not considered. This was despite the fact that when the principal spoke to the parents they told him they felt powerless to act because their daughter had threatened to leave home.'

Contrary to the Commission's assessment, Department records indicate that the student's welfare was the paramount consideration in respect to this matter at the time. These records indicate that, after initially denying that he and the student were involved in an inappropriate relationship, Teacher C admitted to the principal on the 12 April 2001 that this was the case. The principal immediately instructed him to cease any further contact with the student and informed him that he would contact the student's parents as well as the district director to inform them of this situation.

The records show that the principal spoke with the district director later that day who immediately took steps to organise counselling support for the family and the student. The principal telephoned the student's parents at 7.45 pm that night. The principal spoke with the student's father who informed him of the contact that they, as parent's had observed, prior to Teacher C's admission and also, of the fact that the student had threatened to leave home if her father contacted the school over the relationship. The principal assured the father of the student of his support, advised him that Teacher C would not be returning to the school, informed him that the district director had been notified, that counselling of the family was available and that EDWA (as it was known then) would be taking disciplinary action against Teacher C pursuant to section 7C of the *Education Act 1928*.

On the 17 April 2001, the first working day following the Easter weekend, and whilst the principal was on leave, he forwarded a chronology of events related to the matter to the district director regarding his conversation with the student's father

On the 18 April 2001 the district director records that she informed the student's father by telephone that the Police Child Abuse Unit would be notified and that the Department would proceed with its disciplinary investigations. The record also indicates that the district director had arranged for a District based psychologist and a school psychologist to provide counselling support to both the student and her family.

Department records indicate that on the 18 April 2001 an officer in the District Education Office was asked to contact the student's father to arrange counselling support for the family. The offer was accepted and a District based psychologist then telephoned the student's father the following day and arranged to see the parents.

The senior psychologist met with the student's mother and father in their home on the 19 April 2001 at 3.45pm for a counselling session. The psychologist agreed to provide them with feedback on any response from the Child Abuse Unit. She also agreed to organise follow up psychological counselling for the student, if the student, who was very angry at the exposure of her relationship, agreed.

On the 20 April 2001 the District psychologist contacted the officer in Workplace Relations who was the case manager for the disciplinary matter to inform him of the support she was providing to the parents. He agreed to allow the District psychologist to inform the parents of his telephone number and also, that of the Child Abuse Unit. The record shows that this information was conveyed to the student's father.

On the 23 April 2001 the District psychologist contacted the school psychologist regarding the possibility of counselling the student upon her return from the Term 1 school holidays. At the commencement of Term 2 2001 the school psychologist organised and offered counselling to the student at school. This support was offered on an ongoing basis for the duration of her enrolment at school (7 school terms). In addition to the support of the school psychologist the student received considerable support from other staff members who were aware of her situation and, in particular her Year Leader, until her graduation at the end of 2002. It is worth noting that the student was the Dux of Year 12 in 2002 attaining a distinction average in 6 TEE subjects.

The principal also contacted the student's parents in early Term 2 2001 and met with them at the school to discuss in detail their daughter's educational and personal needs and to outline the schools counselling and support plans for the student

In addition to the above, it is important to note that from notes taken contemporaneously by the deputy principal at the meeting between Teacher C, the principal and the deputy principal held on the 12 April 2001 it was made very clear to Teacher C that the primary concern of the principal and deputy principal was the welfare of the student. Extracts from these notes include the following;

'Teacher C, the principal's in a difficult situation here. You could say we are both your bosses. We each have a collective responsibility to safeguard every student at this school.....including a 15 year old girl, born 15 July 1985 and called (student name). Thats what I am fixated on Teacher C – the student's welfare- you are second to that.'(Spoken by deputy principal before Teacher C admitted any inappropriate involvement with the student). And again,

'Teacher C, I want to emphasise that I have a job to do which is to look after (student name)'. (spoken by Deputy Principal after Teacher C had admitted inappropriate involvement with the student).

The preceding paragraphs indicate that the student's welfare was, in fact, the uppermost consideration for the district director, principal and the deputy principal at the time.

'The principal did not notify the Department for Community Development (DCD). Neither did he report the matter to police. Although Teacher C denied sexual contact with the girl, there were witnesses, including the girl's parents, to intimate touching and kissing.'

In accordance with Department policy at the time the district director was informed of the situation by the principal and she, in turn arranged for an officer in Workplace Relations to contact the Police Child Abuse Unit. In addition, point 2 of the relevant Department policy entitled, Allegations of Sexual Contact Against Employees – Procedures stated that it was discretionary whether the matter was reported to DCD or not. This discretion clearly reflected the fact that under Routine Orders 3.2.81-3.2.94 police are obliged to report any reports of child abuse to DCD.

Department records indicate that the district director notified an officer in Workplace Relations of this incident on the 12 April 2001 (that is, the day Teacher C confirmed that an inappropriate relationship had developed between himself and the student) which contact enabled the principal to convey to the parent that the Department was intending to take action against Teacher C pursuant to section 7C of the *Education Act 1928*. Advice to the Anti-Corruption Commission on the 2 May 2001 records that police were notified and that they had informed the Department that there was insufficient evidence to warrant a criminal investigation.

When police contacted the girl some years later she refused to cooperate with them. She would not confirm if there had been sexual activity, but stated that when she was sixteen Teacher C took her away for a long weekend. She also said that at no time did anyone from the Child Protection Unit or DOET speak to her "...to ever ask me if it was consensual or not".

The Department is unaware of what transpired between the police and student in subsequent years following Teacher C's resignation. It only became aware of the fact that Teacher C and the student went away for a long weekend in the course of the 2005 investigation of Teacher C's conduct. It appears that the long weekend occurred approximately 8 months after Teacher C had resigned (January 2002) and therefore, logically, could not have formed part of the consideration of the police investigation in April 2001.

All information the Department had about the nature of the relationship was conveyed to the Police Child Abuse Unit at the time.

It is also important to note, in all fairness the full context of the quoted extract above. The student says 'Nobody from the Child Protection Unit or the Department of Education and Training ever spoke to me at the time to ask me whether it was consensual or not. They spoke to my parents but not to me' (Department emphasis). Furthermore it was appropriate for Department officers and the Police to speak with the parents as the student was a minor. Her parents had no doubt at the time that the student was a willing participant in the relationship and, in fact, was extremely angry that the relationship had become known to authorities.

It is also important to note that the Department went to some lengths to encourage the former student to participate in the 2005 investigation into Teacher C's conduct. She was most reluctant to do so. However, as can be seen from her statement the student was still, four years later, refusing to confirm whether the relationship was fully sexual in nature.

'After his resignation in April 2001, Teacher C continued his relationship with the girl for another twelve months. The girl stated that she ended the relationship, at which point Teacher C began a relationship with another of her school friends.'

When a teacher is not in a position of authority over a student, there is no lawful impediment prohibiting a teacher from forming a relationship with a student. Clearly, a student would need to be over 16 years of age if the relationship was sexual in nature. As Teacher C was no longer employed by the Department it had no control over Teacher C's subsequent actions, even if it had been known at the time. In addition, from the student's statement, it appears that the relationship between Teacher C and another student from this school occurred sometime after that student had left high school and indeed, had become an adult.

'This matter was not reported to the then Anti-Corruption Commission until Teacher C had resigned by which time DOET's investigation had ceased.'

This matter was reported to the Anti-Corruption Commission on the 2 May 2001. Teacher C's last day at the school was 12 April 2001 which was prior to both the commencement of the disciplinary investigation and therefore logically, prior to the conclusion of the investigation.

The Anti-Corruption Commission advised the Department on the 13 June 2001 that it had 'considered the matter and all relevant information provided' prior to closing its file on the matter and significantly, did not reflect adversely on any aspect of the Department process at the time.

The Department questions whether it is appropriate for the Commission to comment adversely to Parliament on a matter previously finalised by the Anti-Corruption Commission particularly when no new information has come to light.

Upon reviewing the matter, the Commission recommended that... DOET reinforce the requirement of school administrators to report such matters to the Complaints Management Unit to ensure rapid notification to the Commission and timely investigation;

The Department has taken steps to regularly reinforce with school administrators the need to ensure rapid notification of potential misconduct matters to the CMU and hence to the Commission. It ought to be noted that at the time of the 2001 incident the CMU was not in existence. However, the appropriate notifications to police and the Anti-Corruption Commission were made.

Upon reviewing the matter, the Commission recommended that ...in all cases where employees resign before allegations can be tested, either through the internal disciplinary process, police investigation, or investigation by the Commission, that the employee's history clearly show there is an unresolved matter;

Department records indicate that upon his resignation in 2001 Teacher C's personnel records were flagged 'as not to be employed without reference to the Director, Workplace Relations'. In addition, at the same time, Teacher C's name was placed on a MCEETYA National Check of Employment Status database as a category 2 type, signifying that he had resigned whilst facing allegations of a sexual nature against a student

Upon reviewing the matter, the Commission recommended that,,, the then principal and deputy principal of the high school be informed of the events that followed their decisions made on 12 April 2001, to ensure that they are fully aware of the ramifications arising from these decisions to enable them to deal more holistically with any similar situation that may arise in the future.

The principal and the deputy principal have been made aware of the Commission's assessment of their action at the time. However, it is apparent from the Draft Report that the Commission is not fully aware of the circumstances surrounding the purported actions and motives of the principal and deputy principal at the time as is evident from preceding paragraphs.

'It was only because of the time lapse since Teacher C's first resignation that the Commission refrained from recommending disciplinary action against the principal and his deputy. It is unfortunate that the Commission did not recommend such disciplinary action as part of the review of this matter. With the benefit of hindsight it clear that it should have done so.'

In light of the clarification provided, the actions of the principal and deputy principal were in accord with Department policy at the time. Therefore it is the view of the Department that adverse reference to these officers' role in respect to the management of this incident in 2001 ought to be expunged from the Draft Report, in the event that the Commission intends to report on this matter at all.

'The Commission's overriding concern about this matter is that greater weight was given to the reputation of the school and Teacher C than the safety and well being of the student.'

The Department response above demonstrates that the safety and well being of the student was of paramount concern when reflecting on the actions of all Department officers involved in 2001, including the principal and deputy principal.

'The fact that neither police nor DCD were informed of the 2001 incident was in breach of DOET's policy of the day. The principal and deputy principal appear to have actively assisted Teacher C prevent DOET making him account for his actions, and they were not held to account for their own. Little or no regard was paid to the interests of the girl involved or the risks to the other girls at the school.'

Department policy of the day required the principal to report the matter to the district director. In this instance, the district director, the principal's superordinate officer, undertook responsibility for ensuring that the Police Child Abuse Unit was informed. A number of Department records indicate that the police were informed at the time and that the student's parents also acknowledge that they were contacted by police at the time. Point 2 of the Department policy entitled 'Allegations of Sexual Contact against Employees- Procedures' states that it is discretionary whether the principal reported the matter to DCD or not. This discretion clearly reflects the fact that under Routine Orders 3.2.81-3.2.94, police are obliged to directly report any reports of child abuse to DCD.

From information provided above, neither the principal nor deputy principal acted to subvert any Department investigation into this matter. In addition, the paramount concern for all Department personnel involved was the wellbeing of the student who received considerable professional and emotional support from school staff following the incident.

'The initial handling of the matter also paid no regard to the risks posed by Teacher C in the event he was employed in, for example, the private school sector or in another government agency dealing with teenage girls. Given the agreed pretext for resigning, future employers would have had no reason to suspect that he represented a risk.'

This paragraph is incorrect. Teacher C's personnel records were flagged in 2001 as 'not to be re-employed without reference to the Director, Workplace Relations'. In addition, at the same time, Teacher C's name was placed on the MCEETYA National Check of Employment Status database as a category 2 type, signifying that he had resigned whilst facing allegations of a sexual nature against a student. This register is checked by the private school sector and any government agency when people are employed to work with children.

In addition, the incident occurred in 2001 prior to the appointment of the current Director General and prior to the creation of the CMU. The Department contends that it is procedurally unfair to forward a report to Parliament that holds the Director General accountable for the management of an incident prior to his appointment. The Department also considers that, as the Department's handling of this matter at the time had been reviewed and finalised without adverse comment by the Anti-Corruption Commission, that it is therefore inappropriate to report this matter to Parliament as if this previous scrutiny was void.

CASE STUDY FIVE

'DOET formed a suspicion that breaches of discipline may have occurred and conducted an inquiry into the allegations. The outcome of this inquiry led to an investigation that found the allegations against Teacher D were sustained and that Teacher D had breached:

- the Western Australian Public Sector Code of Ethics;
- the Department of Education & Training Staff Conduct Policy;
- the Department of Education & Training Child Protection Policy; and
- the Department of Education & Training Duty of Care Policy.'

Please be advised that the Department conducted an investigation first and then this investigation was followed by an inquiry. Both the investigation and inquiry were conducted pursuant to the disciplinary procedures in the PSM Act

'Although records show DOET clearly intended to do so, they do not show that the AFP was notified of this matter. The AFP have no records of notification from DOET... Ultimately the Commission notified the AFP of the matter.'

The Department refutes that that it did not notify the Australian Federal Police (AFP) and furthermore, states that not only did the Department notify the AFP of this matter, so did the WA Police Child Abuse Unit.

Department records indicate that the Principal, ██████████ notified the Police Child Abuse Investigation Unit of the allegations against Teacher D arising from his participation in the ██████████ tour in 2003 on the 7 September 2004. On the same day, Detective Sergeant Simon Hubbard of the Police Child Abuse Investigation Unit had a telephone conversation with Ms Eva Sims, Consultant, Complaints Management Unit in which he advised her that this matter ought to be referred to the Australian Federal Police. An undated, unsigned biro notation in Ms Sims hand writing states

'Simon Hubbard-CAU
[REDACTED] issue out of their jurisdiction (on plane from [REDACTED]) he suggested sending a formal request for investigation to the Federal Police
FEDERAL POLICE
OPERATIONS MONITORING UNIT
PO BOX 586
WEST PERTH WA 6872

Another officer, Mr Mark Smith has added a pencil notation, again undated and unsigned, to the above record next to the line Operations Monitoring Unit 'send copy CCC letter to here. Needs to go thru Committee'

A notation in Mr Smith's handwriting dated 8 September (2004) states:

'Wayne McKenzie said Operations Committee need to look at it to determine if falls in there (sic) regs. Flight in and out of Aust ok but this flight broken up in [REDACTED]'

There was some expressed concern at the time that the matter may be outside the jurisdiction of the AFP and may need to have been referred by them to Interpol.

On an email forwarded from Detective Sergeant Kearns Gangin, Child Abuse Investigation Unit to Mr Smith dated 22 September 2004 Mr Gangin states:

'Mark

The information provided regarding the alleged Indecent Dealing of [REDACTED] Senior High School Student [REDACTED] by teacher [REDACTED] has been assessed.

The Child Abuse Investigation Unit was first notified of this matter by [REDACTED] the principal of [REDACTED] Senior High school on 7 September 2004.

The alleged offences have occurred in the [REDACTED] and on an international flight between [REDACTED] and [REDACTED], therefore the matter comes under the jurisdiction of the Australian Federal Police(AFP)

I understand that EVA SIMS was advised of this by Det Sgt Simon HUBBARD by phone on 7 September 2004. Eva was intending to advise the AFP of the complaint.

Regards

K Gangin'

An unsigned and undated handwritten notation on this hard copy version of the above email written by Mr Smith states:

*"Australian Federal Police
AFP Operations Monitoring Unit faxed a copy of CCC letter and complaint on 10/9/04. To be screened by a committee. On advice from Wayne McKenzie, AFP 93203444."*

In addition, on the 22 September 2004 Mr Smith forwarded an email to the CMU Manager and others stating:

'FYI

A copy of the CCC letter was faxed 10/9/04 to the Operations Monitoring Unit at AFP to be screened by a committee.

Mark.'

It is acknowledged that the omission of the facsimile receipt to the above effect from the Department's file is most regrettable. However, this administrative oversight does not in any way serve to justify the conclusion that the Commission has drawn that the Department did not make contact with the AFP regarding this serious matter.

On the 14 October 2004, the Department received correspondence from a Commission Review/Assessment officer Ms Stephanie Boyd stating *'It is noted that allegations regarding the teacher's behaviour during an international flight have been (Department emphasis) forwarded to the Australian Federal Police'*.

Given that the Department is aware that the Commission often makes its own enquiries in relation to a matter without reference to an affected agency, it is quite logical for the Department to assume from this correspondence that the Commission had received assurances that the Australian Federal Police had received correspondence related to the matter from the Department.

In this same correspondence the Commission advises the Department that '*in accordance with section 33(1)(c) and s 37(3) of the Corruption and Crime Commission Act 2003 (the Act) the Commission has decided to refer the complaint to you for investigation within a reasonable period*'.

In other words, the Commission directed the Department to investigate this matter without regard to any pending AFP investigation processes. At the time of receiving this advice the Department understood this advice as possibly reflecting the fact that the Commission, being a state body, may not have any jurisdiction over the AFP.

The Department advised the Commission of the conclusion of its inquiry into this matter on the 5 September 2005. Over 6 months later, during the Commission's routine review of this matter the Department received correspondence dated 9 March 2006 from Ms Debbie Hills, Commission Review/Assessment officer which stated that she had contacted the AFP who have no record of having received any Department correspondence in relation to this matter. On the 19 April 2006 the Department responded to this correspondence by writing to the Commission and highlighting the particular folios that related to the referral process. On the 18 May 2006, by way of finalisation of the Commission's queries regarding this matter the Department received correspondence from Mr Nick Anticich, Director Operations, in which did not mention the fact that the Commission had formed the view that the Department had definitely not contacted the AFP following Department clarification of the referral process.

As stated above, not only did the Department contact the Australian Federal Police (and the WA Police Child Abuse Unit) at the time, but so did the Police Child Abuse Investigation Unit. Detective Sergeant Simon Hubbard contacted Wayne Mc Kenzie of the AFP prior to informing the Department of the address to forward documentation and the name of the contact Officer (Wayne McKenzie). The Operations Manager, Police Child Protection Squad confirmed on the 19 July 2006 that police records indicate that WA Police referred the matter to the AFP on the 7 September 2004. Even if the Department's facsimile did go astray, the WA Police informed the AFP just prior to the Department doing so on the 7 September 2004 and, given its serious criminal nature, it would be expected that the AFP would have contacted the Department and/or WA Police again to advise of the non receipt of anticipated correspondence.

The fact that there had been no interim correspondence from the Department to the Commission between the 10 September 2004 when it advised the Commission of its intention to forward this documentation and the Commission's letter to the Department dated 14 October 2004, acknowledging that the documentation had been forwarded to the AFP would have also served to allay any concerns that the material had not been received by the AFP, if indeed had any been held at the time.

'There is also no evidence on DOET's file indicating that it has notified the WA College of Teaching of Teacher D's dismissal.'

Section 50 of the WACOT Act requires the Department to notify the College of Teaching of the dismissal of any registered teacher. Teacher D was not a registered teacher at the time of his dismissal. As the Commission is aware, only registered teachers are authorised to teach in government schools and, as the Department has ensured that Teacher D is on the

MCEETYA National Check of Employment Status database as having been dismissed for sexual misconduct, any future application for teacher registration will be denied. Notwithstanding this to be the case the Department did inform WACOT on the 9 September 2005 of the outcome of its disciplinary process in the event that Teacher D was to seek registration at a subsequent date.

'In 2001, Teacher D was the subject of a similar complaint by a student's father who came across inappropriate emails to his 15-year-old daughter. This interaction also began on an overseas excursion and included kissing and touching. The behaviour continued upon return to Perth, with the girl taking time from classes and weekend activities to meet up with the teacher. The situation progressed to the point where the girl had diarised that she was considering agreeing to pressure from Teacher D to engage in sexual intercourse.'

The incident described in this paragraph and elaborated upon in subsequent paragraphs in the Draft Report occurred in 2000. The Department does not dispute that the then principal did not comply with relevant Department policy in terms of reporting this matter to the appropriate authorities and internally. However, the mismanagement of this incident occurred prior to the appointment of the current Director General and the creation of the CMU in February 2002. Since the creation of the CMU, all line managers have been made aware that any allegations relating to inappropriate relationships being formed between an employee and a student must be addressed centrally by the Executive Director, Human Resources with the assistance of CMU.

It is the Department's strong contention therefore, that the current Director General should not be held responsible for the management of this disciplinary matter that occurred before his appointment. Its inclusion in this Report reflects adversely upon the Director General despite the fact that current Department practices would not permit local level resolution of a matter such as this. Furthermore, if a Principal today failed to make the appropriate notifications in such matters, he /she would almost certainly be the subject of disciplinary proceedings. The principal responsible for the mismanagement of this particular incident retired several years ago.

'The 2003 excursion manager stated to the DOET investigator that he was briefed about the 2001 incident involving Teacher D. He assigned Teacher D's former line manager to share accommodation and the same bus with Teacher D. He then took little interest in Teacher D's behaviour.'

The 2003 excursion manager stated to the DOET investigator that he was briefed about the 2000 incident involving Teacher D by the Head of Department whose position he took up when he came to [REDACTED] in 2001. He was not briefed about this incident by any of his superordinates at the school in 2003 as this statement in the Draft Report seems to infer. Rather, he was given a handover from the previous position holder in which the former employee mentioned in passing that there had been an issue in respect of Teacher D.

The excursion manager also states that after the 2003 tour he became aware that there was more to the 2000 incident than he was told during the handover conversation he had with Teacher D's previous line manager in 2000.

It is not fair to state that excursion manager took little interest in Teacher D's behaviour. Rather it is fair to say that he did not observe any untoward behaviour by Teacher D until the flight home, as he was not assigned to travel in the same coach as Teacher D, nor did any other employee raise any concerns with him until it was brought to his attention that Teacher D and the student were sharing a blanket on a leg of the plane trip home. The

excursion manager states that he took steps to observe them but did not see anything happening of an inappropriate nature.

'The teacher assigned by the tour manager to share accommodation with Teacher D was the former supervisor who had counselled Teacher D on four previous occasions about his inappropriate relationships with students. He witnessed the Teacher D's alleged behaviour towards the student on the 2003 excursion. He did not intervene because "Supervisors on the plane were aware of the situation and I take it they dealt with the matter in a manner they saw fit".'

The wording of the above Commission extract seems to overstate the issues of the past concerns of the teacher who shared accommodation with Teacher D. This teacher stated that he counselled Teacher D about his inappropriate behaviour towards female students who chose to visit Teacher D in the staffroom when they worked together at another school. The teacher did not state that Teacher D had formed inappropriate 'relationships 'with students but, in his words, 'behaved inappropriately'. He did witness Teacher D and the student sharing a blanket on the plane trip home but stated that, when he observed them, Teacher D was asleep.

'Another teacher stated:

"It was quite blatant that [the student] and [Teacher D] had changed seats to be next to each other. They were both awake. There was only one blanket over the two of them. I thought this situation was inappropriate but relatively harmless. I did not intervene. I ensured that I monitored the situation and saw no physical activity occur between the two of them ... Upon our return to Australia, I felt that [Teacher D's] behaviour was such that it needed to be reported to the Principal. This I did".

However, this teacher did not report Teacher D's behaviour until she was aware that the deputy principal had raised concerns with the principal when he observed the interaction between the student and teacher in the school car park after the tour returned to Perth. No action was taken by the principal until the student lodged a formal complaint, some twelve months after the tour.'

It is incorrect to state that the principal did not take any action regarding the report of the deputy principal and the report of the teacher regarding suspicions of an inappropriate relationship until 'the student lodged a formal complaint, some twelve months after the tour'.

Department records indicate that a deputy principal, who did not go on tour, observed some 'empathy' between the student and teacher during a school concert some 8 weeks after the end of the tour. In addition, the deputy principal observed an incident in the car park on the 19 September 2003. These observations resulted in the deputy principal approaching a teacher and a fellow deputy principal who went on the tour to discuss his observations and then subsequently, raising the matter with the principal.

The teacher who went on tour also prepared a report for the principal as to what she observed regarding the 'blanket incident 'on the plane.'

At a meeting conducted on or around 24 September 2003 Teacher D was questioned by the principal and Teacher D's line manager regarding the relationship between Teacher D and the student whilst on the tour and subsequently. Teacher D denied any impropriety on his part and suggested that the student had become infatuated with him but that he had in no way encouraged this. The student was also questioned by a female deputy principal and

also denied that there had been any improper interaction between Teacher D and herself. In light of the student's categorical denial that anything improper had occurred, the school level investigation ceased.

Approximately 12 months later, the student subsequently admitted that she had lied to protect Teacher D when initially questioned about this relationship. Upon receipt of her written complaint, the principal immediately contacted the Police Child Abuse Unit and the CMU in accordance with Department policy.

'Perhaps the most remarkable aspect of this matter is that after observing Teacher D and the student talking in the car park, it was arranged for a female teacher to speak with the student. The teacher said to the student:

"...that it had been noticed that her and [Teacher D] had been spending time together and she should think how that was coming across to other people, i.e. that it looked inappropriate. I think I recommended to her that she try and detach herself a little bit"

The Commission has omitted the final sentence with respect to the above quotation, that is, '*I put this to (student name) without trying to seem that I had made a judgement about her behaviour*'.

In addition this quotation needs to put in the context that the student had categorically denied to this teacher having had an inappropriate relationship with teacher D despite persistent questioning by the teacher.

'Including the excursion manager, there were a total of six eyewitnesses to Teacher D's behaviour on the bus and the aeroplane. Four of these were aware of the previous allegations. All of them "kept an eye on him" but no one acted. It is not clear why their failure to act has not been identified by DOET as possible breaches of discipline.'

Whilst three of the 6 (adult) teachers possessed decidedly inaccurate hearsay knowledge of a previous incident that had been addressed 3 years previously, none witnessed any acts of impropriety by Teacher D towards the student on the bus tours apart from observing that they sat together, seemingly by arrangement.

Similarly whilst 5 of the 6 adult witnesses were aware of the fact that Teacher D and the student sat together on at least one leg of the flight home and that, for an indeterminate period but for longer than 5 minutes, they were covered by a single blanket again, none of the adult witnesses observed any act that caused concern beyond the foolishness of sharing a single blanket.

In this Draft Report the Commission poses the question as to why the Department has not initiated disciplinary proceedings against these witnesses for their perceived 'failure to act'. Under section 81(1) of the PSM the employing authority must suspect a breach of discipline before commencing the PSM Act disciplinary process. In this case, none of the adult employee witnesses on the tour observed inappropriate behaviour of the nature of the particulars which were put to Teacher D through the disciplinary process, apart from the fact that Teacher D and the student sat together on coach tours and on the plane, and at one stage on the plane, shared a single blanket. None of these witnesses sought to deliberately cover up untoward behaviour they observed and all willingly assisted the employing authority with its enquiries into the matter.

As the Commission would appreciate, an employee is not compelled to provide evidence in a disciplinary matter. The fact that these employees elected to do so enabled the Department to dismiss a sexually predatory employee. Without the contextual information these employees provided it is arguable that this eventuality may not have been possible.

In general terms it would act as an extremely powerful dissuader indeed to all Department employees to provide evidence in disciplinary cases if, by doing so, they ran the risk of the Department using the evidence they gave against themselves and subjecting them to disciplinary processes. It is not hard to imagine that in these circumstances, employee representative organisations such as Unions/Associations would advise employees of their right to silence with respect to participation in disciplinary matters. In that event, the stated Object of the *Corruption and Crime Commission Act 2004*, that is, to reduce the incidence of misconduct in the public sector would be severely compromised.

Notwithstanding the above generalised cautionary approach to initiating disciplinary action against witnesses, the Department is of the view however, that warranted disciplinary action ought to be taken in respect of information provided through a witness statement in certain circumstances. However, in this case, there is no suspicion that any of these witnesses observed any of the particulars related to the disciplinary charges against Teacher D and failed to report their observations.

'The Commission's overriding concern about this matter is DOET's inability over a period of years to take appropriate action to deal with Teacher D's conduct. Had they acted decisively in 2001, events in 2003 might have transpired differently.'

The Department agrees that if the 2000 incident had been addressed in accordance with the Department policy that has been in existence since the creation of the CMU in 2002, it is likely that the 2003 incident would never have arisen.

Notwithstanding the above observation however, it is the Departments strong contention that the current Director General should not be the subject of a Report to Parliament over the management of an incident over which he had absolutely no control.

By way of comparison, the Department's management of the student's complaint relating to the 2003 incident was conducted in strict accordance with the statutory regime and resulted in the employee's dismissal and exclusion from working with children in any employment capacity.

'There is no adequate record of the allegations made against Teacher D, or the managerial or disciplinary action that followed from the 2001 complaint. There is no adequate basis upon which the decision to allow Teacher D to go on subsequent excursions and camps was made. There is no evidence of an adequate management or supervisory plan to ameliorate the risks associated with Teacher D. Once he was on the excursion, even in the face of identifiable inappropriate actions, there was no appropriate managerial intervention to protect the student. On one view, it would appear that the student was, at least at one point, held to blame. For reasons best known to DOET, it was unable to identify or form a suspicion about possible breaches of discipline by Teacher D's supervisors and colleagues while on excursion.'

It is acknowledged that the actions of Department officers in relation to the 2000 incident were contrary to Department policy at the time. However this incident occurred before the current Director General was appointed and the management of this incident does not reflect current policies and practices initiated by this Director General to redress past poor practices.

With respect to managing the 'risks' associated with this employee, it is important to note that documentation concerning the 2000 incident was manifestly inadequate and was not sufficient for the principal appointed in 2003 to assess the risks this employee represented. It should also be noted that Teacher D was not an employee at the school but rather provided a service as directed by a central Department specialist body. In addition, the information relating to this 2000 incident was given to the excursion manager when he took up his position in the school, was verbal and not detailed. Hearsay knowledge about an employee's alleged past conduct is not an adequate basis on which the Department can or should plan excursions. However, it is acknowledged that, irrespective of Teacher D's alleged past conduct, normal excursion management procedures should not allow for any teacher/student relationship to become blurred and that seating/sleeping arrangements should always reflect this professional distance.

For the reasons given in preceding paragraphs the Department does not believe that disciplinary action against the employees who attended the tour is warranted.

'There is no record of DOET notifying to WA College of Teaching or giving effect to the principles behind the *Working with Children (Criminal Records Checking) Act 2004*.'

Section 50 of the WACOT Act requires the Department to notify the College of Teaching of the suspension or dismissal of any registered teacher. Teacher D was not a registered teacher at the time of his dismissal. As you are aware only registered teachers are authorised to teach and, as the Department has ensured that Teacher D is on the MCEETYA National Check of Employment Status database as having been dismissed for sexual misconduct, any future application for teacher registration will be denied. Notwithstanding this to be the case, the Department informed WACOT of Teacher D's dismissal on 9 September 2005.

At the time of his dismissal Teacher D had not been charged with any offence. The *Working with Children (Criminal Records Checking) Act 2005* requires the Department to notify DCD of any relevant change in an employee's criminal record as soon as is practicable. Teacher D was not a Department employee at the time of criminal charges being laid against him. The WWC Act came into force on 1 January 2006. There is no retrospectivity associated with the provisions of the WWC Act. Consequently, there is no requirement prior to 1 January 2006 for persons or authorities to comply with the provisions of the WWC Act.

CASE STUDY SIX

'On 25 January 2002, in the absence of corroborating evidence Teacher E was acquitted of the charges.'

On the 25 January 2002, in a unanimous decision of the jury Teacher E was acquitted of the charges against him. The transcript of the trial does not indicate that the jury made this decision as a result of a 'lack of corroborating evidence' and it is unwise to impute this rationale into this decision.

'DOET then fell silent on the issue, despite regular requests from the ACC for a status update. On the 3 June 2003 with still no response, the ACC notified DOET that unless an immediate response was received there was no other recourse than to report the matter to the Minister for Education. DOET replied a month later stating that it considered the matter closed "Arising from the difficulty of being unable to access the transcript as well as other reasons, particularly the public interest and utilisation of Departmental resources..."'

It is incorrect to state that the Department did not respond to ACC correspondence between the 11 April 2002 and the 3 June 2003 despite 'regular requests'.

On the 14 May 2002 the ACC acknowledged the Department's letter dated 11 April 2002 informing the ACC of the fact that the Department was endeavouring to obtain a transcript of court proceedings.

Department records indicate that it responded to the letter from the ACC dated 14 May 2002 on the 11 June 2002, advising the ACC that it was still awaiting the court transcript of proceedings.

The ACC did not forward further correspondence to the Department until 3 June 2003.

In other words, in the intervening period the ACC did not make 'regular requests for status updates' that were ignored by the Department. The Department responded promptly to all ACC correspondence between 11 April 2002 and the 3 June 2003.

'The ACC was dissatisfied with the outcome, advising DOET that "... it is not appropriate the file on this matter be closed merely because [Teacher E] was acquitted, particularly as there are similar allegations against him in another matter being dealt with by the Child Abuse Investigation Unit.' It gave DOET two months to conduct an inquiry to determine whether Teacher E was suitable to remain as a teacher and supplied DOET with a copy of the trial transcript to assist in its investigation.'

The Director General wrote to the ACC on the dated 2 July 2003 in which he advised the Commission that despite every Department effort to obtain a copy of the Court transcript, the Department had been refused a copy by the Courts.

The ACC informed the Department in correspondence dated 25 July 2003 that, notwithstanding these difficulties, the ACC required the Department to undertake an inquiry into the matter within two months.

The ACC did not provide the Department a copy of the transcript until the 11 August 2003, some 15 months after the Department had first advised the ACC that it was seeking a copy of the transcript and 14 months after the ACC had been advised by the Department (11 June 2002) of the difficulties it was facing in obtaining a transcript.

'By December 2003, the ACC again sought a status update from DOET. In January 2004 DOET advised that the disciplinary process had been commenced and the allegations had been put to Teacher E.'

The Department re-commenced disciplinary proceedings in relation to the allegations that were the subject of his first criminal trial against Teacher E in correspondence dated 22 December 2003.

The 8 week delay in recommending disciplinary action was due, in part, to the need to seek advice from the State Solicitors office in relation to the applicability of the *School Education Act 1999* to this matter.

The earlier disciplinary proceedings that had been initiated against Teacher E in 2000 in relation to this matter, but which were stayed because of court proceedings, had been initiated under the superceded *Education Act 1928*. Clarification was therefore sought in order to determine whether the recommended proceedings should be conducted under the superceded Act or the current Act.

In addition, because the Department was able to obtain more detail about the allegations from the transcript than reflected in the original correspondence to Teacher E outlining the allegations against him dated 17 February 2000, this earlier correspondence was withdrawn and the process commenced anew on the 22 December 2003. The ACC was informed that this was the case on the 20 January 2004.

An investigator was appointed on the 19 February 2004. The investigator has made as much progress as she can without Teacher E's participation. However, since 15 September 2004, following a suicide attempt, Teacher E has been declared medically unfit to participate in Department disciplinary processes.

Whilst the above deliberations were taking place in relation to the first matter, in February 2003 Teacher E was again charged by police in relation to allegations of sexual misconduct. The Department agreed to stay its disciplinary investigations into the matters that were the subject of this particular criminal investigation until the matter was heard in the Court. Please note that Teacher E had been removed from contact with children from February 2000.

'In November 2004, DOET advised the Commission that Teacher E was on long-term sick leave and as such could not be interviewed in relation to disciplinary matters.'

Teacher E was declared medically unfit to participate in Department disciplinary processes from 15 September 2004 following a suicide attempt.

It is Department practice not to require an employee to participate in disciplinary proceedings if they are medically unfit in light of the fact that it would arguably constitute a denial of procedural fairness to proceed. Progression in such circumstances may render proceedings unlawful.

To date, considerable progress has been made with respect to this investigation, but it cannot be finalised until Teacher E is medically cleared to participate.

The Department has required Teacher E to attend at the offices of the Department's Occupational Physician.

Teacher E's treating psychiatrist has recently reaffirmed that Teacher E is unfit to participate in the Department's disciplinary processes. The Department is seeking other specialist opinion.

'DOET did not notify the ACC of the matter until 1 May 2003. A file note shows that a telephone call was made to DOET by an ACC officer to determine if Teacher E was still employed as a teacher. The person was advised by the Manager of Investigations that Teacher E had been transferred to a District Office with no contact with children until these latest allegations were fully investigated.'

On the 7 April 2003 the ACC informed the Department that they had considered this matter and had referred this matter to the Western Australian Public Sector Investigations Unit for investigation. (Please note, not the Department).

On the 29 April 2003, in the knowledge that the ACC had indicated that the matters of concern were to be addressed by the PSIU, the Department nevertheless informed the ACC of its intention to also address the matters of concern.

On the 6 May 2003, the ACC acknowledged receipt of the Department's correspondence dated 29 April 2003 without commenting that this was not an appropriate action in light of the ACC previous referral to the PSIU.

Please note, Teacher E had been removed from contact with children from February 2000.

On the 9 June 2003 the Director General stayed disciplinary proceedings pending the outcome of criminal proceedings in respect of this second criminal matter.

'Teacher E was found not guilty on all charges on 14 October 2005. As in his first trial there was a lack of corroborating evidence. Evidence presented to the court was very similar to the evidence presented during the first trial.'

Teacher E was found not guilty of all charges in a unanimous verdict similar to the outcome of the first trial.

'The third matter arose on 3 February 2005, when DOET notified the WA Police Child Abuse investigation Unit and the Commission of a complaint against Teacher E by a another former student. The student allege that during school camps in 1983 and 1984 Teacher E inappropriately touched and kissed her when they were alone together. She alleged that this led to a sexual relationship with him in 1985, the year after she left school.'

The Commission was notified of the third matter on the 2 February 2005.

'It is not clear how this complaint came about. There are a number of emails between the girl and the CMU which involved some direct questioning prior to police and the Commission being informed. In any event, the complainant was not prepared to make a police complaint and on 3 February 2005 Police advised that they would not be able to pursue the matter.'

This complaint arose from information provided to the investigator appointed to investigate the matters arising from Teacher E's first trial. The Department acted responsibly and commenced disciplinary proceedings in relation to this information.

'The Commission's overriding concern about this matter is DOET's unwillingness to act decisively to assess the risks posed by the allegations made against Teacher E by conducting some form of inquiry into his behaviour.'

In addressing the risks posed by Teacher E the Department has removed him from his teaching duties since 2 February 2000.

Having ensured that Teacher E represents no risk to students by his relocation to a District Office to perform non-teaching duties, the Department initiated disciplinary action in respect of three matters.

All three matters have been the subject of considerable delay due to initially Teacher E being unwilling to progress the disciplinary matters pending the outcome of criminal proceedings (that is, from 7 January 2000-14 October 2005) against him and subsequently unable, on medical advice, to participate in these disciplinary processes.

As the Commission is aware, procedural fairness requires that Teacher E has a right to be heard in relation to the matters against him. Progression in the circumstances when he has been declared medically unfit to participate in the disciplinary process may render proceedings unlawful and result in any Department decision being overturned by the Industrial Relations Commission on appeal.

On the 3 July 2006, his treating psychiatrist has again confirmed his unfitness to participate in these disciplinary processes. The Department is currently seeking other specialist medical opinion.

'At the time of writing this report some five and a half years have elapsed since DOET became aware of the first set of charges against Teacher E. So far as the Commission is aware, no substantive action has been taken by DOET about the matter in that time. Teacher E's health and the impact of pending trials are relevant to this delay, but not sufficient to explain all of it.'

Department consideration of matters affecting Teacher E have been characterised by delay outside of the control of the Department. The fact that the ACC did not provide the Department a copy of the transcript in respect of the first matter until 14 months after the Department had informed the ACC of the difficulties it had encountered in obtaining a transcript was a delaying factor. However, even if these administrative delays had not occurred, the impact of impending criminal trials (from 7 January 2000-14 October 2005) as well as specialist medical opinion that Teacher E is unable to participate in these disciplinary proceedings has justifiably prevented the progression of these matters. To have progressed these disciplinary matters in the face of these imperatives would almost certainly have rendered proceedings unlawful, resulting in successful appeals on all three matters in the Industrial Relations Commission.

On the 3 July 2006 Teacher E's treating psychiatrist has again confirmed his unfitness to participate in these disciplinary processes. The Department is currently seeking other specialist medical opinion.

'In making this observation the Commission notes and acknowledges the difficulties associated with investigating events of 15 years prior. However, these are not valid reasons to decide not to investigate. Moreover, it is not necessary to limit an investigation to a traditional fact finding mission. Investigating risks to student welfare is at least as important. For example, DOET could arrange for an appropriate psychiatric assessment to be conducted. An investigation might also usefully consider what camps Teacher E attended in recent years, whether attendees at these camps have anything to say about Teacher E's conduct and what conclusions can be drawn from analysing the evidence present at Teacher E's trials.'

The Department has not decided 'not to investigate' the matters affecting Teacher E.

To the contrary, the Department has initiated three separate disciplinary proceedings which are all ongoing matters. One of these matters has proceeded to the investigation phase of the process and the other two matters are highly likely to proceed to investigation in the future.

All three matters have been unavoidably delayed initially due to the impact of criminal proceedings against Teacher E and subsequently, as a result of him being declared medically unfit to participate in the disciplinary processes. The Department is currently seeking further specialist medical opinion about Teacher E's ability to participate in the process.

As Teacher E has not been proven to have committed any breach of discipline, the delegate of the Director General has no lawful authority to impose any sanctions on Teacher E in respect of the incidents giving rise to the three disciplinary processes under the PSMA or to act in any way towards him as if the, as yet unproven, allegations were fact. This would include the suggested risk management strategies suggested in this paragraph.

The Department is concerned that the Commission is considering reporting on these as yet, uncompleted matters relating to Teacher E to Parliament. The Department is of the view that any report to Parliament regarding this matter is premature and will possibly prejudice future disciplinary proceedings. The inappropriateness of publicly commenting upon uncompleted matters was highlighted by Commission Officer Mr Nick Anticich, Operations Director, when he said in the West Australian dated 8 July 2006;

'The most appropriate time for the CCC to comment on any particular matter is at the completion of an investigation'

GENERAL OBSERVATIONS ABOUT THE CASE STUDIES

The Departments Perspective

Of the six case studies cited;

- one is an ongoing matter(Case Study Six);
- one refers to a situation in which no employee is suspected on reasonable grounds of having committed an act of misconduct as defined in section 4

of the *Corruption and Crime Commission Act 2003* or, a breach of discipline as defined in section 80 of the PSMA (Case Study Three);

Of the remaining four finalised matters none of the respondents are still employed by the Department;

- two employees had their employment ceased as a direct result of Department processes (Case Study Four and Five)
- one employee had his employment ceased as an indirect result of Department processes (Case Study One)
- one employee retired having been found not to have breached discipline or, any state law.(Case Study Two)

Therefore of the six case studies only one employee remains a potential risk to students and this person has not been permitted to teach since February 2000 (Case Study Six) pending the outcome of Department investigations.

Two of these four finalised case studies (Case Studies Four and Five) refer to events and incidents that occurred prior to the appointment of the Director General in December 2001 and the decision to create the CMU to assist the Director General to address the acknowledged problems of the past. The remaining ongoing matter (Case Study Six) also refers to events and incidents prior to the current Director General's appointment.

Issues arising from the case studies

Case Study One

- All appropriate notifications were made (CCC, Police, WACOT);
- The disciplinary process was conducted in strict accordance with the statutory regime.
- The outcome of the matter was derived lawfully after careful consideration of the facts.

Evidence that Risk to Children Considered

Yes

Employment Status

No longer an employee

Remaining Issues of concern from Department's perspective

Nil

Case Study Two (Intellectually disabled employee)

The Department was unaware that the Commission had any concerns regarding this matter prior to the Draft Report despite informing the Commission seven months ago about its finalisation.

- **First parent complaint**

Addressed locally consistent with Department policy. No impropriety found. Employee given written directive regarding future expectations.

- **Second parent complaint**

Initiation of disciplinary proceedings considered. In light of the fact that disciplinary proceedings were not commenced the parent complaint ought to have been addressed by an alternative complaints mechanism. This did not happen.

- **Substandard Performance Process**

Irrelevant except for the fact that as a result of the substandard performance process the employee was transferred to a position in which he could be closely supervised. His transfer to a supervised position away from very young children was a factor considered by the Executive Director, Human Resources in resolving not to progress disciplinary proceedings against Gardener B in relation to the second parent complaint.

- **Disciplinary process**

CCC notified.

Disciplinary process conducted in strict accordance with procedural fairness principles.

Outcome lawfully derived

Evidence that Risk to Children Considered

Yes. Transferred to a supervised position and away from contact with very young children.

Remaining Issues of concern from Department's perspective

Police did not inform CMU of police interest in employee

Department did not address second parent complaint satisfactorily.

Employment Status

Employee retired

Case Study Three

- No employee suspected on reasonable grounds of having committed an act of misconduct as defined in section 4 of the Corruption and Crime Commission act 2003.
- No employee suspected of having committed a breach of discipline as defined in section 80 of the Public Sector Management Act 1994
- All notifications made(CCC, DCD, Police)
- Specific parent complaint investigated at the time. No suspicion arose as a result of that investigation that an employee may have committed an act of misconduct.
- Overall risk analysis subsequently conducted.

Evidence that risk to children adequately addressed

Yes.

Employment Status

Not applicable

Remaining Issues of Concern from Department's perspective

Nil

Case Study Four**2001 Incident**

Appropriate notifications made (ACC, Police)

Disciplinary proceedings commenced. Student and family provided with psychological support.

Disciplinary proceedings discontinued as employee resigned and would not participate in the process.

Evidence that Risk to Children was adequately addressed

Yes. Police notified. MCEETYA National Screening Database Category Two applied to employee (2001). Personnel records flagged not to be employed (2001).

2005 Reemployment

Was employed in a non teaching position. Delay in the processing of employment related records meant that he commenced duties before the relevant team area became aware of the employment flag that he was not to be employed.

Department recommenced disciplinary proceedings in relation to 2001 incident.

Appropriate notifications were made (CCC, Police)

Employee resigned

Employment flag /MCEETYA notification (2001) confirmed in place

Evidence that Risk to Children was adequately addressed

Yes. Team area informed he was not to have contact with children. Discontinued 2001 disciplinary case recommenced

Remaining Issues of Concern from Department's perspective

Nil

Employment status

Resigned. Personnel records marked 'not to be employed'. MCEETYA notification confirmed in place

Case Study Five

- **2000 incident**

Inappropriately addressed by 2000 Principal in clear breach of Department policy relevant at the time.

Appropriate notifications not made.

Inadequate record keeping related to incident

- **2003 incident**

Appropriate notifications made (CCC, Police, WACOT, MCEETYA) The disciplinary process was conducted in strict accordance with the statutory regime.

The outcome of the matter was derived lawfully after careful consideration of the facts.

Evidence that Risk to Children was adequately addressed

Yes. Removed from contact with children

Employment status

Dismissed. Personnel records 'flagged'. MCEETYA database notified. WACOT notified

Remaining Issues from Department perspective

Facsimile receipt from AFP notification not on file

Case Study Six**2000 incident arising from police charges**

Teacher removed from contact with students February 2000

Disciplinary proceedings commenced but adjourned pending outcome of Court proceedings.

Appropriate notifications made (ACC)

Found not guilty by unanimous verdict of the jury on 25 February 2002

2003 incident arising from police charges

Disciplinary proceedings commenced but adjourned pending outcome of Court proceedings

Appropriate notifications made (ACC)

Found not guilty by unanimous verdict of jury on 14 October 2005

Recommended disciplinary investigation arising from investigation into 2000 incident

Appropriate notifications made (CCC, Police)

Disciplinary proceedings commenced after long delay in obtaining a copy of the Court transcript but subsequently adjourned on medical grounds

Evidence that Risk to Children was adequately addressed

Yes. Removed from contact with children from 2000

Remaining issues from Department perspective

Not applicable

Employment status

Ongoing employment. Currently medically unfit to engage in the above disciplinary processes.

Overall Summary

These case studies as they relate to matters arising since February 2002 do not indicate systemic problems in the manner in which the Department addresses disciplinary matters and the risk posed to children by sexually predatory employees. Rather, the problems that have arisen are isolated instances of human error with no commonality of occurrence. For example, the acting principal who failed to notify CMU of police interest in Gardener B is one of approximately 780 principals. This was an error of judgement on the part of one officer. Failure of one officer to notify CMU ought not be regarded as a systemic issue. Appropriate notifications are being made to the CMU and from the CMU to external agencies.

Disciplinary processes are rigorous in terms of adherence to the statutory regime and reflect procedural fairness to all parties.

All employees suspected of sexual misconduct towards children are removed from contact with children pending disciplinary proceedings.

Department's response to Chapter 3 – What needs to be done to fix the problem

From the Department's submission it is apparent that the Commission's assessment of the six case studies have largely been made on the basis of incomplete information. Where issues of concern still remain, these concerns are not indicative of systemic deficiencies, but rather, represent isolated human error. As such, in the Department's view, they do not warrant the serious step of reporting to Parliament, nor can these judgements be validly used as basis for making the Recommendations suggested in the Draft Report.

'In Case Study Two the high school principal took no action, despite his knowledge that a police investigation was underway.'

The Department acknowledges that the principal (an acting principal) did not inform the CMU that an employee at his school was a person of interest to police for a short period of time.

No police charges resulted.

The principal informed police that he would closely monitor the conduct of Gardener B. The principal stated that he arranged for Gardener B not to be on his own in the work situation but rather, that he was to be accompanied by the Head Gardener of all times. In doing this, the principal ensured that Gardener B was not on his own with any child for the remainder of his time of employment in the school.

The principal was advised that he ought to have informed the CMU of police interest in this employee at the time by a CMU officer. The principal explained this omission as being due to the fact that the police informed him that they were not pressing charges against Gardener B.

In addition, the police did not contact CMU directly in accordance with long standing protocol.

'In Case Study Four the principal and deputy principal actively assisted the teacher to resign, thereby subverting the disciplinary investigation on foot, and took no substantive action to protect the child.'

This statement is incorrect. Please refer to the Department's submission in respect of Case Study Four.

'In Case Study Five local managers allowed the teacher to go on an overseas excursion, despite a history of complaints and identified behaviour. In the face of inappropriate behaviour on the excursion they took no action. Upon identifying problematic behaviour back in Australia they acted against the child.'

The above statement misrepresents the situation. Please refer to the Department's submission in respect of Case Study Four.

RECOMMENDATION ONE

'...all responsibility for dealing with suspected or alleged sexual misconduct be removed from local and district managers and transferred to the Complaints Management Unit;'

The CMU is not the employing authority under the terms of the PSMA. Pursuant to the PSMA, the Director General is responsible for personally exercising all powers prescribed in the PSMA in directing the course of a disciplinary process from initiation to conclusion.

Pursuant to section 33 of the PSMA, the Director General has delegated the management of this disciplinary function to the Executive Director, Human Resources. The Executive Director, Human Resources has no legal power to delegate or sub delegate the exercise of his delegated functions to another person or group of persons, including the CMU.

The CMU is a small secretariat body established in February 2002. One of the functions of the CMU is to provide operational assistance to the employing authority in giving effect to his decisions in relation to disciplinary matters. All advice provided by CMU is informed by departmental policy, policy advice from the Department of the Premier and Cabinet and legal advice received from the State Solicitor's Office.

It is current Department policy that local and district managers forward all allegations regarding the possible sexual misconduct of employees to the CMU.

'...as part of the process of change arising from the review of the Complaints Management Unit, DOET employ within the Complaints Management Unit appropriately qualified and experienced staff to deal with sexual misconduct allegations;'

As stated above, under the PSMA the disciplinary power must be personally exercised. The Executive Director, Human Resources has this legal responsibility in respect of the Department and he addresses sexual misconduct allegations in accordance with the relevant statutory regime. CMU officers assist the Executive Director, Human Resources with his management of disciplinary processes.

All officers in the CMU have an in depth and practical working knowledge of Department policy in relation to addressing allegations relating to the possible sexual misconduct by an employee, as well as an in depth knowledge of PSMA disciplinary processes. In addition all officers have undergone disciplinary investigation training.

The level of expertise of these officers has been commented upon favourably the State Solicitors Office who has referred other agencies to the Department for advice. In addition, the Department of Premier and Cabinet have done similarly.

It should also be noted that Mr Mike Silverstone, Executive Director met with the Director General in 2004 and stated that he was impressed with the professionalism of the CMU and its operational procedures.

In June 2005 Commissioner Hammond wrote to the Director General stating that the Department's centralised complaints management system 'appears to be comprehensive and effective'.

Notwithstanding these testimonials, CMU staff regularly attend relevant professional development. Inquiries have been made regarding attendance at the two week course undertaken by DCD and Police officers who act as specialist child witness interviewers. Attendance at such a course is regarded as providing beneficial background knowledge in respect to the interaction of CMU officers with investigators/inquirers.

Within the context of this Recommendation, it is important for the Commission to note that CMU officers do not conduct disciplinary investigations. Rather, the Executive Director, Human Resources appoints investigators/inquirers from the cross-government approved tenderers for that purpose.

Furthermore, the Department conducts its disciplinary processes in the knowledge that the Department for Community Development, through its local Divisional offices, has the statutory responsibility for assessing complaints of suspected child abuse and providing support and protective services where appropriate and also, that the police are required through Routine Orders to ensure that DCD are informed of any relevant matters.

'...DOET enter into a process of planned and continuous improvement of its policies and procedures aimed at giving effect to its state safe and secure learning environment policy. This process should be squarely aimed at building a robust system capable of identifying high-risk behaviour and circumstances.'

This recommendation is accepted as representing ongoing good practice.

'In Case Study Two the principal did not notify the CMU despite his knowledge that police were investigating the matter.'

The Department acknowledges that in Case Study two the principal (an acting principal) did not notify the CMU that police had identified a Department employee as a person of interest and that no charges resulted. Neither, for that matter, did the police which was an exception to the usual prompt exchange of information regarding such matters. The principal was informed of his obligations in this regard by a CMU officer.

The principal however, did inform police that he would closely monitor the conduct of Gardener B. The principal stated that he arranged for Gardener B not to be on his own in the work situation but rather, arranged for him to be accompanied by the Head Gardener of all times. In doing this the principal ensured that Gardener B was not on his own with any child for the remainder of his employment in the school.

'In Case Study Three the mother's claims were dismissed without any form of inquiry or risk assessment.'

The mothers' claims were not dismissed. The Department did conduct an investigation both at the time and subsequently into the matters that were the subject of the complaint.

'In Case Study Four neither the police nor DCD were notified.'

This statement is not correct. The police were notified and the police, under Routine Orders 3.2.81-3.2.90 are obliged to inform DCD. The relevant Department policy at the time stated it was discretionary as to whether DCD were notified directly or not.

'In Case Study Four no effort was made to treat the teacher's conduct as sexual assault.'

This statement is incorrect. The Department initiated a disciplinary process to address allegations that Teacher had acted in a sexually inappropriate manner towards a student. However, following Teacher D's resignation he elected not to participate in the disciplinary process. Notwithstanding his resignation, Teacher D's personnel records were marked in 2001 as 'Not to be employed without reference to the Manager, Workplace Relations' and, at the same time, his name was placed on the MCEETYA National Check of Employment Status database as indicating that he was a person who had resigned whilst facing allegations of a sexual nature against a child.

'In Case Study Five neither the CMU, police nor DCD were notified of the initial incident in 2000. CMU claim that they notified the Australian Federal Police following the 2004 complaint, but DOET records do not support this.'

The CMU was not created until February 2002 and it follows therefore, that the school principal in the 2000 incident could not have notified the CMU.

Notwithstanding this historical fact however, the Department acknowledges that the 2000 incident was inappropriately dealt with by the then principal contrary to both the policy at the time and as it currently exists.

Several CMU records indicate that the CMU notified the AFP by telephone and in writing, as did the WA Police Child Abuse Unit on the 7 September 2004. This notification was recently confirmed by the Operations Manager, Child Protection Squad. Absolute proof however, that the AFP had received the facsimiled complaint, in the form of a facsimile receipt was not on the file as it ought to have been.

'In Case Study Five the teacher's supervisors took no substantive action in accordance with policy to deal with sexual assault allegations made against the teacher over a long time. No action was taken to deal with contact between student and teacher on the 2003 excursion until a complaint was lodged twelve months later – despite that contact being witnessed by other teachers.'

This statement is not correct. Please refer to the Department's submission in relation to Case Study Five within this document.

'In Case Study Six some five and a half years after initial allegations were received, no substantive effort has been made to assess the risk of the teacher sexually assaulting children.'

This statement is not correct. Teacher E has been removed from having contact with students from February 2000. Please refer to the Department's submission in relation to Case Study Six.

'In relation to these policies the Commission notes the following:

- In Case Study Five despite the obvious risks associated with this teacher (in particular that he had been found to have acted inappropriately towards another girl on a similar excursion) the principal allowed him to go on the excursion. The excursion manager and other staff took no action when they witnessed improper conduct. The various notification requirements of the policies in force were not followed.'**

There were no school records relating to this earlier incident. Please note, Teacher D was not an employee at this school. Rather he provided teaching services as directed by a Department central service provider. Any knowledge of the 2003 school staff of the earlier incident was based on hearsay. The excursion manager and other staff did not witness improper conduct. The staff attending the excursion witnessed a teacher and a student sitting together on public transport whilst accompanied by other members of the tour group.

'In relation to this policy the Commission notes the following:

- In Case Study Two the potential problems identified in the first two matters were not even addressed. That a recurring problem might exist after the gardener's transfer to a high school was never considered.'**

This statement is partly incorrect. The first issue was addressed by the principal resulting in a written directive to the employee even though no impropriety was found.

The second parent complaint was not addressed as it ought to have been once it had been decided that it would not be addressed through a disciplinary process.

There is no evidence to justify the conclusion drawn by the Commission that the Department did not properly reflect upon whether the transfer of Gardener B to a high school would resolve the issue of his over familiarity with young children. Indeed, there is documentary evidence to the contrary in that the Executive Director, Human Resources formed the view that, by placing him under the direct supervision of a Head Gardener would minimise the opportunity to interrelate with children and the risks posed by his limited intellectual capacity. In addition, transferring Gardener B to a school environment where the children were high school age and unlikely to seek to engage a gardener in conversation was also a consideration. The Commission was informed and accepted the rationale for this decision at the time.

'In Case Study Three the potential for recurring sexual assault was dealt with by confirming existing care arrangements.'

Department Response

This assertion is not correct. Please refer to Department submission in relation to Case Study Three which demonstrates that the Department acted lawfully, in accordance with Department policy and in the best interests of this student at all times.

'In Case Study Six no action has been taken to deal with a number of allegations stretching back over many years.'

This statement is incorrect. This employee has been removed from all contact with children since February 2000. Since 2000 Teacher E has been subject to two criminal cases. As the Commission would be aware, it is not at all uncommon for criminal cases to take two years or more to come to trial. In relation to the first matter, Teacher E was charged on 7 January 2000 and the matter was finalised by the Courts on 25 February 2002. Following the conclusion of criminal proceedings the Department endeavoured unsuccessfully to obtain a copy of the Court transcript in order to progress its disciplinary process. This transcript was not provided until 14 months after the Department had informed the ACC of the difficulties it was facing in obtaining the transcript. In relation to the second trial, Teacher E was charged on 27 February 2003 and the matter was finalised by the court on 14 October 2005. Since September 2004, following a suicide attempt, Teacher E has been declared medically unfit to participate in the three ongoing disciplinary matters.

'Prior to 2005, DOET did not have a specific Code of Conduct. Expected behaviours and responsibilities of school staff were outlined in the policy of the day.'

The Department has had a specific Code of Conduct since 2001.

'In relation to these policies, the Commission notes the following:

- In Case Study One the decision to retain the teacher is heavily reliant on DOET's duty of care towards him. This does not appear to take into account the need to foster relationships based on trust, mutual respect and acceptance of responsibility. Nor does it appear to reflect any obligations to maintain safe working environments, in which risks to physical, mental and emotional harm are minimised. It does not appear to reflect the idea that the duty of care owed to students outweighs the duty of care owed to staff.'

The risks to student safety and well being that Teacher A presented was carefully assessed by the Executive Director, Human Resources prior to him discharging his responsibilities under section 92 of the PSMA.

It is important for the Commission to note that State Solicitor's Office advice is that the decision of the Executive Director, Human Resources in respect of Teacher A did not proceed on the basis of any erroneous finding of fact, nor was it outside the range of the reasonable exercise of discretion conferred upon him in determining the disposition permitted under section 92 of the PSMA. Please refer to the Department's submission in relation to Case Study One for further explanation of this point.

'In Case Study Two the duty of care towards children was overlooked in the DOET's decision to investigate performance issues rather than the allegations of inappropriate behaviour and disobeying a lawful instruction.'

The Department acknowledges that it ought to have addressed the October 2004 parent complaint through an alternative complaints mechanism process. The investigation of Gardener B's performance was an unrelated matter which commenced two months prior to the receipt of the second parent complaint.

'In Case Study Three DOET's decision to only confirm existing care arrangements does not appear to be based on minimising the risk of physical, mental and emotional harm.'

This is an incorrect summation of Department action in relation to this incident. Please refer to Department submission in relation to Case Study Three which demonstrates that the Department acted lawfully, in accordance with Department policy and in the best interests of this student at all times.

'In Case Study Four it would appear that maintaining the reputation of the school and teacher were given much greater weight than duty of care issues, or fostering relationships based on trust, mutual respect and acceptance of responsibility.'

This statement is incorrect. Please refer to the Department submission related to Case Study Four for a full account of the circumstances.

'In Case Study Five it is difficult to see how any of the teacher's supervisors, could be said to have been guided by social responsibilities owed to the student or her parents.'

Had the 2000 principal acted in accordance with Department policy at the time, it is highly unlikely that the 2003 matter would have arisen. Notwithstanding this poorly managed incident in 2000, the 2003 incident was managed in strict accordance with Department policy and the statutory regime at the time and resulted in the dismissal of the employee. The department's social responsibilities to the affected student and future students, was reflected in this outcome.

'In Case Study Six DOET's inaction over five and a half years does not appear to be consistent with its values that reflect social responsibilities.'

It is incorrect to state that the Department has been wilfully 'inactive' in respect to addressing concerns with respect to Teacher E.

This employee has been removed from all contact with children since February 2000. Since 2000 Teacher E has been the subject of two criminal cases.

As the Commission would be aware, it is not at all uncommon for criminal cases to take two years or more to come to trial.

In relation to the first matter, Teacher E was charged on 7 January 2000 and the matter was finalised by the Courts on 25 February 2002. Following the conclusion of criminal proceedings the Department endeavoured unsuccessfully to obtain a copy of the court transcript in order to progress its disciplinary process. The transcript was not provided by the ACC until 14 months after the Department informed that agency of the difficulties it was facing in obtaining the court transcript.

In relation to the second trial, Teacher E was charged on 27 February 2003 and the matter was finalised by the courts on 14 October 2005. Since 15 September 2004, following a suicide attempt, Teacher E has been declared medically unfit to participate in the three ongoing disciplinary matters.

The Department continues to reflect its social responsibilities with respect to managing matters affecting Teacher E.

RECOMMENDATION TWO

'The Commission recommends that DOET:
a develop an ongoing training programme to ensure that policies and procedures relating to sexual misconduct are well known and understood by DOET staff'

This recommendation is accepted as reflecting ongoing good practice

'develop procedures to ensure that identifiable non-compliance with policies and procedures is identified and dealt with by way of management and/or disciplinary actions'

Every page of every Department policy contains the following statement:

'All policy and procedural statements contained within this document are lawful orders for the purposes of section 80(a) of the Public Sector Management Act 1994 (WA) and are therefore to be observed by all Department of Education and Training employees.'

As the Commission is aware, section 80 defines what constitutes a breach of discipline in respect of the disciplinary processes of the PSMA.

The Department has published procedures for addressing policy compliance issues. The majority of these non compliance issues are addressed locally by line management, through grievance procedures or mediation. More serious issues of policy non compliance are addressed centrally by the Executive Director, Human Resources through formal disciplinary processes.

'ensure that all reports compiled for internal investigation files address compliance and/or non-compliance with relevant policies.'

In considering any action arising from a disciplinary investigation report, the Executive Director currently considers the impact of any relevant policy to the matter at hand. For example, any proven breach of discipline is almost certainly to be a breach of the Staff Conduct policy and the WA Public Sector Code of Ethics. Since 2002 there are numerous examples of where the Department has formulated disciplinary allegations against an employee that relates to a possible breach of an express provision in a Department policy.

'In relation to this legislation the Commission notes the following:

- In Case Study One the decision to transfer the teacher to a new teaching position is in direct contravention of the Act. DOET cannot currently lawfully employ him to teach in Western Australia. The decision to transfer him was made by the Executive Director of Human Resources – DOET's representative on the Board of the College.'

The decision to transfer Teacher A was not made as a consequence of the Executive Director, Human Resources discharging his responsibilities pursuant to section 92 of the PSMA. Teacher A had voluntarily requested a compassionate transfer following this matter being decided. This transfer was affected on the 30 January 2006 in consultation with the district director of the school to which Teacher A was transferred.

At the time of making his decision in relation to the disciplinary matter affecting Teacher A on the 6 October 2005, the Executive Director, Human Resources was aware of the future impact of the WACOT Act and instructed the Manager, CMU to inform WACOT of the charges against the employee, notwithstanding the fact that under the WACOT Act this was the responsibility of the Director of Public Prosecutions or the Commissioner of Police. The Manager, CMU notified the College of Teaching of the charges against Teacher A's on the 10 May 2005 in keeping with the spirit of the WACOT Act. As the Commission is aware, during the transition processes of this Act, teachers were not required to be registered until March 2006.

Teacher A was lawfully employed by the Department up until the time that WACOT refused him registration on the 19 July 2006.

In the knowledge that the College Board was obliged to act in relation to Teacher A's conviction should he make application for registration, the Executive Director, Human Resources, nevertheless brought his own mind to bear on this matter in deciding the matter under the *Public Sector Management Act 1994* as he was required to do in order to discharge his responsibilities. In discharging his responsibilities the Executive Director, Human Resources clearly delineated his responsibilities as the delegate of the Director General in respect of managing Department disciplinary matters from his responsibilities as a Board Member of the WA College of Teaching established under a separate Act of Parliament. In exercising his disposition under section 92, the Executive Director, Human Resources acted in strict accordance with his responsibilities under the relevant statutory regime as he was bound to do.

'Moreover, reference to the relevant provisions of the Act ought to be a routine aspect of all internal investigation files. After all, how can decisions be reasonably made about whether or not a teacher should be retained without reference to it?'

Since December 2005 it has been routine for the Department to consider whether a disciplinary matter requires notification to WACOT. This has been included on a discipline checklist which is attached to the front cover of every personal investigation disciplinary file.

RECOMMENDATION THREE

'The Commission recommends that, as a matter of priority DOET review its compliance with the *Western Australian College of Teaching Act 2004*. This review should include:

The development of policies and procedures to ensure that good effect is being given to the Act (for example, reference to the Act in all internal investigation reports)'

Since December 2005 it has been routine for the Department to consider whether a disciplinary matter requires notification to WACOT. This has been included on a discipline checklist which is attached to the front cover of every personal investigation disciplinary file.

'Reviewing records of matters caught by the Act, with a view to advising the College about those teachers currently employed by DOET, whose actions cast into doubt their suitability for registration.'

The Department is required by the WACOT Act 2004 to notify the College of Teaching of any teacher who has been suspended or dismissed from the Department. There are no teachers currently employed by the Department who have been suspended from their employment with the Department pursuant to the PSMA disciplinary provisions.

'c Reviewing records of matters caught by the Act with a view to advising the College about teachers who have left DOET's employ because of conduct that casts into doubt their suitability for registration.'

The Department is required by the WACOT Act to notify the College of Teaching of any teacher who has been suspended or dismissed from the Department. No teachers have been dismissed from the Department since the WACOT Act has been given practical effect. Any teacher who was dismissed prior to the WACOT Act coming into being and who subsequently seeks re-employment as a teacher is required to be assessed by WACOT according to the procedures established by WACOT. WACOT registration procedures require an applicant to make a statutory declaration with respects to the relevant aspects of their employment history, including criminal and/or disciplinary history.

RECOMMENDATION FOUR

'The Commission recommends that the decision to retain the teacher in Case Study One be reviewed in light of the *Western Australian College of Teaching Act 2004* and that notification be provided to the college as a matter of priority.'

The Department notified the College of Teacher A's conviction on the 10 May 2005. The College refused Teacher A registration on the 19 July 2006.

'Although teachers registered under the *WA College of Teaching Act 2004* before 1 January 2007 do not have to apply for Working with Children checks until 2009, they are still bound by the Act. From 1 January 2006, any changes to an employee's criminal record must be notified to the employer even if it is prior to the relevant phasing-in date. Importantly, if the change involves either a Schedule 1 or 2 offence, the employee "...must cease child-related work immediately".'

'DOET's retention of the teacher in Case Study One is clearly a breach of this Act.'

The Department's retention of the teacher in Case Study One is not in breach of the WWC Act 2004.

The WWC Act came into force on 1 January 2006. There is no retrospectivity associated with the provisions of the WWC Act. Consequently, there is no requirement prior to 1 January 2006 for persons or authorities to comply with the provisions of the WWC Act. Section 29(1) of the WWC Act provides that a person employed in child related employment must give their employer written notice of a relevant change in their criminal record as soon as possible after the change occurs. Clause 13 of Schedule 1 of the WWC Regulations exempts teachers registered with WACOT from the requirements of the WWC Act. Teacher A was not a registered teacher, although his application for registration was entered on the WACOT database on the 29 November 2005 and noted 'status pending'.

Teacher A was therefore engaged in child related work and subject therefore to the requirements of the WWC Act from 1 January 2006. Since 1 January 2006 there has been no change in Teacher A's criminal record requiring him to notify the Department pursuant to Section 29(1) of the WWC. The said Act was not in force at the time of the change in Teacher A's criminal record. Therefore the Department is not in breach of the WWC Act by continuing to employ Teacher A up until the time he was refused registration by WACOT on the 19 July 2006.

The Department has advised the solicitor acting for the Department of Community Development in the Working with Children (Criminal Record Checking) Unit of this particular situation. No adverse comments have been received.

'From 1 January 2007, DOET will become one of the approved screening agencies for the working with Children checks. The Commission is concerned about the DOET's suitability to undertake this role. The Commission's concern is based on the following factors:

- **the case studies illustrate that DOET has a poor history of dealing with allegations of sexual misconduct against children by its employees;'**

The Department's response to each of the Case Studies indicates that the Commission has, for the most part, formed its judgements on the basis of incomplete information. Consequently, the Department is of the view that there is no justification for the above statement.

By way of further illustration, since February 2002 in addition to the 5 employees that are the subject of these case studies and who the Department suspected of making inappropriate contact of a sexual nature with a student, the Department has addressed 38 similar cases. The ACC/CCC have closed their files on 25 of these matters. Of the remainder, 8 are ongoing and the Department is yet to hear from the Commission in relation to 4 cases. The Department advised the Commission of the outcome of these matters more than 7-9 months ago.

'DOET has not apparently given practical effect to the WA College of Teaching Act 2004, and the Working with Children (Criminal Record Checking) Act 2004;'

From the Department's submissions it can be seen that the Department has given practical effect to the WACOT Act and the WWC Act in relation to the two case studies where it was relevant (but not legally required) to do so.

'the case studies illustrate that DOET does not appear to understand how to properly assess risks as they relate to the protection of children from sexual misconduct.'

The Department's submissions in relation to the six case studies indicate that, since the appointment of the current Director General, the Department has acted appropriately to assess the risks posed by employees suspected of sexual misconduct. All employees suspected of sexual misconduct towards children are removed from contact with schools as a matter of routine. In addition the Police Child Protection Squad is also notified as a matter of routine.

By way of further illustration, since February 2002 in addition to the 5 employees that are the subject of these case studies and who the Department suspected of making inappropriate contact of a sexual nature with a student, the Department has addressed 38 similar cases. The ACC/CCC have closed their files on 25 of these matters. Of the

remainder, 8 are ongoing and the Department is yet to hear from the Commission in relation to 4 cases. The Department advised the Commission of the outcome of these matters more than 7-9 months ago.

'Having said that, the Commission believes that DOET ought to be an approved screening agency. Indeed it is contrary to reason that the largest employer of people who work with children in Western Australia can apparently not be trusted to adequately screen the suitability of these employees. To that end urgent work is required within DOET to ensure that its policies and procedures are adequate to enable it to be trusted to carry out this screening role.'

In 1997, in response to the recommendations of the Wood Royal Commission into the New South Wales Police Service, the Ministerial Council on Education, Training and Youth affairs (MCEETYA) developed a *National Strategy in schooling to Prevent paedophilia and other forms of Child Abuse*. This strategy was endorsed by the Minister for Education and Training in Western Australia.

Since 1997 all new applicants for positions in WA government schools have been required to have an Australia wide police clearance.

In December 2003, the WA Minister for Education and Training announced that all school teachers, TAFE lecturers, administration and support staff, who have not already been police cleared, would undergo criminal screening. The Department has created a specific Unit to undertake this task and has developed and published policy in relation to this task.

Not one of the six case studies cited reflect poorly on the Department's screening processes which have been operating effectively for nine years. Indeed in Case Study Four, the effectiveness of the Department's screening processes were demonstrated when Teacher C sought re-employment as a teacher and was refused employment.

RECOMMENDATION FIVE

'The Commission recommends that prior to implementation of the *Working with Children (Criminal Record Checking) Act 2004* on 1 January 2007, in conjunction with DCD, DOET review its policies and procedures to ensure that they give good effect to the Act.'

The Department is reviewing its policies and procedures in relation to the WWC Act and will continue to monitor policy development to ensure that the Act is given proper effect. It is important for the Commission to note however, that at this time the WWC Act has no relevance to teachers registered by WACOT (which should include all teachers employed in government or non government schools).

'This report neither purports to analyse in any detail the organisational culture of DOET nor the commitment of senior management to act on misconduct. Nevertheless, on these issues, the Commission notes the following:

- **In Case Study One the decision to place the teacher in question back in the classroom was made by the Executive Director of Human Resources.'**

The decision to place Teacher A back in a classroom was made after a careful assessment of the risk to students posed by Teacher A. Department records demonstrate that the Executive Director, Human Resources carefully considered all aspects of the Court transcript and the leniency of the Court imposed sentence, amongst several other factors. The Executive Director, Human Resources gave due weight to the fact that, despite prosecuting counsel's submissions to the contrary, the judge did not regard Teacher A as a

danger to children in the community and did not elect to place him on a sex offenders register or make him the subject of any community supervision Order.

In addition, he noted that Teacher A has no previous convictions of this sort.

The Executive Director, Human Resources also reviewed the employment history of Teacher A which indicated that, in the 9 ½ years of his employment with the Department as a teacher, that he had not been the subject of any disciplinary process in relation to a complaint of this nature, or for that matter, been the subject of any prior disciplinary process. Therefore there was nothing in his past employment history that would give rise to any concerns that were unknown to the sentencing judge.

The sentencing judge, who had an overriding obligation to consider the risks posed to the community by Teacher A, was satisfied that a term of imprisonment was inappropriate as neither the nature of the offences nor the need to protect children from Teacher A in his view arose as a consideration. The sentencing judge commented '*it is unlikely in my view, having regard to the information before me, that it is extremely unlikely that you will offend again. Certainly you have not offended in this or in any other significant matter during your adult life.*'

As stated above, Teacher A was not listed as a sex offender and a psychological analysis cited during his sentencing stated that he was at low risk of re-offending.

In light of the above and also, in the knowledge that Teacher A's line managers had been notified of the circumstances and outcome of Department deliberations on this matter, the Department is of the view that the risks to children presented by Teacher A were properly weighed and considered at the time.

'In Case Study Two the high school principal took no action, despite his knowledge that police were investigating the gardener's conduct. No action has been taken by DOET senior management to correct the principal's omission.'

The principal (an acting principal) informed police that he would closely monitor the conduct of Gardener B. The principal stated that he arranged for Gardener B to be accompanied by the Head Gardener of all times. In doing this the principal ensured that Gardener B was not on his own with any child for the remainder of his employment in the school. The principal was advised that he ought to have informed the CMU of police interest in this employee at the time by a CMU officer. The principal explained this omission as being due to the fact that the police informed him that they were not pressing charges against Gardener B. In addition, the police ought to have raised his matter directly with the CMU in accordance with long established protocol.

'In Case Study Four the teacher's supervisors arranged with him to resign on palpably false grounds before the relevant disciplinary inquiry made any progress. Nothing has been done by DOET senior management to sanction these supervisors.'

This statement is incorrect. Sanctions against these officers are unjustified. Please refer to Department submission in relation to Case Study Four.

'In Case Study Five the teacher was permitted to go on the overseas excursion despite previous allegations. No action was taken about his behaviour while on tour, despite first hand knowledge of it by his supervisors. No action has been taken by DOET senior management to sanction these supervisors.'

The above statement is misleading in that it omits relevant facts. Please refer to the Department submission in relation to Case Study 5 that better reflects the situation.

'These case studies are not consistent with the notion that senior management within DOET is committed to dealing with inappropriate organisational cultural responses to sexual misconduct allegations. Action is required by the DOET executive to demonstrate to employees and the wider community that they take seriously their responsibilities to both manage misconduct and give effect to DOET's safe and secure learning environment policy.'

Despite the Commission stating that this report is not concerned with questioning the 'commitment of senior management to act on misconduct', the above paragraph does exactly that.

Department senior management is totally committed to dealing appropriately with sexual misconduct allegations. By way of further illustration, since February 2002 in addition to the 4 employees that are the subject of these case studies who the Department suspects of making inappropriate contact of a sexual nature with a student, the Department has addressed 37 similar cases. The ACC/CCC have closed their files on 25 of these matters. Of the remainder, 8 are ongoing and the Department is yet to hear from the Commission in relation to 4 cases. The Department advised the Commission of the outcome of these matters more than 7-9 months ago.

In addition, it is important to note that all employees facing allegations of sexual misconduct towards students are promptly removed from all contact with students and the Police Child Protection Squad notified, pending further investigation of the allegations.

RECOMMENDATION SIX

'The Commission recommends that the executive of DOET demonstrate that it is committed to managing misconduct by:

- a. reviewing the case studies cited in this report, taking appropriate action to rectify identified problems; and'**

Following the Department's response to the Draft Response the Department seeks guidance as to which issues remain which require rectification.

Draft Report Extract

- b. 'implementing a system review at executive level of serious misconduct cases, particularly sexual misconduct allegations, as part of the changes stemming from its review of the Complaints Management Unit.'**

This recommendation is accepted as representing ongoing good practice.

'The Commission is confident that DOET does seek to fulfil these imperatives, but notes the following

- In Case Study Four police were not notified of the matter.'**

This statement is incorrect. Police were notified of this matter at the time.

- 'In Case Study Five although it is clear that DOET intended to notify the AFP of the matter, their records do not demonstrate that they did so. The AFP say they were not advised of the matter.'**

Department records do indicate that the Department contacted the AFP both by telephone and through facsimile. With respect to the latter assertion the Department acknowledges that there is no facsimile receipt on the file. In addition the Operations Manager for the WA

Police Child Protection Squad confirmed on the 19 July 2006 that police records show that they too, referred the matter to the AFP on the 7 September 2004 and then closed their file.

'These factors mean that DOET cannot reasonably rely on police decisions to determine their own risk assessments and whether or not they should conduct their own investigations.'

Since the creation of CMU in February 2002 the Department has, without exception, considered the appropriateness of initiating disciplinary proceedings against employees who have been the subject of police or court proceedings, including in circumstances where a court has dismissed charges against an employee.

RECOMMENDATION SEVEN

'The Commission recommends that DOET review its approach to matters involving alleged sexual misconduct by:

- a. ensuring that all relevant matters are notified to police;'**

This is a matter of published policy and practical routine for the Department and built into the checklist for managing disciplinary cases.

- b. 'ensuring that sufficient documentation is maintained to demonstrate notification and interaction with police; and'**

It is acknowledged that a facsimile receipt was not on a personal investigation file cited in this Draft Report. Several file notes however, referring to the fact that the AFP were contacted are on that file. It is a matter of practical routine that contact with police is recorded. The disciplinary checklist in the front cover of each disciplinary file ensures that contact is made as a matter of routine.

- c. 'developing appropriate policies and procedures to ensure co-operation with police, and to ensure that internal decision-making about investigating allegations is made on the basis of Departmental risk assessment, as distinct from police prosecuting decisions.'**

Since February 2002 the Department has had a close working relationship with both the Police Child Protection Squad and the Public Sector Investigation Unit and have agreed on protocols regarding the exchange of information.

Notwithstanding the outcome of police inquiries, the Department always considers whether disciplinary proceedings should be commenced.

CONCLUSIONS

'Whether intended or otherwise, the practical effect of DOET's approach to handling misconduct allegations is that greater weight is given to employee welfare issues than to the safety and security of children.'

The six case studies cited do not reflect that greater weight was given to employee welfare issues than to the safety and security of children. It is long standing Department practice that wherever the Department perceives there is a risk to children because of the possibly sexually predatory nature of an employee, the employee is removed from all contact with children.

'The current level of responsibility assumed by local and district managers is too high. Main responsibility should be with the Complaints Management Unit.'

Since February 2002 Department policy has clearly stated that whenever an employee is suspected of sexual misconduct that CMU must be notified. From the point of notification the Executive Director, Human Resources manages any processes arising, with the assistance of the CMU.

'The approach taken to dealing with sexual misconduct is devoid of any notion of managing risks.'

The Department response with respect to the six case studies indicates that this statement is not justified.

Since 2002, wherever the Department perceives there is a risk to children because of the possibly sexually predatory nature of an employee, the employee is removed from all contact with children. The safety of children is always of paramount importance to the Department.

'DOET has a raft of relevant policies to deal with sexual misconduct, but does not always follow them.'

The six case studies show that two principals (one, an acting principal) in a six year period did not comply with Department policy in relation to addressing the possible sexual misconduct of an employee. Given that the Department employs approximately 780 principals this sample does not indicate that a systemic problem of non compliance with Department policy exists.

'DOET has not given practical effect to either the WA College of Teachers Act 2004 or the Working with Children (Criminal Record Checking) Act 2004.'

4.0.4.5

From the Department's submissions it can be seen that the Department has given practical effect to both the WACOT Act and the WWC Act in relation to the two case studies where it was relevant (but not legally required) to do so.

'Senior managers within DOET are not holding local and district supervisors to account for their decisions when dealing with alleged sexual misconduct.'

4.0.4.6

The Department acknowledges that in Case Study Two the principal (an acting principal) did not inform CMU of police interest in an employee. The principal was informed of the requirement to notify CMU. In Case Study Four the principal and deputy principal acted in accordance with Department policy at the time and the ACC was satisfied with the Department's management of the matter. In Case Study Five, regarding the 2000 incident the Department acknowledges the shortcomings of the principal's actions.

'DOET is unable to demonstrate that it is fulfilling its obligations to properly notify police of sexual misconduct allegations.'

4.0.4.7

Incorrect. With respect to the six cases cited, police were either notified or there was evidence that they were already aware of the matter and informed the Department.

'Record keeping associated with sexual misconduct cases is inadequate.'

4.0.4.8

In respect of the six cases cited the Commission has highlighted that a facsimile receipt was not on one personal investigation file.

The Department acknowledges that an incident which occurred in 2000 was addressed entirely inappropriately.

However, it is an invalid overgeneralisation to interpret record keeping as being a systemic problem on the basis of the information contained in the Draft Report.