



# **CORRUPTION AND CRIME COMMISSION**

## **REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT IN RELATION TO CONTACT WITH STUDENTS AND THE ACCESSING OF CHILD PORNOGRAPHY BY A DEPARTMENT OF EDUCATION EMPLOYEE**

**2 November 2012**

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## CORRUPTION AND CRIME COMMISSION

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Mr Peter John McHugh  
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Dear Mr Peacock  
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003* (WA) ("the CCC Act"), the Commission hereby transmits to you a copy of its *Report on the Investigation of Alleged Public Sector Misconduct in Relation to Contact with Students and the Accessing of Child Pornography by a Department of Education Employee*.

The Commission notes that under section 93(3) of the CCC Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roger Macknay', with a large, stylized flourish at the end.

Roger Macknay, QC  
**COMMISSIONER**

2 November 2012



## ABBREVIATIONS AND ACRONYMS

("the CCC Act")	<i>Corruption and Crime Commission Act 2003 (WA)</i>
CEO	Chief Executive Officer
("the Commission")	Corruption and Crime Commission
("the COPINE Scale")	Combating Paedophile Information Networks in Europe (COPINE) Scale
("the Education Act")	<i>Education Act 1928 (WA)</i>
("the PSM Act")	<i>Public Sector Management Act 1994</i>
("the SEA Act")	<i>School Education Act 1999 (WA)</i>
("the section 240 order")	Order issued pursuant to section 240 of the <i>School Education Act 1999 (WA)</i>
("the SD Act")	<i>Surveillance Devices Act 1998 (WA)</i>
("the TI Act")	<i>Commonwealth Telecommunications (Interception and Access) Act 1979</i>
WACOT	Western Australian College of Teaching
("the WACOT Act")	<i>Western Australian College of Teaching Act 2004 (WA)</i>
WAPOL	Western Australia Police
("the WWC Act")	<i>Working with Children (Criminal Record Checking) Act 2004 (WA)</i>
WWC card	Working with Children Card
WWC Check	Working with Children Criminal Record Check
WWC Screening Unit	Department for Child Protection Working with Children Screening Unit
("7C inquiry")	Inquiry under section 7C of the <i>Education Act 1928 (WA)</i>



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# EXECUTIVE SUMMARY

## Introduction

- [1] This is a report on the 2008/2009 investigation by the Corruption and Crime Commission (“the Commission”), of alleged public sector misconduct in relation to Teacher A,<sup>i</sup> an employee of the Department of Education.<sup>ii</sup>
- [2] The teacher, now in his sixties, was employed as a Primary School teacher in a rural District High School, having begun with the department in the late 1970s. He was an active and well known member of the rural community in which his family resided. For a number of years he was a senior office bearer of a particular Western Australian sporting association involving children and young people, and was heavily involved in events related to this. From the large rural property where he and his family resided, his wife operated a business, catering to children of all ages, including those with physical and learning disabilities. Overnight sporting-related camps were held at the family property.
- [3] In 1996, Teacher A was prosecuted on charges of indecently dealing with a male child in his care but was acquitted by a jury. In 2007, the Department of Education received an allegation that he had engaged in inappropriate conduct with another male child. As a result, disciplinary proceedings were commenced by his employer and he was directed away from school premises preventing him from teaching. Subsequent investigations by the Department of Education resulted in five adult males, who as children had been students at the school where Teacher A worked, making allegations of sexual misconduct against him. These “historical” allegations related to a period between 1982 and 1988.

## Commission Investigation

- [4] The Commission’s investigation began in 2008 with two areas of focus. First, it considered the “historical” allegations with the scope being to determine whether Teacher A had previously engaged in misconduct. Due to the complexities of the investigation itself, its sustained and protracted nature, the reluctance of witnesses and complainants to pursue the matters criminally, the historical nature of the allegations involved and the potential risk posed to children by Teacher A, the Commission also proceeded with an investigation into Teacher A’s current activities. This

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<sup>i</sup> In order to protect the identities of the parties directly and indirectly involved in these matters, some of whom were juveniles at the time of the alleged incidents, the Corruption and Crime Commission (“the Commission”) has concluded that it is not necessary, or in the public interest, to name the Department of Education employee in this report. He is no longer employed in the sector and has been convicted of offences arising out of the Commission investigation. The Commission refers to him throughout this report as “Teacher A”.

<sup>ii</sup> This report includes matters over a number of decades. During this period the relevant employing authority has variously been the Department of Education and Training, the Ministry of Education, the Department of Education and other agencies. For ease this report will refer to the Department of Education (as the public authority currently is) throughout.

second focus to the Commission's investigation was conducted with the scope being to determine whether Teacher A was currently engaged in misconduct. This aspect of the investigation involved, but was not limited to, the use of information obtained from lawfully installed surveillance devices and lawfully intercepted telephone, internet and email services.

- [5] This aspect of the Commission's investigation identified email exchanges that had occurred (prior to the Commission's investigation) between Teacher A and (then) current and former students. The nature of these exchanges, on their face and without investigation, was a matter of concern for the Commission, however, they did not amount to criminal offences. However, also as a consequence of the Commission's investigation, Teacher A was charged with eight counts of using a carriage service for child pornography pursuant to section 474.19 of the *Criminal Code Act 1995* (Cth). He was convicted on five counts and received two 12-month sentences of imprisonment, each suspended for 18 months, and fines totalling \$12,000.

## Systemic Issues

- [6] This report sets out the relevant literature and child protection and law enforcement industry perspectives with respect to some of the misconduct risk factors identified through the Commission's investigation.
- [7] The Commission's intention in publishing its analysis is to identify a range of risk behaviours often exhibited by persons who are unsuitable to be in contact with children, and to raise awareness of the risks faced by children, in order to assist the relevant public authorities to establish appropriate preventative, identification and management strategies. This is done so in the exercise of the Commission's prevention and education function, which is closely related to its misconduct function.<sup>iii</sup>
- [8] The case of Teacher A highlights deficiencies in the systems that were in place to prevent, detect and remove those people who present an unacceptable risk that they might engage in inappropriate contact and conduct with children, from working with them. Teacher A was such a person, and when the risk presented by him emerged, the various bodies involved did not respond in a coordinated, comprehensive or complete way. The Commission contends that, although often acting within the limitations imposed by legislation, there was, over a considerable period, a systemic failure insofar as the various regulatory and employment bodies involved were unable to deal with matters before they manifested as criminal charges and eventual conviction. Acknowledging the legislative limitations that existed, the Commission notes that it was not until criminal charges were preferred, and conviction achieved in 2010, that substantive action to preclude Teacher A from all child-related work was taken.
- [9] In July 2007, on commencement of the disciplinary proceedings, the Director General of the Department of Education took swift action to

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<sup>iii</sup> Sections 17 and 18 of the *Corruption and Crime Commission Act 2003* (WA).

remove Teacher A and order him away from all public schools pursuant to section 240 of the *School Education Act 1999* (WA) (“the section 240 order”), on the basis that his continued presence constituted a risk to the safety and welfare of students. In August 2007, he was issued with a Working with Children Card (“WWC card”).

[10] In the Commission’s opinion, the systems that were in place collectively failed to ensure Teacher A’s suitability to work with children. These systemic failures occurred at several points. The basis for this opinion includes:

- That a WWC card was able to be issued to Teacher A, in accordance with the relevant legislation, allowing him to work with children as part of his wife’s business and the sporting association he was involved in, notwithstanding that he had previously been the subject of non-conviction charges and that he was, at that time, the subject of a section 240 order by his employer who considered him a potential risk to children.
- That Teacher A maintained his Western Australian College of Teaching (“WACOT”) registration and WWC card enabling him to be engaged as a teacher in the private education sector if he had chosen, and to work with children generally (including as part of his wife’s business and the sporting association he was involved in), notwithstanding the section 240 order.
- That the Department of Education’s processes meant that the section 240 order was unable to be effectively enforced by the department. Notwithstanding the 240 order in place, Teacher A was able to be engaged as a school volunteer and go undetected on school premises on several occasions.
- That inappropriate activity on a Department of Education computer was not able to be detected by proactive departmental investigations because Teacher A had remote internet access.
- That WACOT, by their account, was given insufficient information to act by the Department of Education in relation to the disciplinary allegations against Teacher A. As a consequence Teacher A was able to maintain his teacher registration, and therefore seek employment at private schools should he have chosen to, notwithstanding the disciplinary action commenced by his employer and the section 240 order.
- In this regard there was, in the Commission’s opinion, a systemic failure to respond to the potential risk posed to children by Teacher A in a coordinated, comprehensive or complete way.

## **Commission Opinion**

[11] In the opinion of the Commission, the conduct of Teacher A, which amounted to criminal offences under section 474.19 of the *Criminal Code Act 1995* (Cth), for which he was convicted, constitutes misconduct under sections 4(d)(iii) and (vi) of the CCC Act and, in the alternative, sections 4(d)(i) and (vi) of the CCC Act.

- [12] As Teacher A is no longer employed as a public officer and has been convicted and sentenced for his criminal offences, the Commission makes no recommendation for further action in relation to him.

## Recommendations

- [13] This report deals with the course of allegations concerning Teacher A's conduct in four sections; the failed prosecution of the 1990s, the multiple complaints of inappropriate physical contact, the child pornography matters for which he was criminally convicted and the emailing activities. Having considered the representations of the parties and bodies included in this report, the Commission makes six recommendations for improvement in response to the systemic weaknesses exposed by the investigation.

### Recommendation One

That the Department of Education review the legislation, systems and procedures in place with respect to section 240 of the *School Education Act 1999* (WA) and amend it as necessary, in view of the enforcement, compliance and monitoring issues raised in this report.

### Recommendation Two

That the Department of Education review and amend as necessary, the systems, policies and procedures it has in place for engaging employees and volunteers. Consideration should be given to whether these take adequate account of any prohibition or conditional orders in place and the suitability of individuals to be working with children.

### Recommendation Three

That the Minister for Education review the *Teacher Registration Act 2012* (WA) and amend it as necessary, in view of the matters raised in this report. Consideration should be given to the authority to suspend a teacher's registration in circumstances where the teacher is or has been the subject of disciplinary investigation by their employer and the allegations raise possible doubt as to their suitability to work with children. Any current limitations to the effective operations of section 50 of the *Western Australian College of Teaching Act 2004* should also be addressed by the *Teacher Registration Act 2012* (WA).<sup>iv</sup>

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<sup>iv</sup> As of 17 October 2012, the *Teacher Registration Act 2012* (WA) had been assented and sections 1 and 2 of that Act proclaimed. Refer to paragraph [206] of this report for discussion of Recommendation Three and the pending proclamation of the *Teacher Registration Act 2012* (WA).

#### **Recommendation Four**

That the Department for Child Protection give consideration to amending the *Working with Children (Criminal Record Checking) Act 2004* (WA) to enable disciplinary findings and/or disciplinary investigation by relevant Government departments or regulatory bodies to trigger consideration of the person's eligibility to hold a *Working with Children Card*.

#### **Recommendation Five**

That the Department of Education and the relevant teacher registration body, together, have in place policies and Codes of Conduct for teachers, and those who work in schools, which consistently and clearly establish the standards and expectations for professional behaviour and conduct.

These should take account of issues such as:

- contact and communication with students outside of regular school hours and activities;
- contact and communication with students via email, internet and by telephone;
- relationships with students; and
- physical contact with students.

These policies and Codes of Conduct should be supported by training which, the Department of Education should make mandatory for teachers and school-based staff. The relevant teacher registration body, should consider making such training a requirement for teacher registration/re-registration.

#### **Recommendation Six**

That the Department of Education review its current capacity for proactive strategies and initiatives in relation to child pornography and child protection issues, and give consideration to increasing this capacity.

- [14] These recommendations have been accepted in full, or with some amendment by the relevant bodies.

### **Acknowledgements**

- [15] The Commission acknowledges the cooperation of the Department of Education, the Department for Child Protection's Working with Children Screening Unit and the Western Australian College of Teaching, in particular, their willingness to pursue improvements to child protection strategies and systems across the sector.

- [16] The Commission also gratefully acknowledges the assistance and cooperation of the parties and their families involved in these matters. To lessen any potential distress at its contents, affected parties have, where possible, been made aware of this report.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

- [1] This is a report on the 2008/2009 investigation by the Corruption and Crime Commission (“the Commission”), of alleged public sector misconduct in relation to Teacher A,<sup>1</sup> an employee of the Department of Education.<sup>2</sup> The teacher, now in his sixties, was employed as a Primary School teacher at a rural District High School. In 1996, Teacher A was prosecuted on charges of indecent dealing with a male child in his care, and was acquitted by a jury.
- [2] In 2007, the Department of Education received an allegation that he had engaged in inappropriate conduct with another male child. Later, allegations were made by other former male students of sexual misconduct that was said to have occurred between 1982 and 1988. On the basis of information obtained in relation to these allegations, the Commission assessed that Teacher A may have engaged in misconduct as defined by section 4 of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”).
- [3] The Commission’s investigation commenced as a consequence of the 2007 allegations, as well as the additional complaints dating back to a period between 1982 and 1988 (“the historical allegations”). The historical allegations had been the subject of investigation by the Department of Education and were reported to the Western Australia Police (WAPOL). However, because of the complexities of the investigation, including its protracted nature, the reluctance of witnesses to pursue criminal complaints, and the limited capacity of either public authority to conduct sustained proactive investigations of this nature, successful investigative outcomes were less likely.
- [4] In addition to the historical allegations, the Commission’s investigation also focussed on Teacher A’s current behaviour in order to determine if he was presently engaged in misconduct. During the course of the investigation into Teacher A’s current behaviour, email exchanges between Teacher A and (then) current and former students were identified. These exchanges took place prior to the Commission’s investigation. They were a matter of concern for the Commission, however, they did not amount to criminal offences. However, as a result of the Commission’s investigation, Teacher A was indicted with eight counts of using a carriage service<sup>v</sup> for child pornography pursuant to section 474.19 of the *Criminal Code Act 1995* (Cth). He was later convicted on five of the eight counts. He received two 12-month sentences of imprisonment, each suspended for 18 months, and fines totalling \$12,000.

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<sup>v</sup> The *Telecommunications Act 1997* (Cth) defines a carriage service as a “service for carrying communications by means of guided and/or unguided electromagnetic energy”.

- [5] The matters considered in this report expose weaknesses in the systems that were in place for ensuring the suitability of those who work with children. The report makes important recommendations for change in this regard.
- [6] Chapter One of this report provides an overview of the Commission's activities and the legal context in which the investigation occurred, the report is made and the Commission has formed its opinion. Chapter Two provides the wider legal context relevant to the assessment and management of the potential risk to children within the teacher/student relationship in which the Commission has made recommendations. Chapter Three details and analyses the allegations concerning Teacher A's conduct in relation to children from the early 1980s through to 2009. Chapter Four sets out the relevant literature with respect to some of the misconduct risks factors identified through this investigation and makes relevant analysis. Chapter Five considers the question of misconduct by Teacher A and Chapter Six provides an analysis of the systems that were in place to protect children and ensure the suitability of the teacher to work with children. The report makes six recommendations for improvement in response to the systemic weaknesses exposed by the Commission's investigation. In making these recommendations, the Commission has considered the representations made by the parties and bodies involved.

### **1.1.1 Scope of the Commission Investigation**

- [7] The initial scope of the Commission investigation was to:
- (a) determine whether Teacher A had previously indecently dealt with students of District High School A;
  - (b) determine whether Teacher A was currently indecently dealing with current students of District High School A;
  - (c) determine whether WAPOL, the Department of Education and the Department for Child Protection<sup>vi</sup> identified and liaised with the appropriate agencies in the exchange of information when allegations of this nature arose; and
  - (d) to assist the Department of Education to determine whether Teacher A was a person of suitable character to be teaching children.
- [8] Information gained by the Commission during the investigation led to the scope evolving to encompass new avenues of inquiry. This is discussed further in Chapter Two of this report.

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<sup>vi</sup> The Department for Child Protection came into operation in July 2007 as a result of the splitting of the Department for Community Development into the Department for Child Protection and the Department for Communities. In the period between 1985 and 1992, the relevant organisation was the Department for Community Services. For ease this report will refer to the Department for Child Protection (as the public authority currently is) throughout.

## **1.2 Jurisdiction of the Commission**

- [9] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the CCC Act faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the CCC Act.
- [10] It is a function of the Commission, pursuant to section 18 of the CCC Act, to ensure that an allegation about, or information or matter involving, misconduct by public officers is dealt with in an appropriate way. An allegation can be made to the Commission, or made on its own proposition. The Commission must deal with any allegation of, or information about, misconduct in accordance with the procedures set out in the CCC Act.

## **1.3 Definitions**

### **1.3.1 Misconduct**

- [11] The Commission refers to and incorporates into this report what is set out at [20] to [36] and [38] inclusive in its Special Report.<sup>3</sup>

### **1.3.2 Public Officer**

- [12] The Commission refers to and incorporates into this report what is set out at [39] of its Special Report.
- [13] By definition, Teacher A was a “public officer” during the period relevant to the Commission investigation. The term is defined within section 3 of the CCC Act by reference to section 1 of the *Criminal Code 1913* (WA) and includes employees of the Department of Education.<sup>4</sup>
- [14] In particular, pursuant to section 1(c) the *Criminal Code 1913* (WA), which provides the definition of a “public officer”, Teacher A, as an employee of the Department of Education, appointed under the *School Education Act 1999* (WA), was included in the category of “public service officer ... within the meaning of the *Public Sector Management Act 1994*”.

## **1.4 Reporting by the Commission**

- [15] The Commission refers to and incorporates into this report what is set out at [40] to [41] inclusive of its Special Report.
- [16] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters. Teacher A and a number of bodies were provided the opportunity to make representations in relation to these matters.

#### **1.4.1 Teacher A**

- [17] Prior to coming to a concluded opinion on matters contained in this report, the Commission provided Teacher A with an opportunity to make representations in relation to them, pursuant to section 86 of the CCC Act. The Commission has taken these representations into consideration in reaching the views and opinions expressed in this report.
- [18] Teacher A was notified by letter on 1 February 2012 of possible adverse matters which it was proposed to include in this report. He was invited to make representations about those and other matters, and was advised that he and/or his legal adviser could inspect evidentiary material going to matters identified. Teacher A took this opportunity to provide representations to the Commission which were taken into account in finalising this report. These were in writing and were received on 13 February 2012.
- [19] Teacher A indicated to the Commission in his representations that he had been unable to seek legal counsel for reasons of financial hardship. The Commission therefore wrote to Teacher A providing him with an additional 10 working days in which to make contact with Legal Aid Western Australia, should he wish, in order to determine whether he qualified for legal advice through that office. No further communication was received from Teacher A and therefore, by way of letter dated 1 March 2012, the Commission informed him that his earlier submission would be taken as his sole representation on matters.

#### **1.4.2 Department of Education**

- [20] The Director General of the Department of Education was notified on 25 January 2012 of possible adverse matters which it was proposed to include in this report. Following a number of extensions, representations were received by the Commission on 10 April 2012. These representations were taken into account in finalising this report.
- [21] During the period in which the Department of Education was invited to provide representations, senior departmental officers indicated a desire to meet personally with Commission officers to discuss the issues raised in the draft report and the department's response. Furthermore, the Director General's representations indicated that she would be willing to personally meet with the Commissioner to discuss the issues raised in her letter and the department's response. The Commission did not meet with representatives of the Department of Education or the Director General. The Commission was concerned to maintain impartiality and to avoid allegations of preferential treatment. Had the Commission met in private with representatives of the department or the Director General, when such an opportunity had not been afforded to other affected parties in relation to reports of the Commission in previous investigations, it may have affected the perception of impartiality. The process under section 86 provides for "reasonable opportunity" for representations to be made to the Commission. The Commission is of the view that providing the opportunity to make representations in writing is "reasonable" in the circumstances.

### **1.4.3 Western Australian College of Teaching**

- [22] The Director of the Western Australian College of Teaching (WACOT) was notified on 25 January 2012 of possible adverse matters which it was proposed to include in this report. Following an extension, representations were received by the Commission on 7 March 2012. These representations were taken into account in finalising this report.

### **1.4.4 Working with Children Screening Unit**

- [23] The Director of the Department for Child Protection Working with Children Screening Unit ("the WWC Screening Unit") was notified on 25 January 2012 of possible adverse matters which it was proposed to include in this report. Representations were received by the Commission on 21 February 2012. These representations were taken into account in finalising this report.

## **1.5 Disclosure**

- [24] The Commission refers to and incorporate into this report what is set out at [43] to [46] of its Special Report.
- [25] The decision by the Commission to report on the investigation of alleged public sector misconduct in relation to Teacher A, an employee of the then Department of Education and Training, goes to its statutory purpose of improving continuously the integrity of, and reducing the incidence of misconduct in, the public sector. It is also necessary in the public interest to enable informed action to address the child protection and misconduct risks identified by the circumstances revealed in this report.

## **1.6 Telecommunications Interception Material**

- [26] The Commonwealth *Telecommunications (Interception and Access) Act 1979* (Cth) ("the TI Act") contains stringent controls and safeguards in relation to telecommunications interception and handling, and communicating information gathered from lawfully intercepted telecommunications. Section 63 of the TI Act prohibits the communication of lawfully intercepted information unless given particular restricted circumstances.
- [27] Section 67(1) of the TI Act allows certain intercepting agencies, including the Commission,<sup>5</sup> to make use of lawfully intercepted information and interception warrant information for a "permitted purpose". "Permitted purpose", as defined in section 5(1) of the TI Act, in the case of the Commission "means a purpose connected with ...: (i) an investigation under the Corruption and Crime Commission Act into whether misconduct (within the meaning of the Act) has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur; or (ii) a report on such an investigation".<sup>6</sup>

## **1.7 Privacy Considerations**

- [28] In formulating this report the Commission has considered the benefits of public exposure and public awareness weighed against the potential for prejudice and privacy infringements.

## **1.8 Opinions of Misconduct**

### **1.8.1 Publication of an Opinion**

- [29] The Commission refers to and incorporates into this report what is set out at [49] to [51] inclusive of its Special Report.

### **1.8.2 Balance of Probabilities**

- [30] The Commission refers to and incorporates into this report what is set out at [52] to [57] inclusive of its Special Report.

### **1.8.3 Expression of Opinion**

- [31] The Commission has borne all of the foregoing considerations (as outlined above) in mind in forming its opinions about matters the subject of the investigation. Any expression of opinion in this report is so founded.

## CHAPTER TWO LEGAL CONTEXT

### 2.1 Background

- [32] The allegations regarding Teacher A were reported to, and assessed by, the Commission in the performance of its misconduct function (as referred to in paragraphs [9] – [11] of this report) as required by the CCC Act. The allegations which resulted in the Commission’s investigation were of historical sexual misconduct.
- [33] The focus of the Commission’s investigation at the early stages was on the current activities of Teacher A, that is, to determine whether Teacher A was currently engaging in sexual misconduct with students at District High School A. This focus was considered important to establish whether Teacher A posed a current risk to children in circumstances where Teacher A at that time remained employed by the Department of Education (although stood down subject to an order issued pursuant to section 240 of the School Education Act 1999 (WA) (“the SEA Act”) (“the section 240 order”)) referred to in paragraph [82] below), retained his *Working with Children Card* (“WWC card”), and retained his WACOT teaching registration. The current activities of Teacher A were an avenue of effective covert investigation by the Commission. This ultimately led to criminal charges and convictions relating to the use of a carriage service for child pornography and the dismissal from employment, the cancellation of Teacher A’s registration as a teacher and the cancellation of Teacher A’s WWC card.
- [34] The Commission has formed one opinion of misconduct with respect to Teacher A related to the above convictions and this is set out in Chapter Five. Details of the allegations made to, and considered by, the Commission and the details of the Commission’s investigation are set out in Chapter Three.
- [35] In short, a critical issue that arose during this misconduct investigation was a matter related to the alleged historical sexual misconduct and that is, whether, in all of the circumstances, Teacher A currently presented as an unacceptable risk to children. Matters related to misconduct fall squarely within the Commission’s misconduct function as expressed in subsection 18(2)(b) of the CCC Act.
- [36] In the Western Australian legislative context surrounding the employment, registration and Working with Children (WWC) clearance of teachers, this issue of the assessment of risk to children is central. Consequently, the Commission’s investigation also involved an analysis of the systems and legislation in place in Western Australia. The case of Teacher A illustrates risk factors that, in the Commission’s opinion, ought to be taken into account to enable relevant departments and bodies to make a proper and timely assessment of the risk posed to children in certain circumstances and this report uses the case of Teacher A to recommend changes to

those systems and legislation. In so doing the Commission is carrying out statutory obligations prescribed in section 7B(3) and section 17(2) of the CCC Act.

- [37] In Western Australia, multiple departments or bodies are involved in regulating the ongoing suitability of individuals to be registered and practising teachers, and to work with children. All teachers who are working with children are required to have a WWC card obtained through the WWC Screening Unit. All teachers engaged to teach in Western Australian public or private schools<sup>iii</sup> must be registered. At the time of the alleged misconduct, teacher registration was the responsibility of WACOT. Currently, the *Teacher Registration Act 2012* (WA) has been assented to but, with the exception of sections 1 and 2 of that Act which have been proclaimed, the Act in its entirety has not yet been proclaimed. Upon proclamation, WACOT will be replaced by a Teacher Registration Board. The Department of Education is the Western Australia's largest employer of teachers and is responsible for certain pre-engagement checks of teachers engaged in public schools, and for the ongoing monitoring of teachers' behaviour and conduct.
- [38] At the time relevant to this report, the collective and individual legislative frameworks governing the three bodies; the WWC Screening Unit, WACOT and the Department of Education, provided for response to the receipt of information calling into doubt a teacher's ongoing suitability. The governing frameworks provided for some notification and sharing of information, and within each body, systems were in place to respond to a potential change to an individual's suitability. In the Commission's opinion this investigation has highlighted that the effectiveness of the systems; the collective and individual legislative frameworks, and the processes and procedures in place, was questionable. The case of Teacher A, in the Commission's opinion, highlights some of the deficiencies in the system.

## 2.2 Relevant Legislative Framework

- [39] All teachers employed to teach in Western Australian public or private schools, kindergarten through to Year 12, must be registered. In this regard, the registration body, WACOT (which will become the Teacher Registration Board), regulates the teaching profession in Western Australia and performs an important bridging function between the public and private education sectors. Registered teachers are issued with a card which indicates their registration status and, therefore, their eligibility to be engaged as a teacher. An online register of teachers is maintained for verification of a teacher's registration.
- [40] At the time of the Commission's investigation, the registration of teachers in Western Australia was governed by the *Western Australian College of Teaching Act 2004* (WA) ("the WACOT Act"). This Act will be repealed following the proclamation of section 132 of the *Teacher Registration Act*

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<sup>iii</sup> Schools covered by the *School Education Act 1999*.



2012 (WA). Section 35 of the WACOT Act sets out the requirements for registration as a teacher which includes that the person has not been convicted of an offence the nature of which renders the person unfit to be a teacher (subsection 35(a) WACOT Act). Similarly, the registration of a teacher under the *Teacher Registration Act 2012* (WA) requires that the person is eligible for registration if, inter alia, they are a fit and proper person (see sections 15 to 18 and section 24 of the *Teacher Registration Act 2012* (WA)).

- [41] In 2004, the *Working with Children (Criminal Record Checking) Act 2004* (WA) (“the WWC Act”) was introduced in Western Australia mandating certain criminal record checks for those in child-related work. A WWC card is issued to a person when their Working with Children Criminal Record Check (“WWC Check”) has been successful. The requirements under the WWC Act were phased in across various categories of child-related work once the Act was proclaimed. For teachers, such as Teacher A, who were registered with WACOT prior to 1 January 2007 and were working as registered teachers before 1 January 2007, there was a requirement that they obtain a WWC Check upon renewal of their registration or by 31 December 2010, whichever came first.
- [42] A significant feature of the legislation is that it allows for the consideration and assessment of certain non-conviction criminal charges as they relate to a person’s apparent suitability to work with children.
- [43] It is now well recognised in this State that where there could be a risk to the safety or wellbeing of children, the interests of the children must be regarded as paramount. Further, the role that unproven conduct can play in this area is demonstrated by the provisions of the WWC Act.
- [44] The WWC Act states that it is an Act:
- to provide for procedures for checking the criminal record of people who carry out, or propose to carry out, child-related work;
  - to prohibit people who have been charged with or convicted of certain offences from carrying out child-related work; and
  - to provide for other related matters.

It is an offence under the WWC Act to carry out child-related work unless the holder of a current Assessment Notice (the notice issued in the form of a WWC card when a WWC Check has been successful).

- [45] On application for an Assessment Notice, the Chief Executive Officer (“the CEO”) of the Department of Child Protection is required to make a criminal record check, such to include information about a charge of a relevant offence even if there was an acquittal, and may, pursuant to section 12(5) of the WWC Act, if satisfied that because of the particular circumstances of the case a Negative Notice should issue, decline to provide an Assessment Notice. A Negative Notice prohibits a person from undertaking child-related work in Western Australia.

[46] There are a number of matters required to be considered by the CEO pursuant to subsection 12(8) of the WWC Act:

- (a) *the best interests of the children;*
- (b) *when the offence was committed or is alleged to have been committed;*
- (c) *the age of the applicant when the offence was committed or is alleged to have been committed;*
- (d) *the nature of the offence and any relevance it has to child-related work;*
- (e) *the effect of future conduct by the applicant in relation to a child if the future conduct were the same or similar to conduct the subject of –*
  - (i) *any offence committed by the applicant; or*
  - (ii) *any charge against the applicant;*
- (f) *any information given by the applicant in, or in relation to, the application; and*
- (g) *anything else that the CEO reasonably considers relevant to the decision.*

[47] Further guidance is provided by section 3 of the WWC Act which states that:

*In performing a function of this Act, the CEO or the State Administrative Tribunal is to regard the best interests of children as the paramount consideration.*

The effect of this legislation is that a person who has been charged and found not guilty of a relevant offence, may be declined their WWC Check by the WWC Screening Unit.

[48] Once a teacher is registered, has a WWC card and is employed their ongoing conduct remains relevant within the legislative scheme. There is an ongoing process relation to WWC Checks. The original Assessment Notice is valid for a period of 3 years (subsection 14(1) of the WWC Act). A further application for an Assessment Notice can be made if the previous notice no longer has effect or if it will expire within a period of 3 months (section 15 of the WWC Act). In addition, section 16 of the WWC Act enables employers to notify the CEO of the Department of Child Protection if they reasonably suspect that the employee has been charged with or convicted of an offence and reasonably believes that the charge or conviction makes it inappropriate for the employee to continue to carry out child-related work. Upon receipt of this information the CEO of the Department of Child Protection, if satisfied that there are reasonable grounds for holding the suspicion and belief, may give the employee written notice requiring them to apply (within 10 days) for a further

Assessment Notice. The WWC Act also places an obligation on employees to report a relevant change in their criminal record (section 29) and failure to do so is a criminal offence.

[49] Further, employers of teachers who have suspended or dismissed a teacher for one of the reasons outlined in section 50 of the WACOT Act were required (and will continue to be so required until that Act is repealed upon the proclamation of the *Teacher Registration Act 2012* (WA)) to notify WACOT in writing within 14 days, setting out the action taken and the reason. In particular, subsection 50(1) of the WACOT Act, provides that:

(1) *If an employer of a registered teacher, or a person who holds a limited authority to teach, has suspended or dismissed that person from teaching at school because, in the opinion of the employer, the has –*

(a) *been seriously incompetent as a teacher; or*

(b) *engaged in serious misconduct.*

*the employer must give written notice to the College within 14 days after taking the action to dismiss or suspend the teacher setting out the action taken and the reason, or reasons, for the action.*

(2) *As soon as is possible after receiving a notice under this section, the College is to consider the notice and any other information it considers relevant and decide if it is necessary to hold an inquiry.*

[50] The legislative regime under the WACOT Act therefore enables WACOT, upon receipt of the written notice, to consider disciplinary action which is initiated under that Act by holding an inquiry. Under the WACOT Act disciplinary action can be taken against a teacher if it has been found at an inquiry into the conduct of that teacher that the teacher has engaged in unprofessional conduct (subsection 62(1) WACOT Act). Unprofessional conduct includes that a person has been convicted of an offence the nature of which renders the person unfit to be a teacher (subsection 63(1)(a) WACOT Act) and that a person has engaged in serious misconduct the nature of which renders the person unfit to be a teacher (subsection 63(1)(b) WACOT Act). Disciplinary action can include cancellation of the teacher's registration (subsection 64(d) WACOT Act).

[51] The provisions of the *Teacher Registration Act 2012* (WA) relating to discipline (which are yet to be proclaimed) are more extensive. While section 50 of the WACOT Act is essentially replicated in section 42<sup>iv</sup> of the *Teacher Registration Act 2012* (WA), the action that can be taken

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<sup>iv</sup> An important exception to this is that section 42 of the *Teacher Registration Act 2012* (WA) includes notification of the resignation of a registered teacher where that teacher's conduct has been the subject of an investigation.

following the receipt of such notice, prior to commencing the formal disciplinary process, is wider. For example, the *Teacher Registration Act 2012* (WA) creates a Teacher Registration Board which has the power under section 45, upon receipt of notice under section 42, to make an interim disciplinary order. Pursuant to the *Teacher Registration Act 2012* (WA), interim disciplinary orders either suspending a person's registration or imposing conditions on it can be made, inter alia, where there is a risk of imminent injury or harm to any person (section 59 of the *Teacher Registration Act 2012* (WA)) or if a registered teacher has been charged with a sexual offence involving a child (section 60 of the *Teacher Registration Act 2012* (WA)). Further, cancellation of a person's registration continues to be an available outcome following the disciplinary process (see sections 70 and 84 of the *Teacher Registration Act 2012* (WA)).

[52] The Department of Education also has legislative powers with respect to the taking of disciplinary action. Section 239 of the SEA Act enables the Director General of the Department of Education to take disciplinary action for a breach of discipline and, in so doing, the SEA Act invokes Part 5 of the *Public Sector Management Act 1994* (WA) ("the PSM Act"). This was previously an inquiry conducted pursuant to section 7C of the repealed *Education Act 1928* (WA) (7C inquiry).

[53] Closely related to the Department of Education's ability to initiate disciplinary action, section 240 of the SEA Act enables the Director General of the Department of Education to order teachers in the employ of the Department to leave school premises in particular circumstances:

(1) *If the chief executive officer suspects -*

- (a) *that a person employed at the premises of a government school may have committed a breach of discipline as referred to in section 80 of the [PSM Act] (whether or not that section applies to the persons); and*
- (b) *that the continued presence of the person on the school premises constitutes a risk to the safety or welfare of students on the premises,*

*the chief executive officer may, by order in writing given to the person, require him or her to leave the school premises and remain away -*

[54] Section 50 of the WACOT Act (as outlined in paragraphs [49] and [50] above) requires the Department to notify WACOT about suspension or dismissal of a teacher. Further, section 49 of the WACOT Act requires the Director of Public Prosecutions, or where relevant, the Commissioner of Police, to notify WACOT when a teacher is charged with, committed for trial or sentence of particular offences (set out in Schedule 2 of that Act) and to notify WACOT when a teacher is convicted of an indictable offence in this State. Section 42 of the *Teacher Registration Act 2012* (WA) essentially replicates section 50 of the WACOT Act with some crucial

differences. Namely employers are required to notify the Teacher Registration Board about a registered teacher who has been suspended, dismissed or resigns as a result of an investigation into their conduct. Further, section 41 of the *Teacher Registration Act 2012* (WA) requires the Director of Public Prosecutions, or where relevant, the Commissioner of Police, to notify the Teacher Registration Board where:

- (a) *a registered teacher is charged with, or committed for trial or sentence before any court for, a sexual offence involving a child;*
- (b) *a registered 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 prosecution of the charge is discontinued or does not result in committal for trial or sentence, or there is an acquittal or mistrial;*
- (d) *in the case of a committal referred to in paragraph (a), there is an acquittal or mistrial or the prosecution of the charge is discontinued.*

[55] This is the legislative framework that governs this aspect of the ongoing management of the employment and registration of teachers.

## **2.3 Understanding the Concept of “Risk” in Child Protection Matters**

[56] This next section provides both Parliamentary and judicial perspectives of the concept of “risk” in child protection matters. The Commission refers to this information for two primary reasons. Firstly, it assists in establishing the reasons for the Commission’s focus on, or concern with, potential risk to children as a matter related to this misconduct investigation. Secondly, it provides some analysis of the framework in which the suitability of persons to be in child-related work in Western Australia is assessed.

[57] The provisions of the WWC Act have been the subject of consideration by the Court of Appeal of the Supreme Court of Western Australia in CEO, Department for Child Protection v Grinrod [No. 2] [2008] WASCA 28. Buss JA, with whom Wheeler JA agreed, at [76] said:

*The subject matter and scheme of the WWC Act reveal that the Act is concerned to ensure that children are not put at risk of sexual or physical harm through contact with people who work in child-related employment and have been convicted of, or charged with, (including charged with and acquitted of) specified criminal offences. The evident legislative purpose is to protect children by reducing the risk that they may suffer harm as a result of contact with people engaged in child-related employment who pose or may pose a potential threat. The Act does not have a punitive or disciplinary purpose even though, in its application or implementation, the civil rights of applicants who are issued with a negative notice will be affected*

*adversely and, in some circumstances, those applicants with non-conviction charges may suffer serious or even irretrievable damage to their reputations or a significant diminution in their earning capacity.*

[58] Further, at [77] Buss JA stated that:

*In my opinion, the Parliament has adopted a precautionary approach, relevantly, to the issue of a negative notice to an applicant who has not been convicted of a Class 1 offence or a Class 2 offence, but has a non-conviction charge in respect of such an offence. The adoption of this approach is discernable from the following:*

- (a) the CEO in performing, relevantly, the function under section 12(4) and (8), is to regard the best interests of children as “the paramount consideration”;*
- (b) whether or not a negative notice is to be issued under section 12(4)<sup>v</sup> depends on the CEO’s “satisfaction” (that is, his or her state of mind) in relation to the particular circumstances of the case, rather than upon the existence of an objective “fact”, as ordinarily understood; and*
- (c) the CEO may decide an application under section 12 by issuing a negative notice to the applicant after, relevantly, inviting the applicant to make a submission to the CEO about information concerning the applicant’s criminal records of which the CEO is aware and about the applicant’s suitability to be issued with an assessment notice (section 13(1)(a)), without any provision for or contemplation of a hearing for the purpose of determining facts or any other question.*

[59] Buss JA also said at [78] that:

*The existence of a precautionary approach generally in relation to protecting children from the risk of sexual or physical harm is also apparent from the Minister’s second reading speech:*

*The Working with Children (Criminal Record Checking) Bill 2004 will mean that persons employed, or who volunteer to work with children, or who are in business, must have extensive checks of any criminal records. If they have certain convictions or charges assessed as putting children at risk of sexual or physical harm they will be barred from starting or continuing to work with children.*

*The working with children Bill is part of a suite of complementary legislation by this Government to protect children: the Children and Community Services Bill, which is twenty-first century legislation to promote the wellbeing, including the protection, of children; the Acts Amendment (Family and Domestic Violence) Bill 2004, which will*

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<sup>v</sup> The *Working with Children (Criminal Record Checking) Act 2004* (WA) has been amended since this decision. The relevant provision is now section 12(5) of that Act.

*afford greater protection to victims of family and domestic violence, with a particular focus on the needs and protection of children; the Community Protection (Offender Reporting) Bill, which is currently before the House and will enable the whereabouts and circumstances of child sex offenders to be monitored and conditions to be placed on aspects of their lives that bring them in contact with children; and this Bill, which will deter and prevent people who have particular types of criminal history from seeking work or volunteering in situations in which harm can be done to our children.*

*In developing this legislation we have assessed the strongest elements of schemes in Queensland and New South Wales. We have also consulted with the Criminal Records Bureau in the United Kingdom. The chief and deputy chief executives of the CRB shared with me their expertise particularly in the light of the Bichard inquiry into the sexual assault and murder of two schoolgirls by Ian Huntley, a caretaker in their school. This Bill is more far reaching than the legislation in Queensland or New South Wales.*

*The intention of the Bill is to introduce a high standard of criminal record screening into areas of child-related work. The legislation aims to protect children from harm by: deterring people from applying to work with children if they have criminal records that indicate they may harm children, preventing people with such criminal records who do apply from gaining positions of trust in certain paid and unpaid employment, establishing consistent standards for criminal record screening for working with children and the ethical use of such information; and contributing to awareness that keeping children safe is a whole-of-community responsibility.<sup>7</sup>*

*(emphasis added).*

[60] His Honour also observed at [83] that:

*“Unacceptable risk” is a familiar concept in the context of family law disputes in relation to parenting (custody or access) matters. In M v M [1998] HCA 68; (1988) 166 CLR 69, the High Court held that, in considering an allegation of sexual abuse in custody or access contexts, the Family Court should not make a positive finding that the allegation is true unless it is so satisfied according to the civil standard of proof with due regard to the seriousness of the allegation: Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336, 362. The High Court also held, however, that custody or access should not be granted to a parent if it would expose the child to an “unacceptable risk” of sexual abuse. Mason CJ, Brennan, Dawson, Toohey and Gaudron JJ said:*

*Efforts to define with greater precision the magnitude of the risk which will justify a court in denying a parent access to a child have resulted in a variety of formulations. The degree of risk has been described as a “risk of serious harm” (A v A [1976] VR 2998, at p.300), “an element of risk” or “an appreciable risk” (Marriage of M*

(1987) 11 Fam LR 765, at p.770 and p.771 respectively), “a real possibility” (B v B (Access) [1986] FLC 91-758, at p.75 and p.545), a “real risk” (Leveque v Leveque (1983) 54 BCLR 164, at p.167), and an “unacceptable risk”: In re G (A minor) [1987] 1 WLR 1461, at p.1469. This imposing array indicates that the courts are striving for a greater degree of definition than the subject is capable of yielding. In devising these tests the courts have endeavoured, in their efforts to protect the child's paramount interests, to achieve a balance between the risk of detriment to the child from sexual abuse and the possibility of benefit to the child from parental access. To achieve a proper balance, the test is best expressed by saying that a court will not grant custody or access to a parent if that custody or access would expose the child to an unacceptable risk of sexual abuse.

*In the present case Gun J was not satisfied that the husband had not sexually abused the child. We take that to mean that his Honour was not so satisfied according to the civil onus. On this footing his Honour was unable to exclude the possibility that the husband had so abused the child. His Honour obviously concluded that there existed an unacceptable risk that the child would be exposed to sexual abuse if the husband were awarded custody or access (78).*

[61] At [84] Buss JA stated that:

*It is not the CEO's function (under section 12(4)) or the Tribunal's function (on a review application) to adjudicate upon whether the applicant is, in fact and at law, guilty or not guilty of the non-conviction charge in question. The relevant function involves an analysis and evaluation of risk. It is not concerned with the proof of offences which the applicant may have committed previously, but with the prevention of potential future harm.*

[62] The High Court dismissed an appeal from the majority judgment of the Full Court of the Family Court, which had affirmed Gun J's decision. Also see Fardon v Attorney-General for the State of Queensland [2004] HCA 46; (2004) 223 CLR 575, 657 [225] (Callinan and Heydon JJ); Murphy & Murphy [2007] Fam CA 795, [243] - [305] (Carmody J).

[63] The Court of Appeal again considered the question of risk to children in relation to the WWC Act in CEO, Department for Child Protection v Hardingham [2011] WASCA 262. In that case the Court of Appeal considered the interpretation of section 12(8) of the WWC Act and whether, in circumstances where an applicant for a WWC check had a non-conviction charge with respect to a relevant offence, the WWC Act permits consideration of matters beyond those which arise in connection with the charge. The Court held that the WWC Act did permit such consideration. The material sought to be considered was two statements that related to, what was submitted was, excessive interest in a young boy from the age of 12 over a three to four year period by the applicant who was the Deputy Head at the boy's school. In particular, the boy was said to have stayed overnight at the applicant's home on 20 to 30 occasions,



attended the applicant's home to watch Foxtel and play X-box games and use weight training equipment, and was photographed by the applicant with his shirt off and encouraged not to wear his shirt. These statements did not relate to any offence of the relevant non-conviction charge relating to the applicant.

- [64] In a joint judgement of the court, the applicant's conduct was said to be characterised by the appellant (at [22]):

*...as probative of the possibility that [the respondent] may have been grooming selected pubescent boys as a precursor to committing an offence.*

At [54] the Court pointed out that existence of a prior conviction or charge underlay the power to issue a Negative Notice. However, once that power arose, its exercise required "consideration of all matters that go to assessing the relevant risk and cannot be confined to the circumstances of an applicant's criminal record". The evidence sought to be led was therefore relevant to the assessment of risk, the Court found.

- [65] Section 240 of the SEA Act, which has already been noted above in paragraph [53] of this report, is also intended to address the situation where a person, including a teacher, presents a risk to students at the school where he or she teaches and relevantly provides that the employee may be ordered to leave school premises. However, unlike the WWC Act, it is not necessary that any alleged conduct said to demonstrate or contribute to the existence of a risk is, or has been, the subject of any criminal charge.



## **CHAPTER THREE**

### **ALLEGATIONS AND ANALYSIS**

#### **3.1 Background**

- [66] Teacher A began his employment as a Primary School teacher with the Department of Education in the late 1970s. He worked at various public schools, the most recent of which was a rural District High School with students ranging from kindergarten through to year ten.
- [67] He was an active and well known member of the rural community in which he and his family resided. For a number of years he was a senior office bearer of a particular Western Australian sporting association and was heavily involved in events related to this sporting activity. The association had a membership ranging in ages from around three through to 25, and the teacher's involvement included coaching, judging and officiating activities. From the large rural property where he and his family resided, his wife operated a business relating to the sporting activity, catering to children of all ages, including children with physical and learning disabilities. This business included several overnight sporting-related camps which were held at the family property.
- [68] The course of conduct alleged of Teacher A spans three decades, during which time he was a teacher and was in contact with children. This report deals with these matters in four sections: the failed prosecution of the 1990s; the multiple complaints of inappropriate physical contact which brought Teacher A to the attention of the Commission; the emailing activity with current and former students; and the child pornography matters for which he was convicted.
- [69] The following sections of this report (sections 3.2 to 3.7) detail the allegations and their investigation by the Commission and/or other bodies.

#### **3.2 Failed Prosecution**

##### **3.2.1 Charges and Acquittal**

- [70] In about 1996, WAPOL charged Teacher A with three charges of indecent dealing with a child by a person in authority pursuant to section 322(4) of the *Criminal Code 1913* (WA).
- [71] The allegations related to a male, year five student [Student F] at the District High School where Teacher A was employed at that time. It was alleged that on three occasions Teacher A held the student back after class and asked the boy to sit on his lap, where he then indecently dealt with the child, by fondling his genitals through his clothes.
- [72] In 1996, a jury acquitted Teacher A of all three charges. One teacher, a colleague of Teacher A, provided evidence in his defence telling the court that:

*I called him the Pied Piper because he had such a gift with children*

...

### **3.2.2 Action Taken by the Department**

- [73] In response to the criminal charges against the teacher in about 1996, the department suspended him from teaching on full pay and initiated a 7C inquiry into suspected misconduct. At the conclusion of the criminal trial, the department reviewed the transcript of the court proceedings and determined that in view of the acquittal, the teacher's denial of the allegations and the lack of evidence corroborating the child's allegations, there were no grounds to proceed with a disciplinary investigation into the matter. The suspension was lifted and recommencement arrangements were made to "limit any unnecessary trauma" to the teacher.
- [74] Teacher A later returned to the classroom. For the purposes of his reintegration into the classroom, he was supervised for a period.
- [75] It is important to note that while it may have been the practice of the day for the department to take such an approach to matters where employees were criminally charged and acquitted, it reflects an approach and an attitude to disciplinary matters and issues of child protection, that no longer hold sway in the Department of Education. In 2006, the Commission released a report into some of the practices of the department with respect to its handling of allegations of sexual contact with children by its employees.<sup>8</sup> This led to considerable reform within the department.

### **3.2.3 Working with Children Assessment**

- [76] As noted already in paragraph [41], with the introduction of the WWC Act, "phasing in arrangements" prescribing the gradual introduction of the checking process across various categories of child-related work, were introduced. Employees, self-employed people and volunteers who were in child-related work had different "phasing-in arrangements" requiring them to apply for a WWC card by a prescribed date between 2006 and 2010.
- [77] In 2006, Teacher A applied for a WWC card, as was required, for his role with the sporting association. The phasing in arrangements that were in place meant that, although the teacher would need to have a WWC card to remain a teacher, it was not required at that time but would be required later upon the renewal of his teacher registration of by 31 December 2010, whichever came first.
- [78] In August 2007, having completed an internal assessment of Teacher A's suitability to work with children, the WWC Screening Unit issued him with an Assessment Notice in the form of a WWC card, allowing him to work with children. The WWC Screening Unit's internal assessment process took account of the 1996 non-conviction charges in accordance with the WWC Act. This included reviewing the court transcript of the 1996 proceedings.

## **3.3 Complaints of Inappropriate Physical Contact**

### **3.3.1 Initial Allegations**

- [79] In July 2007, prior to a WWC card being issued to Teacher A, the Department of Education notified the Commission of two allegations

relating to the then current behaviour of the teacher. It was those allegations that first brought Teacher A to the attention of the Commission. The first allegation was that Teacher A had made inappropriate physical contact with a student [Student G]. Teacher A had reportedly been observed by another teacher, in the classroom, with Student G, a year one male student sitting on his lap. The second allegation received two months later, was that Teacher A had neglected his duty of care by having his class of year eight to 10 students create weapons as a class activity.

- [80] The department informed the Commission that there were no records, historical or otherwise, indicating that Teacher A had previously been the subject of disciplinary action,<sup>vi</sup> and that a proactive investigative initiative recently undertaken by the agency to detect teachers having accessed child pornography, had not identified Teacher A as a person of interest.<sup>vii</sup>
- [81] Child protection investigators from the Department of Education commenced disciplinary proceedings in relation to the allegation of inappropriate contact, and WAPOL were notified of the allegation as a standard course of action.
- [82] Shortly after the departmental investigation commenced, the Director General of the Department of Education issued a section 240 order directing Teacher A away from school premises for a period. Teacher A was ordered to leave and remain away from school premises, and was not permitted to enter the premises of any other public school, until such time as the disciplinary proceedings were finalised and/or the order was revoked. He remained on full pay.
- [83] The result of the department's disciplinary process was that Teacher A was not found to have committed a breach of discipline in relation to the allegation of inappropriate physical contact. The investigation found that his actions did not constitute a breach of discipline as the department's policy at the time did not state that it was not permissible to have a student sitting on a staff member's knee. With respect to the duty of care matter, it was referred to the Principal of the school for local complaint resolution.
- [84] The section 240 order was rescinded at the completion of the disciplinary process; however, by that time the department's investigations had resulted in the identification of the additional "historical" allegations relating to the teacher, and a second order to remain away from school premises was issued by the Director General. The date of the rescinding of the first

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<sup>vi</sup> It is of concern that the material from the earlier inquiry into the allegations of indecent dealing with a child (that were the subject of the 1996 non-conviction criminal charges) conducted under section 7C of the *Education Act 1928* (WA) was not immediately identified, perhaps in part due to the manner in which complaints and disciplinary matters have been variously recorded by the department over the years. That such information may not always reside in a single place and that, as a consequence of legacy systems and processes, it might be inconsistently recorded, would seem to increase the risk that important information may be missed.

<sup>vii</sup> The proactive initiative conducted by the department, which will be discussed in greater detail later in this report, involved its *Notebooks for Teachers* program and examination of internet searches conducted using the department's computer network servers.

section 240 order and the issue of a new order meant that a section 240 order remained in effect during the period between July 2007 and the termination of Teacher A's employment in August 2009. There was no period after the first section 240 order of July 2007, and the period of the Commission's investigation (which commenced in August 2008), where Teacher A was reinstated to work at a public school.

### **3.3.2 Historical Allegations**

- [85] In addition to the department's investigations into the initial allegation of inappropriate contact, in 2008, a number of further "historical" allegations regarding Teacher A, dating back to the early to mid-1980s, were identified by the department's investigation. They involved allegations of inappropriate contact, including touching and fondling, with several male students [Students A through E].
- [86] The allegations related to the period between 1982 and 1988 and involved five boys, all of a similar age, and all students at the school where Teacher A worked at that time. The incidents were alleged to have occurred at Teacher A's then residence and on school premises, in rooms including the sick bay, a store room and a stationary cupboard.
- [87] One student said that Teacher A asked him to go to a store room at lunch time. Once there, Teacher A allegedly asked him to strip to his underwear while he conducted a visual examination of the boy's body, lasting around five minutes. A second student reported that Teacher A requested that he come to a stationary store room and that while alone in the room with Teacher A, the teacher removed the student's shorts and touched his testicles. A third student reported that while in the school sick bay, Teacher A touched his neck and chest area and then asked him to take his trousers down telling him that there were areas in the groin which could be manipulated for the purposes of reducing the effects of asthma. Similarly a fourth student reported that Teacher A had told him that he intended to check his glands for swelling, telling him that there were glands on his body that could be manipulated in order to reduce the symptoms of his ailment. With this he was alleged to have rubbed the student's inner thigh.
- [88] Two students told of being befriended by Teacher A and, with the permission of their parents, having separately stayed at the teacher's then residence. They both alleged that while staying at the residence, Teacher A touched and fondled their genitals. It should be noted that in representations to the Commission, Teacher A denied that any boys ever stayed overnight with his family. However information available to the Commission does not support this claim. During the Commission's 2008/2009 investigation, information obtained from lawfully installed surveillance devices confirmed that overnight sporting events had previously been held on the family property on an annual basis and overnight "slumber parties" for the teacher's children occurred. Both included male children spending the night at the family's property.
- [89] Teacher A's representations to the Commission noted that the allegations had not been put to him. Teacher A stated that:

*A point of notice needs to be made that if, and when, these accusations were raised by the boys in the CCC Report, why was there never any investigation or questioning of the Teacher? Why do these Reports suddenly appear when evidence seems to have been (by the boys statements) to formulate a case against “Teacher A”. This is some 20 plus years later.<sup>9</sup>*

- [90] Information provided by the Department of Education is, however, that the allegations relating to the historical matters were formally put to Teacher A in 2008 as part of the department’s disciplinary investigation which occurred in 2008, and furthermore, via his legal counsel, were denied by the teacher.
- [91] In 2008, the Department of Education notified the Commission of the additional allegations it had identified. Upon receiving the 2008 allegations, the Commission commenced its own investigation. As noted already, the investigation had two primary areas of focus. First, it considered the “historical” allegations with the scope being to determine if Teacher A had previously engaged in misconduct. With respect to these matters, in order to progress the investigation, among the strategies available to, and considered by, the Commission was the use of private examinations.<sup>viii</sup> Careful consideration has to be given to the need to compel witnesses in a formal environment. At the time of this consideration the Commission had not yet commenced telecommunications interception of Teacher A’s home internet and email services. Without the complainants’ willingness to pursue criminal complaints, combined with the Department of Education’s investigative limitations, the allegations were considered to be sufficiently serious, particularly in light of the assessment of the risk that Teacher A posed to children in the education and sporting arenas, for the Commission to consider all available investigative strategies.
- [92] The second focus to the Commission’s investigation related to Teacher A’s current behaviour with the scope being to determine whether he was currently engaged in misconduct. In view of the nature of the allegations, which, if sustained, would constitute a significant risk to students at the school and the children in his care, and the unwillingness of the witnesses to pursue criminal complaints, the Commission proceeded with a proactive investigation into Teacher A’s activities to determine whether he was currently engaged in misconduct. In this case, the Commission’s capacity to dedicate resources to the investigation and to conduct complex, sustained and proactive investigations of this nature, was greater than that of other public authorities involved in these matters. This aspect of the investigation included, but was not limited to, the use of information obtained under warrant from lawfully installed surveillance devices and lawfully intercepted telephone, internet and email services, and forensic computer analysis.

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<sup>viii</sup> Although the *Corruption and Crime Commission Act 2003* refers to examinations (of persons for the purpose of obtaining information to advance an investigation), there is a general tendency for those examinations to be described by the media as “hearings”. Examinations or “hearings” conducted by the Corruption and Crime Commission are compulsory examinations of persons before it.

- [93] With respect to the investigation of Teacher A's current behaviour, through forensic analysis of Teacher A's Department of Education-issued laptop, the Commission identified email exchanges that had occurred, prior to the Commission's investigation, between Teacher A and (then) current and former students. This computer forensic analysis also identified internet "Google searches" using terms such as "nude young boys". The search terms are discussed further in section 3.5.1 of this report. The nature of the email exchanges was of concern. With respect to lawfully intercepted internet and email services, the Commission also intercepted child pornography as having been accessed using Teacher A's personal computer. Lawfully installed surveillance devices established that it was Teacher A making the access. This led to criminal charges, for which Teacher A was convicted.
- [94] In view of the criminal convictions, and the subsequent actions that were taken to remove and preclude Teacher A from being in contact with children namely, the WWC Negative Notice issued against him and the termination of his employment by the Department of Education, the Commission did not pursue the "historical" allegations and email exchanges further. Further investigation of these matters would have required examination of some of the witnesses and, in the Commission's opinion, it was no longer in the public interest to compel potentially vulnerable and reluctant witnesses and complainants to give evidence before the Commission during private examinations.

### **3.4 Section 240 Orders**

- [95] Throughout the period of the Commission's investigation, Teacher A was prohibited from entering the premises of any Western Australian public school; a condition imposed by the Department of Education's section 240 order.
- [96] During the period in which Teacher A was the subject of a section 240 order from the Department of Education, the Commission became aware that the teacher had attended an awards presentation on the premises of a public school to which he had links but was not employed. Furthermore, there was evidence that he was due to participate in an event involving primary school aged children to be held on that school's premises. The existence of the 240 order was not known by the school as it was in a different education district to the school Teacher A had been employed to teach at. Department of Education systems did not readily allow for the detail and existence of section 240 orders to be known outside of the education district in which the teacher had been engaged to work.
- [97] Acting on information obtained by the Commission, the Department of Education took action in relation to the enforcement of its section 240 order so as to prevent the teacher's planned participation in the event from occurring. The Commission later found that the teacher had been engaged by the school as a volunteer, among other things, assisting with activities for years one and two students.



### 3.5 Child Pornography Matters

- [98] As noted already, one aspect of the Commission's investigation was to focus on Teacher A's, then, current behaviour, in particular, his internet activities. The Commission applied for and obtained warrants to lawfully intercept internet and email services used by Teacher A. This lawfully intercepted information together with information obtained from a forensic examination of lawfully seized computer equipment (being Teacher A's work-issued and personal laptop computer) was analysed by the Commission. This aspect of the investigation led to criminal charges and subsequent conviction in relation to child pornography matters to be discussed further in sections 3.5.1 and 3.5.2 of this report.
- [99] The forensic analysis of Teacher A's work-issued laptop computer also lead to the identification of a separate area of concern for the Commission which did not result in criminal charges. This was a series of email communications that had previously taken place between Teacher A and (then) current and former students. These exchanges related to a period prior to the Commission's investigation. These will be discussed in section 3.6 of this report.

#### 3.5.1 Teacher A's Department of Education Laptop

- [100] The Department of Education's *Notebooks for Teachers* program provided teachers with work laptops for use from home. These laptops used a dial-up function to connect to the internet through the department's servers. Teachers based in regional and remote areas, such as Teacher A, used the laptops via their own broadband internet connections. As they did not connect to the internet through departmental servers, their internet access was unable to be monitored by the department and therefore Teacher A was not identified through the department's proactive investigative initiative referred to in paragraph [80] of section 3.3.1 above.
- [101] Forensic analysis of the Department of Education-issued laptop computer provided to, and in the possession of, Teacher A, established that the laptop had been used to conduct internet "Google searches" using search terms which included "nude young boys", "nude children" and "nude children sex foto [sic]" and had been used to access websites which, upon examination by Commission officers, appeared to depict children under the age of 18. It is important to note that the forensic analysis of the computer occurred after the websites were accessed; live internet searches were not intercepted at that time. For this reason, given the content of internet websites can change, and because there was no surveillance confirming it was Teacher A conducting the searches, the Commission was unable to confirm whether, at the time the websites were accessed using Teacher A's laptop, the content was child pornography. However, at the time Commission officers analysed the websites, they did appear to depict children under the age of 18. The Commission subsequently applied for, and obtained, warrants to lawfully intercept internet and email services used by Teacher A.
- [102] The internet "Google searches" referred to above were conducted during the period in which Teacher A was in email communication with current

and former students, including Students H, I and J (referred to in section 3.6 below).

### **3.5.2 Teacher A's Personal Laptop**

[103] With respect to Teacher A's personal laptop, lawfully intercepted information and forensic examination confirmed that websites containing child pornography<sup>ix</sup> had been accessed by Teacher A. The evidence was of child pornography images being accessed and displayed rather than accessed and copied or moved to the computer. Forensic analysis confirmed that none of the accesses on either Teacher A's personal or work-issued laptops were due to virus software or computer hacking, rather they were performed through physical manipulation of the keyboard of the laptop.

[104] Section 473.1 of the *Criminal Code Act 1995* (Cth) defines access as:

**Access** in relation to material includes:

- (a) *the display of material by a computer or any other output of the material from a computer; or*
- (b) *the copying or moving of the material to any place in a computer or to a data storage device; or*
- (c) *in the case of material that is a program – the execution of the program.*

[105] The lawfully intercepted material and forensic analysis found that Teacher A's personal laptop computer had been used to conduct searches using search terms including, "pre-teen boys", "nude young boys", "very young nude boys little nude boys", "very young nude boys and cocks" "photos of young nude boys", "nude little boys", "real young nude boys", "very young boys cocks", "young teen cock", "very young boys cocks", "very young nude boys and cocks", "very young nude boys", "pre-teen nude boys" and "young boy models".

[106] In order to discount the possibility that websites containing child pornography were being accessed by someone other than Teacher A, information obtained from lawfully installed surveillance devices and other corroborating evidence established that it was Teacher A seated at, and using, the computer at the times where child pornography was accessed. This evidence formed the basis of eight criminal charges against the teacher.

[107] In his response to the Commission, Teacher A denied that he in fact conducted such internet searches. In relation to the images presented to the court, for which he was convicted, Teacher A, in his representations to the Commission, denied ever having seen them before. This is in spite of the evidence presented to, and accepted by, the court confirming that Teacher A was using the computer at the time the images of child pornography were accessed. The court accepted that the images which formed the basis of the charges were in fact child pornography.

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<sup>ix</sup> See Appendix 1 for the legal definition of child pornography material.

- [108] Images accessed by Teacher A ranged from child modelling websites with images of children in non-erotic settings and poses, to images of children in various states of undress, to images of children engaged in sexual activity with other children and/or adults, including images depicting the use of restraints and physical injury. Generally the images were of young, pre-pubescent to pubescent boys.
- [109] Teacher A was criminally charged by the Commission in relation to eight occasions where he was alleged to have accessed images of child pornography online. He was criminally convicted on five of those counts.

### 3.5.3 Analysis of the Child Pornography Images

- [110] Of the 1,090 images identified as child pornography for which he was convicted:
- 1,075 showed images of male children;
  - 15 showed images of female children;
  - 1,038 showed pubescent children (those in the state of, or reaching, puberty); and
  - 52 showed pre-pubescent children (those between the age of birth and puberty).
- [111] The images were categorised using the *Combating Paedophile Information Networks in Europe (COPINE) Scale* ("the COPINE Scale").<sup>10</sup> The COPINE Scale is commonly used by law enforcement agencies to categorise the typology and severity of child pornography images, in terms of the degree of harm to the child or children involved. The five categories are as follows:

COPINE LEVEL	DESCRIPTION	COPINE TYPOLOGY
1	Images depicting erotic posing with no sexual activity.	<ul style="list-style-type: none"> <li>• Nudist (naked or semi-naked in legitimate settings/sources);</li> <li>• Erotica (surreptitious photographs showing underwear/nakedness);</li> <li>• Posing (deliberate posing suggesting sexual content); and</li> <li>• Explicit erotic posing (emphasis on genital area).</li> </ul>
2	Sexual activity between children, or solo masturbation by a child.	Explicit sexual activity not involving an adult.
3	Non-penetrative sexual activity between adults and children.	Assault (sexual assault involving an adult).
4	Penetrative sexual activity between children and adults.	Gross assault (penetrative assault involving an adult).
5	Sadism or bestiality.	Sadistic/bestiality (sexual images involving pain or animals).

TABLE 1: THE COPINE SCALE

[112] The images, as they related to counts two through six of the charge, were categorised using the COPINE Scale. They were as follows:

COUNT	COPINE 1	COPINE 2	COPINE 3	COPINE 4	COPINE 5	TOTAL
2	166	195	4	8	7	380
3	14	13	-	-	-	27
4	223	205	2	1	3	434
5	49	72	2	-	-	123
6	81	45	-	-	-	126
TOTAL	533	530	8	9	10	1,090

**TABLE 2: CATEGORISATION OF IMAGES BY COPINE LEVEL**

[113] The table shows that of the 1,090 child pornography images accessed by Teacher A (for which he was convicted), the vast majority, over 1,000, were assessed as COPINE level 1 and 2. Twenty-seven of the images accessed were categorised as COPINE level 3, 4 or 5. It is important to note that images at the higher end of the scale, COPINE 4 and 5 (of which there were 19), can involve penetrative sexual activity between children and adults and sadism or bestiality. Such images by their nature involve acts of criminal abuse, exploitation and assault of children.

#### **3.5.4 Criminal Charges**

[114] Throughout its investigation the Commission continued to closely monitor and assess the levels of risk potentially posed by the teacher toward children at any one time, based on the information being gathered.

[115] The nature of the “historical” complaints, the nature and characteristics of the email exchanges that had occurred between the teacher and young male students, the continued attendance by Teacher A at school premises, the concerns about the Department of Education’s capacity to enforce section 240 orders, and escalating internet searches for child pornography were of concern to the Commission. When the Commission became aware that an overnight sporting camp for 15 children was due to be held at the family property on the weekend of 4 and 5 July 2009, and that Teacher A would be present and likely to be involved in the activities, the Commission formed the view that the risk of his conduct was

unacceptable and as a result, took action which made its investigation known to Teacher A.

- [116] On 3 July 2009, the Commission executed a search warrant on Teacher A's residence, seizing a number of items. At the conclusion of the warrant's execution, Teacher A was arrested and then later charged with eight counts of using a carriage service for child pornography pursuant to section 474.19 of the *Criminal Code Act 1995* (Cth). He pleaded not guilty and did not give sworn evidence during his trial. A jury convicted Teacher A on five of the eight counts, for which he received two 12-month sentences of imprisonment, each suspended for 18 months, and fines totalling \$12,000.

### **3.5.5 Termination of Teacher A's Employment and Notification of Other Bodies**

- [117] On 9 July 2009, the Commission advised the Department of Education of the charges preferred. Once advised of the criminal charges, on 10 July 2009 the Department of Education notified WACOT, pursuant to section 50 of the WACOT Act of the charges relating to Teacher A.
- [118] A few weeks later, on 4 August 2009, Teacher A was issued with a Negative Notice pursuant to section 18(1) of the WWC Act. As noted in Chapter Two, the Negative Notice precludes the subject from being engaged in child-related work, paid or otherwise, unless the notice is cancelled.
- [119] A point highlighted by the Department of Education as part of its representations concerning this report, was that the disciplinary regime available to it was, in the department's opinion, likely inadequate to deal with the matter and the child protection issues raised. Specifically, the department stated that:

*The Commission's investigation required surveillance of private activities. The Commission is an eligible authority and an enforcement agency as defined by the Telecommunications Interception (and Access) Act 1979; Commission officers are authorised persons and law enforcement officers as defined by the Surveillance Devices Act 1998. The Department is not a law enforcement agency or an interception agency. In the absence of the use of these powers by the Commission the activities of Teacher A may well have gone undetected. The Department recognised in 2007 that the risks posed by Teacher A were such that the discipline process under the [PSM Act] were in all likelihood inadequate to deal with the matter and the risks posed by Teacher A. It was for this reason that the Department's initial investigation was expanded to focus in the possibility of identifying additional cases of abuse not previously identified and, when it did so, the Department provided this information to law enforcement agencies and advocated strongly for a criminal investigation.<sup>11</sup>*

- [120] As a consequence of the Negative Notice issued in relation to Teacher A, his employment with the Department of Education was terminated on 14 August 2009.

### **3.6 Email Communications with Current and Former Students**

- [121] As noted already, during the course of the Commission's investigation, computer forensic analysis located email exchanges between Teacher A and, then, current and former students dating back to 2007. This forensic material and analysis of telephone Call Charge Records confirmed that Teacher A was using telephone and email services to communicate and have contact with young male students. This was consistent with information obtained during the course of the Department of Education's disciplinary investigation into the allegation concerning Teacher A allegedly having a child sitting on his knee that Teacher A communicated with children in these ways outside of the school environment. During that investigation, Department of Education child protection investigators obtained information suggesting that Teacher A may have been using telephone and email services to communicate and have contact with young male students from the school. He was reportedly observed by a fellow teacher encouraging the boys to email him at home and there was information that several of the teacher's colleagues had noted that Teacher A paid special attention to certain young male students.
- [122] The Commission's investigation revealed that Teacher A had been in email and telephone communication with students from the school where he had been engaged as a teacher, and from where he had been ordered to remain away pursuant to the section 240 order. The content, nature and tone of the emails appeared to be, in the Commission opinion, inappropriate for that of a teacher engaging with students and was considered to pose a potential risk to the safety and welfare of children. At that time Teacher A was also in communication with teenagers who were formerly students of the school where he had been working. In all, the teacher was in email and telephone text messaging contact with at least five current and former students, between the ages of eleven and sixteen. There were key similarities to nature of the exchanges between the teacher and each of the students.
- [123] One example relates to the period between August 2007 and April 2008, where there were numerous email exchanges between Teacher A and a current student, a (then) eleven year old boy [Student H] from his school.<sup>x</sup> These took place during the period where the teacher was the subject of an order preventing him from entering school premises. The

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<sup>x</sup> It should be noted that the Commission viewed the email exchanges with concern and was therefore in communication with parents of Student H and his brother, Student J, regarding them. The parents cooperated fully with the Commission's investigation.

email exchanges were extensive in number, and as they went on, their content was of an increasingly intimate nature. This included:

- Having special names for each other. Teacher A referred to the student as “HBF” as the television advertisement where “the boy [is] smiling as his Dad lifts him up on his back” reminded Teacher A of the student.<sup>12</sup>
- Compliments by the teacher about the boy’s body or physique, personality and talents.
- The idea that the student was growing up and becoming a man.
- Talk by the teacher about the student’s relationships with girls.
- Introduction of the idea that they might meet up in person in the future, or places where they might both be and would be likely to run into each other.
- Having a gift for the boy that the teacher would like to give to him.
- Having a “special relationship” and that what they wrote to each other was “personal” and just between them.
- Exchanges such as “I love you”, “thinking of you”, “missing you”, and “you have a special place in my life”.

[124] On multiple occasions the teacher asked the student to write a statement about him, “on what you think of me as person, as a teacher and what you think I have done or meant, at school ...”.<sup>13</sup> The teacher told another, former student [Student J], who was the older brother of Student H, that it was for a booklet he was writing about teaching in the classroom. He specified that it should include the student’s name, age, birth date and contact telephone number. The statement prepared by the student, along with other documents from other male students, was located in the teacher’s bedside cabinet in the master bedroom of his home during the 3 July 2009 execution of a search warrant by the Commission referred to in section 3.5.4 above.

[125] In the Commission’s opinion, these email exchanges between Teacher A and young students were cause for concern and are certainly relevant to assessing the potential risk posed by Teacher A to children. In his response to the Commission, Teacher A did not deny that he had been in contact with former and current students, including Student H, but claimed the latter contact arose from a desire to assist with issues at school and to help the student succeed.

### 3.7 Chronology of Key Events

PERIOD	EVENT
Late 1970s	Teacher A commences as Primary School teacher.
1982-1983	Alleged inappropriate contact of Student A occurs.
1984	Alleged inappropriate contact of Student B occurs.
1984-1985	Alleged inappropriate contact of Student C occurs.
1986	Alleged inappropriate contact of Student D occurs.
1987-1988	Alleged inappropriate contact of Student E occurs.
1995	Teacher A is charged by Western Australia Police with three charges of indecent dealing with a child [Student F] by a person in authority pursuant to section 322(4) of the <i>Criminal Code 1913</i> (WA).
	Teacher A is suspended from teaching on full pay.
1996	Teacher A is acquitted by a jury of the criminal charges.
	Teacher A's suspension from teaching is lifted.
1998	Teacher A returns to a supervised teaching role.
Jun 2007	Allegation of inappropriate contact of Student G is received.
Jul 2007	The Director General of the Department of Education issues an order under section 240 of the <i>School Education Act 1999</i> (WA), prohibiting Teacher A from entering any public school premises.
Aug 2007	Teacher A begins email contact with Student H (continues until April 2008).
	Teacher A begins email and telephone contact with Student I.
	Teacher A is issued a <i>Working with Children</i> card.
	Allegation of neglect of duty of care by Teacher A received.
Dec 2007	Teacher A begins email contact with Student J, the brother of Student H.
Jul 2008	Historical allegations are received in relation to Students A through E.
Aug 2008	The Commission commences an investigation into Teacher A.
Nov 2008–Jun 2009	Access of child pornography by Teacher A is detected.
May 2009	Teacher A is on the premises of a public school as a visitor.
	Teacher A works as a school volunteer with years one and two students.
Jul 2009	Teacher A is due to participate in an overnight sporting-related camp on his family's premises with children.
	Teacher A is arrested and charged with eight counts of using a carriage service for child pornography pursuant to section 474.19 of the <i>Criminal Code Act 1995</i> (Cth).
	The Department of Education notifies the Western Australian College of Teaching of the charges preferred.
- approx. Aug 2009	Teacher A continues with a sporting association involving children.
	Teacher A continues to be involved in activities associated with his wife's business, involving children.
Aug 2009	The Department for Child Protection's Working With Children Screening Unit issues a Negative Notice against the teacher.
	Department of Education terminates Teacher A's employment.
Oct–Nov 2010	Teacher A is convicted in October 2010 and is sentenced in November.

**TABLE 3: CHRONOLOGY OF KEY EVENTS**



- [126] Part (c) of the scope of the Commission's investigation was to consider how WAPOL, the Department of Education and the Department for Child Protection identify and liaise with the appropriate agencies in the exchange of information when allegations of this nature arise. To this extent the Commission considered the case of Teacher A, as outlined in this chapter, and whether it highlighted any weaknesses in the systems that were in place for identifying, exchanging and acting on information suggesting a potential risk to children.
- [127] In the Commission's opinion, the systems that were in place collectively failed to ensure Teacher A's suitability to work with children. These systemic failures occurred at several points. These include:
- That a WWC card was able to be issued to Teacher A, in accordance with the relevant legislation, allowing him to work with children as part of his wife's business and the sporting association he was involved in, notwithstanding that he had previously been the subject of non-conviction charges and that he was, at that time, the subject of a section 240 order by his employer who considered him a potential risk to children.
  - That Teacher A maintained his WACOT registration and WWC card enabling him to be engaged as a teacher in the private education sector should he have chosen, and to work with children generally (including as part of his wife's business and the sporting association he was involved in), notwithstanding that he had previously been the subject of non-conviction charges and that he was, at that time, the subject of a section 240 order by his employer who considered him a potential risk to children.
  - That the Department of Education's processes meant that the section 240 orders were unable to be effectively enforced by the department. Notwithstanding the section 240 order in place, Teacher A was able to be engaged as a school volunteer and go undetected on school premises on several occasions.
  - That inappropriate activity on a Department of Education computer was not able to be detected by proactive departmental investigations because Teacher A had remote internet access.
  - That WACOT, by their account, was given insufficient information to act by the Department of Education in relation to the disciplinary allegations against Teacher A. As a consequence Teacher A was able to maintain his teacher registration, and therefore seek employment at private schools, notwithstanding the disciplinary action commenced by his employer and the section 240 order.
- [128] In this regard there was, in the Commission's opinion, a systemic failure to respond to the potential risk posed to children by Teacher A in a coordinated, comprehensive or complete way. These systemic failures will be detailed further in Chapter Six of this report and recommendations for change in this regard will be made.



## **CHAPTER FOUR IDENTIFIED RISKS**

### **4.1 Introduction**

- [129] Part (d) of the scope of the Commission's investigation was to assist the Department of Education to determine whether Teacher A was a person of suitable character to be teaching children. To do this, the Commission considered the specific misconduct risk factors identified through the investigation of Teacher A and took account of the current literature and child protection and law enforcement industry perspectives concerning those risk factors.
- [130] In light of the above, the purpose of this chapter is to set out the relevant literature and child protection and law enforcement industry perspectives with respect to some of the misconduct risk factors identified through this investigation and make the relevant analysis concerning Teacher A's suitability to be teaching children. The identification of these misconduct risk factors has been conducted with specific reference to the issue of the suitability of the public officer to work with children (in light of the legislative scheme that applies, particularly in the case of teachers, which is set out in the Chapter Two of this report).
- [131] The Commission's intention in publishing this analysis is to identify a range of high risk behaviours often exhibited by persons who are unsuitable to be in contact with children, and to raise awareness of the risks faced by children, in order to assist the relevant public authorities to establish appropriate preventative, identification and management strategies. This is done in the exercise of the Commission's prevention and education function, which is closely related to its misconduct function.<sup>14</sup>
- [132] With respect to this investigation, the Commission identified a number of behaviours that require mechanisms for identification and management, without which misconduct risks can arise. They are: child grooming behaviours, accessing/possessing child pornography, and paedophile behaviours. It is the Commission's opinion that the relevant public authorities should have systems in place to proactively seek out these behaviours and that relevant policies, procedures and legislation should address the prevention, identification and management of them. Furthermore, it is the Commission's opinion that parents, students, teachers, and those in authority over teachers should be aware of these behaviours.
- [133] This chapter considers the relevant behaviours constituting misconduct risk and potential risk to the safety and welfare of children. Before exploring those risks in more detail or making an analysis of them in terms of Teacher A's conduct, the Department of Education's current policies and procedures for management of these issues will be outlined.

## 4.2 Department of Education

### 4.2.1 Detecting Behaviours Suggesting Risk

- [134] As the result of an already noted 2006 Commission report into the Department of Education's handling of complaints and allegations of inappropriate contact of a sexual nature between students and persons of authority in the department, the agency implemented a number of recommendations.<sup>15</sup> The reforms included establishing a Professional Standards and Conduct Division with an internal investigative capacity and specialist child protection investigators. By 2007, when the initial complaints and allegations relating to Teacher A were received, a number of experienced child protection investigators, many recruited from law enforcement and child protection backgrounds, were operating within the department.
- [135] By 2007, the department's processes for assessing complaints and allegations were such that child protection experts were able to recognise from the information reported, high risk behaviours and potential child grooming techniques in their early stages. Furthermore, specialist investigators trained in dealing with vulnerable witnesses were able to elicit information which, although not the subject of the eventual criminal prosecution, assisted in identifying a potential risk to children and a possible pattern of conduct. This marked an important progression in the department's complaints handling and child protection capacity.
- [136] In the Department of Education's submissions to the Commission, the Director General drew to the Commission's attention a number of strategies that the department now has in place to deal with these issues. For example:

*... the Department has implemented a comprehensive, robust and well resourced misconduct management framework. This includes: specialist investigation staff with child protection experience; a robust complaints management system that captures allegations of misconduct and allows reporting and tracking of misconduct risks; relevant policies and procedures to identify, report and manage misconduct; and prevention and education strategies, support by professional development, to address misconduct issues and risks.*

*In addition, the Department has already undertaken a back-capture project to check the criminal history of all school based staff and staff working in our shared services area. The Department is currently in the process of undertaking a similar back capture project for all staff located in Central Office and Regional Offices and when this is completed all staff within the Department will have been through our Criminal History Screening process. This supports our current policy requiring all new employees to be criminally screened prior to commencement of employment. These protections are in addition to the requirements of the Working with Children (Criminal Record*

Checking) Act 2004 and, for teaching staff, the registration requirement set out in the Western Australian College of Teaching Act 2004.<sup>16</sup>

- [137] The Department of Education also highlighted a number of the compliance processes in place with respect to criminal screening and the requirements of the WWC Act, and provided the Commission with copies of relevant departmental policies and procedures in place to deal with issues of staff behaviour and conduct. With respect to proactive strategies and initiatives in relation to child protection, the department stated that:

*The Department does currently monitor employee activity by filtering Internet access ... All internet traffic is centrally logged and monitored for signs of activity that may relate to the access or transfer of child exploitation material. Any indications of such activity are immediately reported and investigated.*

*The Department has implemented a central filtering service based upon blocking access to approximately 750,000 sites that have been identified as containing content that is unsuitable for the education context. This centrally managed blacklist service is linked to other similar services around the globe and is updated to reflect changes occurring on the Internet.*

*The Department no longer provides unrestricted remote access to the internet for staff.*<sup>17</sup>

## **4.3 Child Grooming**

### **4.3.1 Grooming and Grooming Methodologies**

- [138] Child grooming is a pre-meditated set of behaviours and activities that collectively are intended to secure the trust and cooperation of a child, in order to make it easier for the groomer to procure the child to engage in unlawful sexual activity.<sup>18</sup> Grooming behaviours or activities exist on a spectrum and by their nature escalate with the intention of eventual unlawful sexual activity. Viewed in isolation, or by the untrained eye, the early behaviours can have all the hallmarks of propriety.

- [139] In 2008, the Australian Institute of Criminology described child grooming as:

*... a process that commences with sexual predators choosing a target area that is likely to attract children. In the physical world, this could be venues visited by children such as schools, shopping malls or playgrounds. A process of grooming then commences where offenders take a particular interest in a child and make them feel special with the intention of forming a bond. Intimate personal details including the predator's sex life are shared with the child "confidante" with the intention of making it easier to procure the recipient to engage in or submit to sexual activity with the offender or another person. The internet has greatly facilitated this process ... Other*

*communication technologies such as instant messaging, email, voice over internet protocol and mobile phones – can also be used in the grooming process. Often, the grooming process will continue for months before the offender arranges a physical meeting.*<sup>19</sup>

- [140] The grooming process often includes or extends to the child's parent or parents, and those around the child. In building a trusting relationship with the parent/s, the groomer is able to gain easier, unimpeded access to the child. Furthermore, in situations where a child complains about the offender's behaviour, parents may be less inclined to believe them.<sup>20</sup>
- [141] There is research suggesting that in terms of online grooming and online interactions involving suspected paedophiles and children, the strategies and approach taken toward male children may be characterised in a particular way.<sup>21</sup> According to this research, interaction with male children can often be characterised as less aggressive or forceful and less sexually explicit than for female children. In such interactions, the emphasis is often less on short-term sexual gratification, and more on establishing mutual respect and trust through protracted conversations, with a focus on friendship. The research noted that these less overt tactics might include the cautious introduction of sexual topics and enquiring about the child's sexual experience and physical body. Although the interactions might later progress to include more overt grooming tactics, the research suggested that initial exchanges were likely to be more cautious and restrained.
- [142] The relevant literature concerning grooming provides some insight and assistance with respect the analysis of the emails and the behaviour traits of a person who is engaged in grooming and therefore assists in the identification of misconduct risks for relevant public authorities.

#### **4.4 Child Pornography**

- [143] General definitions and understandings of what constitutes child pornography can vary but it is typically understood to include the visual or written depiction of a child who is, or appears to be, under the age of eighteen,<sup>xi</sup> and is engaged, or seems to be engaged in sexual activity, or is depicted in a sexual manner, that is likely to cause offence to a reasonable adult person.<sup>22</sup> Where some definitions and understandings can vary is around written material; where the production of the material does not necessarily involve the participation of a child, and images of children in non-sexualised settings and poses (such as children playing on a beach).
- [144] Notwithstanding the differing opinions and definitions generally, the relevant legal definition for child pornography material is provided for in section 473.1 of the *Criminal Code Act 1995* (Cth).<sup>xii</sup>

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<sup>xi</sup> Under the Commonwealth Criminal Code, a child is defined as being under 18 years of age. Teacher A was convicted of a Commonwealth offence.

<sup>xii</sup> See Appendix 1 for the legal definition of child pornography material.

- [145] Extensive research in the area has not determined whether child sex offenders are more, or less, likely to offend if they view and/or collect child pornography.<sup>23</sup> A view, which has validity but is not universally accepted, is that there is a significant likelihood that a person in possession of child pornography will also be involved in sexually abusing children.<sup>24</sup> This perspective is one which often informs law enforcement strategies and investigative initiatives. The Parliamentary Joint Committee on the National Crime Authority observed that from a law enforcement perspective, following a child pornography trail as a method of uncovering hitherto unsuspected child sexual abusers, is an important investigative strategy and is one that relies on a correlation between the two factors.<sup>25</sup>
- [146] There are a number of reasons for, and ways by which, paedophiles use child pornography. Primarily paedophiles possess and use child pornography for the same reasons that adults use adult pornography; sexual stimulation and gratification.<sup>26</sup> Child pornography may also be used by paedophiles, however, as a strategy for grooming a child, lowering the child's inhibitions and desensitising them to sexual images, to assist in procuring them to engage in sexual activity. It may be used as a way of showing the child what the adult wants them to do or as a record of the sexual acts that have occurred in an effort to pressure the child to remain silent and/or compliant. Some paedophiles keep images of their sexual acts with children as mementos. Child pornography may also be swapped with other collectors or used in order to establish their bona fides when trying to establish contact with other paedophiles.<sup>27</sup>
- [147] It is generally accepted by researchers and law enforcers that accessing, viewing, producing, collecting and/or distributing child pornography, in and of itself, perpetuates and is part of the sexualisation and sexual exploitation of children.

## **4.5 Paedophilia**

### **4.5.1 Paedophilia**

- [148] There is currently no common law or statutory definition in Australia for the term "paedophilia" or "paedophile" and being a paedophile is not a crime.<sup>28</sup> It is, however, understood to broadly refer to an adult who is sexually attracted to a child or children.
- [149] In terms of the spectrum of interests and behaviours which can be considered paedophilic in nature, there are specific acts which constitute criminal offences and attract a criminal sanction. However, the continuum can also extend to other paedophilic behaviours and interests that are not criminal in nature, but nonetheless render a person unsuitable to work with or be near children.
- [150] The Royal Commission into the New South Wales Police Service by the Honourable Justice Wood adopted a socio-legal definition of paedophilia, "equating it with dealings with young persons in a way which is contrary to the present criminal law".<sup>29</sup>

#### 4.5.2 Paedophile Offenders

- [151] It is a myth, sometimes commonly accepted within sections of the community, that paedophiles are strangers who lurk around playgrounds, prowling for random children to abduct and molest.<sup>30</sup> The primary perpetrators of child sexual abuse are not strangers, rather they are family members or someone well known to the child's family.<sup>31</sup>
- [152] The 1997 report of the *Royal Commission into the New South Wales Police Service, Volume IV: The Paedophile Inquiry*, noted that:
- ... the paedophile, whilst generally but not necessarily male, can present in any guise. He may come from any background or walk of life. It is a mistake to assume, in any investigation, that the holding of a particular position of responsibility or eminence automatically disqualifies a person from being a suspect. Sad to say, it can be a trait of a paedophile that he seeks and attains positions where he can be in contact with, or have influence over, children. Also sad but true is the fact that the paedophile may well be extremely plausible, devious in the exploitation of children, and capable of gulling those caring for them and of covering up his activities.*<sup>32</sup>
- [153] Similarly it has been observed by researchers that:
- Paedophile offenders are not easily recognised – they look and, in public, behave the same way as everyone else; they are found in every suburb, organisation and walk of life; some are married and have sex with their partners and/or other adults as well as with children; other paedophiles gain satisfaction only from sexual contacts with children. Offenders may be well educated or not, rich or poor, married or unmarried, employed or unemployed. They are social workers, child care workers and teachers; church leaders, politicians, judges and doctors; neighbours and relatives.*<sup>33</sup>
- [154] When attempting to describe the behavioural traits and characteristics of a paedophile, research suggests that it is difficult to draw clear conclusions due to the complexities of human behaviour. That being so, there are some common factors or elements evident in the offending behaviour of paedophiles generally. It is “not uncommon for paedophiles to go to great lengths over considerable periods of time to place themselves in situations where they can access children”.<sup>34</sup> Most paedophiles do not act aggressively or violently toward children, rather they will attempt to gain the child's affections and interest, and establish a close bond, by being friendly. Paedophiles typically are attracted to children, often of a fairly narrow age range. As such, their interest in, and attraction to, any one child is usually only of limited duration. Consequently, “[a]s the child grows older, the paedophile ceases to be attracted and seeks a younger replacement”.<sup>35</sup>
- [155] Unlike some other types of criminal offenders, a characteristic that has been noted of paedophile offenders is that they are likely to offend



throughout their lives. In its 1995 report, the Parliamentary Joint Committee on the National Crime Authority observed that:

*A characteristic of some paedophile offenders, not shared with other types of criminals, is that they offend throughout their lives. The Victorian Police told the Committee: "somebody offending as a paedophile at age 23 is more than capable of still offending at age 73 ..."*<sup>36</sup>

- [156] The 1995 report on *Organised Criminal Paedophile Activity* by the Parliamentary Joint Committee on the Australian Crime Commission noted that:

*Although from popular discussion one might think that most child-sex activities involve anal/vaginal penetration, this is not in fact the case. For New South Wales for 1993-94 only 20 per cent of substantiated cases were of this type, while the largest single category of activity was "sexual fondling" (43%). Two of the less prevalent types of reported activity involved no physical contact with the child at all – "genital exposure/voyeurism" (3%), and "threat of sexual abuse" (2%).*<sup>37</sup>

- [157] A mistaken view of paedophile-related offending is that it typically, and necessarily, involves anal/vaginal penetration, and that therefore conduct and incidents involving sexualised fondling are somehow at the lesser end of the spectrum of activities. This type of conduct, however, may in fact be one of the more prevalent categories of child-sex offending.

## **4.6 Analysis of the Risks**

- [158] As stated, given the statutory framework and the Commission's purpose in providing this report, it is both necessary and relevant to examine the allegations relating to Teacher A over and above those allegations of proven criminal conduct which form the basis of the Commission's misconduct opinion (outlined in Chapter Five). In the light of the foregoing, the examination of these other allegations is not for the purpose of forming any concluded view of them, but in order to consider whether such would be likely to be relevant to any assessment of whether Teacher A represented an unacceptable risk to children.
- [159] As can also be the case with persons whose sexual proclivities include children, Teacher A sought out and was employed in work and social activities that by their nature involved being in close proximity to children, in particular, primary school aged, pre-pubescent children. As a person in authority and a trusted member of the community, he had the opportunity to be near children on a daily basis, with the implicit and explicit permission of their parents and caregivers. As a Primary School teacher in particular, and because of the nature of the sporting activities he was involved in, he had the opportunity to be in close physical contact with children, sometimes on a one-on-one basis, without suspicion. A

consequence of the activities and business his family was involved in included the use of the family property for overnight camps.

- [160] Overall, an environment, occupation and role in the community, conducive to improper contact with children if sought, with the appearance of propriety, existed. In this context, Teacher A went on to form “special relationships” with young, primary-school aged, male students. Complainants to the historical matters, as well as colleagues of the teacher, told of him paying special attention to certain young male students, developing individual personal relationships with them. A reoccurring description of the attention the teacher paid to certain students, and the relationships in turn formed, was that they were “special”. As mentioned earlier, in his criminal trial in the 1990s he was described by a colleague as a “Pied Piper” like figure.
- [161] Teacher A was alleged at several points in the period of his employment to have engaged in misconduct involving young boys. The conduct and contact alleged of him ranged from email communication with students which was of an intimate nature and, on the face of it, appeared inappropriate for a teacher, through to physical contact of a directly sexual nature; namely, fondling, rubbing and touching of young boys. Similarities in the allegations were evident in that they repeatedly involved sexualised contact and fondling of young, pre-pubescent boys.
- [162] From a child protection point of view, “special relationships” between persons in authority and children, is an indicator of risk. There is a risk that a person in position of authority, such as a teacher, might be able to convince students to join them in places such as store rooms and stationary cupboards, providing the opportunity to initiate certain improper behaviours. These behaviours might be presented to the child as therapeutic, medicinal or for the benefit of the child. The significance of such spaces is that they afford a degree of concealment and seclusion from the gaze of other staff or students, but if challenged, are spaces where the presence of the adult and child can be reasonably explained.
- [163] The presence of students on the family property of Teacher A was something that occurred with the outward appearance of propriety. As someone who occupied a position of trust and authority in the community, parents would be likely to feel comfortable giving consent for their children to spend the night at the family’s house. In his response to the Commission, Teacher A denied that male children ever spent the night at his family’s house. During the Commission’s investigation, information obtained from lawfully installed surveillance devices confirmed that overnight sporting events were previously<sup>xiii</sup> held on the family property on an annual basis and overnight “slumber parties” for the teacher’s children occurred. Both included male children spending the night at the family’s property.

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<sup>xiii</sup> Prior to the period of the Corruption and Crime Commission’s investigation of Teacher A, sporting camps were held on the family property annually.

- [164] There were similarities to, and key features of, the pattern of behaviour alleged of Teacher A. The similarities of the allegations were consistent with the conduct of a person who was attracted to particular young males (from primary school age through to young pre-teens) and wanted to be in close physical contact with them. Furthermore the age, gender and physical characteristics of the children involved in the allegations (at the time when the alleged incidents occurred) bore similarities to the search terms repeatedly used during intercepted internet searches, the age, gender and physical appearance of the children in some of the images accessed, and the students with whom he was in email communication.
- [165] When Teacher A was ordered away from Department of Education premises, alternative means of communication and contact were used. This included volunteering at another school in another district where the details of the order were unknown, and the email communication with former and (then) current students, which increased in number and intensity as some of the avenues for being near children closed.
- [166] Forensic computer analysis and lawfully intercepted material found that Teacher A's personal and work-issued laptop had been used to conduct "Google internet searches" using search terms such as "nude young boys". Furthermore, as a result of lawfully intercepted information, forensic computer analysis and information obtained from lawfully installed surveillance devices, Teacher A was criminally charged in relation to eight occasions where he was alleged to have accessed images of child pornography online. He was criminally convicted on five of those counts.
- [167] In summary, there were a number a number of risk factors present in the conduct alleged of Teacher A relevant to assessing the risk posed to children by Teacher A. These include:
- The forming of "special relationships" with particular young, male students.
  - The series of allegations made about Teacher A alleging inappropriate conduct with young, male students.
  - Young, male students staying overnight on the family property of Teacher A.
  - The nature, content and extent of email and telephone communications with young, male students by Teacher A outside of school hours.
  - The existence of section 240 orders and information concerning Teacher A's contact with students on Department of Education school premises.
  - Internet searches on work-issued and personal laptop computers using search terms such as "nude young boys".
  - The accessing of child pornography.



## CHAPTER FIVE MISCONDUCT OPINION

### 5.1 Sentencing Remarks

[168] In sentencing Teacher A for child pornography offences, the District Court Judge made a number of remarks which are included below. It is important to note that in the exercise of the Commission's misconduct function, and prevention and education function, it has considered all of the allegations concerning Teacher A. The sentencing remarks of the Judge, however, related only to the criminal matters for which Teacher A was convicted. Further, the criminal sentencing process does not, and cannot, take alleged conduct into account.

[169] The sentencing judge made the following comments:

*He's 63 years of age, has an impeccable work history. He's been a school teacher in [the town] and the [district] for a great many years. He had made quite simply prodigious contribution to the local and wider community and has enjoyed international, national and local recognition in the [particular sport]. Amongst his achievements has been many years of contribution to [the sport] for the disabled.*

...

*[Teacher A] has no relevant antecedents so comes before the court as a man of advanced years with no criminal history and of impeccable character save for these offences.*

...

*... his behaviour is out of character. And again, the references provide evidence of this. His behaviour is so out of character, so aberrant that there has to have been something going on in his life.*

...

*Notwithstanding the lack of expert evidence, I cannot but feel that the offending is attributable to misjudgement associated with undiagnosed stress or similar – or a similar disease. There were numerous potential stressors when the offending started. And in my experience, it is not uncommon for risk taking and morally reprehensible conduct to be entered into by an otherwise excellent male of advanced years whilst that person is undergoing great stress and, as I've said, the erosion of their normal, healthy habitus.*

*For these reasons, I place no weight on the psychological report that's been obtained and find on the balance of probabilities that [Teacher A] was psychologically stressed and making out of character, eccentric and poor judgement calls when the offending happened.*

...

*This is [Teacher A's] first offending behaviour. He's a man of excellent character and antecedents, and has very strong family and community support ...*

*Most of the images do not depict sadism, depravity or perversion or high-level sexual behaviour and fall into the lower levels of seriousness. I am satisfied that there is a low risk of [Teacher A] re-offending. His rehabilitation is problematic because he won't admit wrongdoing, which is the first step in obtaining treatment as it is for any obsessive behaviour.*

*But I am satisfied that he has appropriate self-control mechanisms, which have been noted by some of the people that have supplied me with information, and with the family support and hopefully the support of his probation officer in the services provided, the low risk will be further minimised.*

*...*

*Next, I take into account the manifest damage that these convictions have done and will do to [Teacher A's] standing in the community ... This is not only [Teacher A's] loss, it's the community's, unfortunately.*

*So I take into account not only the loss of his reputation, which is an important part of who he is, but the humiliation and embarrassment that he has suffered ...*

*... Humiliation and embarrassment are much greater – or are felt much more greatly by people who have, by their own hard work and good nature, built up a high reputation. So in a sense, [Teacher A] is the victim of his own stellar reputation, which on all the evidence has been well earned.*

## **5.2 Commission Opinion**

[170] In the opinion of the Commission, the conduct of Teacher A, which amounted to criminal offences under section 474.19 of the *Criminal Code Act 1995* (Cth), for which he was convicted, constitutes misconduct under sections 4(d)(iii) and (vi) of the CCC Act and, in the alternative, sections 4(d)(i) and (vi) of the CCC Act.

[171] Misconduct under sections 4(d)(iii) and (vi) will relevantly be shown where a public officer engages in conduct that:

(iii) *constitutes or involves a breach of the trust placed in the public officers by reasons of his or her office or employment as a public officer;*

and *constitutes or could constitute -*

- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

[172] Misconduct under sections 4(d)(i) and (vi) will relevantly be shown where a public officer engages in conduct that:

- (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of ... a public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*

and constitutes or could constitute –

- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

[173] Teacher A was a public officer who was convicted of using a carriage service for child pornography outside of the performance of his functions as a public officer.

[174] Teacher A's actions constituted or involved a breach of trust placed in him as a public officer by reason of his employment as a teacher. The relationship between a teacher and a student is a relationship of trust and is founded on the expectation that within that relationship there is no risk to the safety or wellbeing of that student. The trust placed in a teacher by virtue of their position is evidenced by the fact that they are required to be registered and hold a WWC card, neither of which could be obtained or maintained by a person known to be using a carriage service to access child pornography. In the Commission's opinion, the conduct in respect of which Teacher A was convicted is incompatible with the proper discharge of the responsibilities of his employment as a teacher so as to amount to a breach of trust placed in him by virtue of his office.

[175] Further, Teacher A's conduct also amounted, in the Commission's opinion, to conduct that could adversely affect the honest performance of the functions of his office pursuant to section 4(d)(i). The word "honest" is defined in the 3<sup>rd</sup> Edition of the Macquarie Dictionary to mean "honourable in principles, intentions and actions; upright". In the Commission's opinion a person who is convicted of using a carriage service to access child pornography and has placed themselves in a position of employment where they have daily contact with children has engaged in conduct that

could adversely affect the performance of their official functions in an honourable and principled way.

- [176] In the Commission's opinion subsection 4(d)(vi) is established as the conduct by a teacher of using a carriage service to access child pornography is conduct which could constitute a disciplinary offence providing reasonable grounds for termination (the relevant legislation is set out in Chapter Two in this regard).
- [177] The conduct of Teacher A amounted to criminal offences under section 474.19 of the *Criminal Code Act 1995* (Cth), for which he was convicted and this in fact led to a Negative Notice being issued by the WWC Screening Unit and his employment being terminated by the Department of Education.
- [178] As Teacher A is no longer employed as a public officer, and has been convicted and sentenced for his criminal offences, the Commission makes no recommendation for further action in relation to him.

### 5.3 Teacher A's Representations

- [179] In his representations, Teacher A "strongly refute[d] and reject[ed] the findings" of the Commission in the report. Of particular note, Teacher A asserted that the findings were made because "a verdict of some description needed to be forthcoming so that the Education Department of W.A. [sic] could be seen to justify its actions".<sup>38</sup> Furthermore, assumptions were made by the Commission "to fit a picture deemed necessary by an investigator to complete a case, so that Teacher A should be found guilty and thus be legally terminated by the Education Department [sic]".<sup>39</sup> The Commission does not accept that this was in fact the case and its position remains that the Commission investigation and subsequent expression of opinion made in this report are done so in accordance with the CCC Act.
- [180] Teacher A's representations to the Commission suggest that he was convicted for offences under section 474.19 of the *Criminal Code Act 1995* (Cth) in error. He contends that:

*The court was presented with Google search terms of an inappropriate sexual nature. This is and was denied in court and remains the case. However, several images were presented to court as "under age youth". These images were presented to the accused whilst in the dock (for the first time), as his counsel recommended that these images be accepted as "child pornography". The defendant was left in no position to argue or defend his knowledge that he had NEVER seen these images before. It was these images that convicted the defendant as having accessed "child pornography" (though the Judge did state that the images were of a teenage and above nature)[.] Subsequent investigations by an independent Forensic Investigator of the URL sites which formed the images presented in court, were ALL FOUND TO BE 18 YEARS AND OVER ... It needs to be noted that these images were NOT found on any computer, hard drive or disks owned or collected by the*



[Commission], yet they were presented as evidence to the court from what the [Commission] claimed were images accessed by the defendant ...<sup>40</sup>

- [181] It is important to note that Teacher A was not criminally charged for collecting or storing child pornography, nor has the Commission alleged that Teacher A stored, copied or moved to his computer, images of child pornography. Teacher A was charged and convicted for using a carriage service for child pornography material pursuant to section 474.19 of the *Criminal Code Act 1995* (Cth). The conviction related to the *accessing* of child pornography; the court having accepted the images were, in fact, child pornography. Analysis of lawfully intercepted internet and email services data and forensic examination of Teacher A's laptop computer confirmed that websites containing child pornography had been *accessed*. As noted already, the evidence was of child pornography images having being accessed and displayed rather than accessed and copied or moved to the computer. Information obtained through lawfully installed surveillance devices and other corroborating evidence was obtained confirming that it was Teacher A using the computer at the time child pornography was accessed. This was the basis of the criminal charges and conviction.
- [182] The Commission further notes that Teacher A had a senior solicitor instructing and was represented by a Queen's Counsel during the criminal trial. He has made no appeal to the courts in relation to his conviction, which, his representations appear to suggest, was an error. Notwithstanding Teacher A's representations on this point, the Commission notes that Teacher A was criminally convicted under section 474.19 of the *Criminal Code 1995* (Cth) and therefore makes the assessments and opinions expressed in this report in view of this fact.
- [183] Based on Teacher A's representations, several points should again be emphasised. These are that:
- Teacher A was acquitted in 1996 of indecent dealing with a child by a person in authority pursuant to section 322(4) of the *Criminal Code 1913* (WA). These non-conviction charges have been viewed by the Commission as such.
  - The complaints received in 2008, involving five boys, dating back to a period between 1982 and 1988, have been subject to consideration by the Department of Education and were reported to WAPOL. Although these allegations have been put to Teacher A during the Department of Education disciplinary investigation, they have never been put to him in a formal interview. Due to the reluctance of the complainants to participate in a criminal investigation, WAPOL was unable to proceed. Teacher A was invited by the Commission to respond to the allegations as expressed in this report. In this regard Teacher A told the Commission that "there are 5 alleged accounts from unnamed boys who myself and my wife have no knowledge of. I totally refute and take objection to unfounded accusations of

inappropriate dealings of any student in the school arena. No boys have ever stayed over night with my family in the 38 years we have been married".<sup>41</sup> These allegations have not, for reasons outlined in paragraph [94], been investigated by the Commission.

- The 2007 allegation of inappropriate physical contact with Student G was investigated by Teacher A's employer. The allegation was not upheld albeit it for the reasons set forward in paragraph [83]. The Commission reviewed this investigation and found the investigation by the Department of Education to be appropriate.

## **CHAPTER SIX**

### **ANALYSIS OF SYSTEMS AND RECOMMENDATIONS**

#### **6.1 Introduction**

- [184] Part (c) of the scope of the Commission's investigation was to consider how WAPOL, the Department of Education and the Department for Child Protection identified and liaised with the appropriate agencies in the exchange of information when allegations of this nature arose. In this context, the following chapter provides an analysis of the various systems that were in place, in terms of their effectiveness in preventing, detecting and removing those people who engage in, or are assessed as at risk of engaging in, sexual misconduct, particularly those whose sexual proclivities involve children, from working with children.
- [185] The phrase, "the systems", as used in this report, is taken to mean the set of Government departments and bodies, their enabling legislation, processes and procedures which it is understood, are intended to work together in a coordinated, systematic and organised way toward a shared purpose or outcome. In this case, the various systems included the Department of Education, WACOT and the WWC Screening Unit, and their collective responsibility for ensuring the suitability of teachers engaged in the education sector to be working with children.<sup>42</sup> In the Commission's opinion, these systems are intended to deal with behaviours suggestive of potential risk to children *before* they manifest in criminal conviction. As discussed in Chapter Two, this principle is recognised and enshrined within "the systems", including in the WWC Act which allows prior non-conviction charges to be taken into account and assessed, and that "the best interests of children are paramount" in making determinations, and the provisions of section 240 of the SEA Act.
- [186] In the Commission's opinion, the manner in which the allegations concerning Teacher A progressed through "the systems" and were dealt with offers an opportunity to examine the effectiveness of legislation and systems in place. The Commission's intention in publishing its analysis in this regard is to assist the relevant public authorities to establish appropriate strategies to prevent, identify and deal with behaviours that constitute misconduct risk and a potential risk to children.
- [187] It is known that where an individual's sexual proclivities include children, they will often seek out professions and roles in the community that place them in close proximity to children, and give them authority over children. For this reason it is crucial that roles or professions which involve working with children, such as teaching, be closely regulated, and the systems that are place to determine the suitability of a person to work with children, be effective.

## 6.2 Background

[188] When the Director General of the Department of Education took action to remove Teacher A from school premises and put an order in place preventing him from re-entering any public school premises, it was done so on the grounds that his continued presence constituted a risk to the safety or welfare of students. Based on the information it had received, his employer considered that the teacher was too great a risk to remain on departmental premises and be near children. Yet, having reached this threshold of risk, Teacher A was still able to:

- be engaged, and go undetected as a school volunteer working with children;
- be on school premises as a visitor on several known occasions;
- maintain his WACOT registration, allowing him to lawfully work in the private education sector should he have chosen to;
- maintain his WWC card without restriction;
- continue to work with children through his wife's business; and
- continue as a senior office bearer of a sporting association involving activities with children.

[189] In this regard, there was a systemic failure to respond to the potential risk posed to children by the teacher in a coordinated, comprehensive and complete way. It was not until criminal charges were preferred, and conviction achieved, that substantive action to preclude Teacher A from all child-related work was taken. In the meanwhile, there were opportunities for the teacher to continue to legitimately engage with children.

[190] The Commission is of the opinion that, over a three decade period, there was a systemic failure insofar as the various regulatory and employment bodies were unable to deal with these matters until they manifested as criminal charges and eventual conviction. The employment decisions made following the non-conviction charges of 1996 are evidence of this.

[191] The Commission does not suggest that there was an unwillingness to act on the part of the bodies involved. On the contrary, mostly, individual bodies took the action that they could within their respective legislative and procedural boundaries. In particular, the Department of Education's identification of the "historical" allegations and the investigative efforts applied to the allegations within the legislative framework available are to be commended. In fact, the Department of Education worked cooperatively and effectively with the Commission during this investigation. However, that Teacher A was able to engage with children for a lengthy period despite cause for concern having been raised (as evidenced by the section 240 orders), in the Commission's opinion, points to a systemic failure. The system of bodies, processes, procedures and legislation intended to collectively function for the shared purpose of child protection failed in crucial areas.

- [192] The Department of Education indicated in its representations to the Commission, that it does not accept that there were “systemic failings” in the handling of the case of Teacher A or how they handle misconduct matters generally.<sup>43</sup> The WWC Screening Unit also questioned the use of this phrase.<sup>44</sup> The Department of Education instead contends several points. Firstly, that “the case of Teacher A and his offending behaviour [was] an anomaly” and that “[o]ne case arising from an employer of over 35,000 people, does not, in [the department’s] opinion constitute systemic failure”.<sup>45</sup> Secondly, that this matter “demonstrates that its processes were effective in identifying the 2007 allegation against Teacher A and, more importantly, recognising and acting on the risks posed”.<sup>46</sup>
- [193] The Department of Education indicated that it accepts that the case of Teacher A highlighted some issues that have not previously been identified and to this end is committed to dealing with these potential gaps. It has also emphasised that a number of the issues identified have already been addressed by the reforms implemented as a result of the 2006 report by the Commission. The department:

*... has implemented a comprehensive, robust and well resourced misconduct management framework. This includes: specialist investigation staff with child protection experience; a robust complaints management system that captures allegations of misconduct and allows reporting and tracking of misconduct risks; relevant policies and procedures to identify, report and manage misconduct; and prevention and education strategies, supported by professional development, to address misconduct issues and risks.*<sup>47</sup>

### **6.3 Section 240 of the School Education Act**

- [194] The decision by the Director General of the Department of Education to issue orders under section 240 of the SEA was prompt and appropriate. However, because of the department’s processes, the ability for compliance with the order to be effectively enforced was, in the Commission’s opinion, limited and problematic.
- [195] Information was obtained by the Commission indicating that while Teacher A was the subject of the order, he:
- attended an awards presentation on the premises of a public school to which he had links but was not employed;
  - was engaged as a volunteer at that same school, among other things, assisting with activities for years one and two students; and
  - planned to attend an event involving primary school aged children on school premises.
- [196] When the Deputy Principal of the school where he was volunteering became aware of the order and confronted Teacher A with the information, Teacher A apparently told the Deputy Principal that the order only related to the school he was employed by and that the matter had been resolved. The Deputy Principal and the school had been unaware of the order

because the school the teacher was employed at was in a different education district and the school, like all Department of Education schools at that time, could only access information relating to their own staff.

- [197] In the opinion of the Commission, the case of Teacher A shows that the department's systems and processes for engaging employees and volunteers in schools did not take adequate account of those people who were the subject of active section 240 orders. The department was to an extent reliant upon the person who was the subject of the order complying with its terms and was limited in its ability to enforce the section 240 order as knowledge of the existence and nature of the order was limited to the particular school and district to which the teacher was attached. The department's information and human resource management systems, which should have provided an effective conduit for the flow of vital information between the organisational centre and those making decisions at school-level, in this case appeared not to do so in any adequate way. Key workforce management information was siloed. With respect to teachers, the engagement processes at school-level apparently all but relied on the teacher having a current teacher registration card and a WWC card. On this occasion, it seemed that enforcement issues relating to the section 240 order were detected by accident, by virtue of the Commission's activities, rather than through sound Department of Education processes.
- [198] The circumstances of Teacher A's engagement as a volunteer highlights a further risk area. Parent volunteers, volunteers and unpaid workers form a sizable contingent of Department of Education's workforce, yet there is some doubt about whether an appropriate degree of attention is paid to the procedures for their engagement.
- [199] A recent, pivotal development in the Western Australian system of public education was the creation of Independent Public Schools. By 2013, it is estimated that around 207 public schools will be independent. It is important that this independent public education system, which is characterised by the decentralisation of functions such as recruitment, and greater flexibility and autonomy at the school level, also be able to deal with child protection risks and the threat of paedophilia in an organised, complete and comprehensive way. The Commission trusts that the department will consider the matters raised in this report, giving attention to any particular risks posed by the independent public schooling system.

### 6.3.1 Recommendations

#### **Recommendation One**

That the Department of Education review the legislation, systems and procedures in place with respect to section 240 of the *School Education Act 1999* (WA) and amend it as necessary, in view of the enforcement, compliance and monitoring issues raised in this report.

### **Recommendation Two**

That the Department of Education review and amend as necessary, the systems, policies and procedures it has in place for engaging employees and volunteers. Consideration should be given to whether these take adequate account of any prohibition or conditional orders in place and the suitability of individuals to be working with children.

#### **6.3.2 Representations**

- [200] The Department of Education has emphasised to the Commission that from the time where a section 240 order was issued onward, “at no time during that period was Teacher A *allowed* to have contact with children as he was directed away from public schools” (emphasis added). The Commission notes, however, that notwithstanding the order, Teacher A *was allowed* to work and have contact with children in the private education sector and children outside of public schools generally. Furthermore he was *able* to be on public school premises and was engaged as a volunteer at that same school, assisting with activities for children.<sup>48</sup>
- [201] The Department of Education has accepted the recommendations and has indicated that it will undertake their implementation as a matter of priority.

#### **6.4 Western Australian College of Teaching**

- [202] With respect to section 50 of the WACOT Act (discussed in Chapter Two), WACOT is not notified by employers of those teachers whose suitability to work with children is a matter of serious concern, or has been called into question, who are not the subject of dismissal or suspension. In the Commission’s opinion, this represented a risk area in terms of those individuals who are the subject of disciplinary action, or proposed action, by the department, but ceased their employment prior to being suspended or dismissed. This position is addressed by the *Teacher Registration Act 2012* (WA) (yet to be proclaimed) because section 42 of that Act requires notification by the Department of Education to the Teacher Registration Board in these circumstances where the teacher has resigned, as well as where the teacher has been dismissed or suspended.
- [203] While Teacher A was the subject of the Department of Education’s section 240 order, and despite WACOT having been notified of the order, he was still a registered teacher and the holder of a WWC card. He was able to lawfully seek work as a teacher in the private education sector should he have chosen to and was able to work with children, in a voluntary or paid capacity, in settings other than Western Australian public schools. With his teacher registration status unchanged, the private education sector in particular, was unaware of the potential risks posed had he been engaged in that sector.
- [204] Although WACOT was notified of Teacher A’s removal from teaching pursuant to section 50(1) of the WACOT Act, in representations to the

Commission WACOT admitted that they did not proceed to conduct an inquiry into the teacher's conduct pursuant Part 7 of the WACOT Act. The legislation provides that WACOT must consider any notice made under section 50(1), and decide whether or not to hold an inquiry. A teacher is unable to have their registration suspended or cancelled unless it has been established by such an inquiry that the teacher engaged in "unprofessional conduct". The response provided by WACOT to the Commission stated that "[w]here there are matters that are subject to criminal prosecution, it has been the policy of WACOT to conduct its inquiry at the conclusion of that process. However, it should be noted that WACOT takes an active role in monitoring the progress of other proceedings".<sup>49</sup>

- [205] In its submissions to the Commission, WACOT expressed some difficulties and apparent frustrations with respect to receiving information from the Department of Education enabling their inquiries to be conducted into allegations of unprofessional conduct by teachers. It was stated that "difficulties have arisen with [the Department of Education] in the provision of information to WACOT after s50 notices have been received" and that is why a Part 7 (WACOT Act) inquiry was not conducted.<sup>50</sup>
- [206] Subsequent to the drafting of this report, the *Teacher Registration Act 2012* (WA) has been passed by the Parliament of Western Australia (the general provisions are yet to be proclaimed). When the Act is proclaimed in its entirety, the WACOT Act will be repealed and WACOT will be replaced with the Teacher Registration Board to undertake teacher registration, discipline and related functions in Western Australia. The Commission notes that a number of the legislative impediments and/or limitations identified in this report with respect to these functions, which are the subject of comment and were the subject of draft recommendations (in particular, Recommendation Three below) in this report, appear to have been addressed by the legislation. These include section 42 which deals with notices to be given by an employer about the suspension, dismissal or resignation of a registered teacher and Division 5 which deals with interim disciplinary orders where there is a potential risk of injury or harm.

#### 6.4.1 Recommendation

##### **Recommendation Three**

That the Minister for Education review the *Teacher Registration Act 2012* (WA) and amend it as necessary, in view of the matters raised in this report. Consideration should be given to the authority to suspend a teacher's registration in circumstances where the teacher is or has been the subject of disciplinary investigation by their employer and the allegations raise possible doubt as to their suitability to work with children. Any current limitations to the effective operations of section 50 of the *Western Australian College of Teaching Act 2004* should also be addressed by the *Teacher Registration Act 2012* (WA).



### **6.4.2 Representations**

- [207] In its representations to the Commission, WACOT indicated that although notified of the section 240 suspension of Teacher A by the Department of Education, they were unable to (and it is not their practice to) proceed with their investigation or take other action as they had not been provided with sufficient information to do so. Their representations further suggested to the Commission that there were significant issues impeding their ability to receive the notifications and information/evidence they required to deal with matters where a teacher's suitability and fitness for registration was in doubt.<sup>51</sup>

## **6.5 Working with Children Act**

- [208] It has already been observed that up until Teacher A was charged with criminal offences, he held a valid, unrestricted WWC card allowing him to work with children in a paid or voluntary capacity. Notably, during the period, he continued as a senior office bearer of a sporting association was involved in sporting events, and assisted with his wife's business which catered to children, including children with disabilities. These activities relied upon Teacher A holding a WWC card, which, up until the point of criminal proceedings, he had. At the point where criminal charges were preferred, he was precluded from participating in the overnight camp referred to in this report, because the bail conditions imposed at that stage prohibited it.
- [209] Although the WWC Screening Unit has the ability to issue either a Negative Notice or Interim Negative Notice, precluding an individual from working with children, it is only in response to criminal charges and/or conviction for certain scheduled offences. Despite the circumstances informing the order issued by the Department of Education, and the information it was in possession of, its issue had no bearing on the status of the teacher's WWC card and there was no legislative basis for the WWC Screening Unit to take action until such time as criminal charges had been preferred. This legislative gap represents a significant area of risk and oversight in the Commission's opinion. Disciplinary information held by particular public authorities such as the Department of Education, whose work fundamentally involves children, is unique in that it may indicate potential unsuitability to work with children, prior to, or without, criminal charges having been brought. Further, it may be that criminal charges are never preferred because of the reluctance of child complainants. Further, it is clear from Western Australian case law and the WWC Act itself, that the focus of the legislation is the proper assessment of potential risk to children, yet there is legislative failure with respect to this aspect.
- [210] The case of Teacher A also potentially highlights an area of risk in terms of the exemptions that apply for people having to obtain a WWC card. A parent volunteering in connection with their child (except if volunteering for an overnight camp), for example a parent volunteering at a school where

their child is enrolled, is exempt from having to apply for a WWC card (even if their child is not in the class they are volunteering for). In view of this significant exemption, in the Commission's opinion, the Department of Education needs to consider what controls and/or other checking processes need to be in place to ensure that those parent volunteers who are not required to have a WWC card are nonetheless suitable to work with children.

### 6.5.1 Recommendation

#### Recommendation Four

That the Department for Child Protection give consideration to amending the *Working with Children (Criminal Record Checking) Act 2004* (WA) to enable disciplinary findings and/or disciplinary investigation by relevant Government departments or regulatory bodies to trigger consideration of the person's eligibility to hold a *Working with Children Card*.

### 6.5.2 Representations

[211] The WWC Screening Unit proposed changes to the Commission's original recommendation. These changes have been accepted, in part, by the Commission. Although the WWC Screening Unit has indicated that it may not be feasible, or of great benefit, to have certain disciplinary investigation matters trigger examination of a person's eligibility to hold an Assessment Notice, the Commission is of the view that the issue should be considered further. It is important to note that, in the Commission's opinion, an appropriate trigger would be the initiation of a disciplinary investigation rather than only the findings of a disciplinary investigation.

[212] The WWC Screening Unit also made a number of points in relation to this report. In particular, it was stressed that the:

*WWC Act is part of a suite of complementary legislation and services and does not stand alone. It is emphasised in all public information that a WWC Card does not certify a person as "fit and proper" or suitable for a particular job. The Card is only proof that if the person has a charge or conviction that it has been considered under the Act. The WWC scheme must be part of other strategies that safeguard children...*<sup>52</sup>

[213] The Commission notes that subsequent to the drafting of this report, a report of the *Review of the Working with Children (Criminal Record Checking) Act 2004* was tabled in the Parliament of Western Australia. A number of the recommendations in that report are noted by the Commission, in particular, that:

- Consideration is given to prohibiting Negative Notice holders from accessing the parent-volunteer exemption only if adequate

mechanisms to monitor compliance and strengthen the promotion of broad child safeguarding strategies can be identified.<sup>53</sup>

- The [WWC] Act be amended to allow relevant disciplinary findings from prescribed employers and professional associations be a trigger for consideration under section 12 of the [WWC] Act. Relevant disciplinary findings are those relation to sexual behaviour towards children or serious physical harm of a child.<sup>54</sup>

(emphasis added)

## 6.6 Standards of Behaviour and Conduct

- [214] Prior to, and notwithstanding the conviction of Teacher A for child pornography offences, the pattern of conduct toward children, as a teacher, might reasonably be regarded by the community as having been inappropriate at times. The nature of his email communications with students outside of school hours was, certainly on its face, in the Commission's opinion, inappropriate for that of a teacher.
- [215] As regulators of the teaching profession generally, and the largest single employer of teachers in Western Australia, it is vital that the relevant teacher registration body and the Department of Education have in place Codes of Conduct which consistently, clearly and unambiguously set the standards of appropriate and professional behaviour and conduct for teachers and those who work in schools, so that deviations from those standards can be quickly detected and responded to. In the Commission's opinion, it is important that the high standards required of teachers be consistently articulated by the relevant employment and regulatory bodies. Furthermore, these Codes of Conducts and other associated policies should be supported by training programmes and should take account of behaviours and activities such as child grooming. The Commission notes the department's *Accountable and Ethical Decision Making* training programme, particularly the module relating to Personal Behaviours, but observes that it does not appear to be mandatory for all teaching or school-based staff.
- [216] In its submissions, the Department of Education provided to the Commission copies of a number of policies and supporting documents for staff which deal with issues of staff conduct and behaviour. The supporting document entitled; *How to Comply with Our Code of Conduct*, deals, in particular, with topics pertaining to maintaining professional boundaries with students. The Commission commends the department for this and again draws attention to the need for the relevant employment and regulatory bodies to deliver a consistent message to teachers concerning professional conduct and behaviours.

### 6.6.1 Recommendation

#### **Recommendation Five**

That the Department of Education and the relevant teacher registration body, together, have in place policies and Codes of Conduct for teachers, and those who work in schools, which consistently and clearly establish the standards and expectations for professional behaviour and conduct.

These should take account of issues such as:

- contact and communication with students outside of regular school hours and activities;
- contact and communication with students via email, internet and by telephone;
- relationships with students; and
- physical contact with students.

These policies and Codes of Conduct should be supported by training which, the Department of Education should make mandatory for teachers and school-based staff. The relevant teacher registration body, should consider making such training a requirement for teacher registration/re-registration.

### 6.6.2 Representations

- [217] As noted already, the Department of Education provided the Commission with a number of policy documents and guidelines relating to staff conduct and discipline. The Commission has considered this information in making this recommendation. The department has also indicated that the *Accountable and Ethical Decision Making* training is available to staff. The training is mandatory for certain categories of employees, such as Independent Public School Principals and the department's senior executive. Furthermore, the department has embarked on a comprehensive process to deliver this training across the whole department.<sup>55</sup> The Commission welcomes these steps.

## **6.7 Proactive Child Pornography and Child Protection Strategies**

- [218] In the case of Teacher A, the Department of Education's capacity to detect his activities with respect to child pornography was diminished as the internet access was made using a work-issued laptop, but was not through the department's servers. The department's ability to proactively investigate the teacher's conduct once suspicion had been raised was also limited.
- [219] As one of the largest employers in Western Australia and one of the largest employers of people in child-related work, as well having day-to-day care for tens of thousands of children, the Department of Education's

business and activities are high risk in a child protection sense. Advancements and changes in communications technology and the modes by which teachers and students have the opportunity to engage with each other, adds further complication to this. In the Commission's opinion, it is important therefore that in addition to having in place robust recruitment and engagement processes, the department give consideration to increasing its capacity for proactive child protection and child pornography initiatives and strategies. It is vital that this public authority be well placed now, and in the future, to deal with the changing environment and emerging child protection risks. This might involve increasing the capacity for proactive investigative activities which are not necessarily allegation or complaint driven.

### **6.7.1 Recommendation**

#### **Recommendation Six**

That the Department of Education review its current capacity for proactive strategies and initiatives in relation to child pornography and child protection issues, and give consideration to increasing this capacity.

### **6.7.2 Representations**

- [220] The Department of Education has indicated to the Commission that it currently monitors the activity of its employees in relation to internet content, in particular, that “[a]ll internet traffic is centrally logged and monitored for signs of activity that may relate to the access or transfer of child exploitation material”.<sup>56</sup> Furthermore, a central filtering service has been implemented “based on blocking access to approximately 750,000 sites that have been identified as containing content that is unsuitable for the education context”.<sup>57</sup>
- [221] The Commission has been advised by the Department of Education that it no longer provides unrestricted remote access to the internet for staff.
- [222] The department has accepted the recommendation and has indicated that it will undertake its implementation as a priority.



## **APPENDIX**

### **Section 473.1 of the *Criminal Code Act 1995* (Cth)**





[223] Section 473.1 of the *Criminal Code Act 1995* (Cth) defines child pornography as:

- (a) *material that depicts a person, or representation of a person, who is, or appears to be, under 18 years of age and who:*
  - (i) *is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or*
  - (ii) *is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;*

*and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or*

- (b) *material the dominant characteristic of which is the depiction, for a sexual purpose, of:*
  - (i) *a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or*
  - (ii) *a representation of such a sexual organ or anal region; or*
  - (iii) *the breasts, or a representation of the breast, of a female person who is, or appears to be, under 18 years of age:*

*in a way that reasonable persons would regard as being, in all the circumstances, offensive; or*

- (c) *material that describes a person who is, or is implied to be, under 18 years of age and who:*
  - (i) *is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or*
  - (ii) *is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;*

*and does this in a way reasonable persons would regard as being, in all the circumstances, offensive; or*

- (d) *material that describes:*
  - (i) *a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or*
  - (ii) *the breasts of a female person who is, or is implied to be, under 18 years of age;*

*and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive.*



## ENDNOTES

<sup>1</sup> In order to protect the identities of the parties directly and indirectly involved in these matters, some of whom were juveniles at the time of the alleged incidents, the Corruption and Crime Commission (“the Commission”) has concluded that it is not necessary, or in the public interest, to name the Department of Education employee in this report. He is no longer employed in the sector and has been convicted of offences arising out of the Commission investigation. The Commission refers to him throughout this report as “Teacher A”.

<sup>2</sup> This report includes matters over a number of decades. During this period the relevant employing authority has variously been the Department of Education and Training, the Ministry of Education, the Department of Education and other agencies. For ease this report will refer to the Department of Education (as the public authority currently is) throughout.

<sup>3</sup> Sections 83-86 of the *Public Sector Management Act 1994* (“the PSM Act”) were deleted by Amendment No. 39 of 2010 s.99. Any reference to these sections in the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“Special Report”) should be disregarded. In addition, parts of paragraphs [31] – [38] of the Special Report are no longer applicable as a result of other amendments made to the PSM Act by Amendment No. 39 of 2010.

<sup>4</sup> *The Criminal Code 1913* (WA), section 1, p.31.

<sup>5</sup> State legislation (the *Telecommunications (Interception) Western Australia Act 1996* (“the Western Australia Act”)) gives the Corruption and Crime Commission (“the Commission”) its status as an intercepting agency. The Western Australia Act is an Act to enable the Commission to be declared an agency for the purposes of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth and for related purposes.

<sup>6</sup> *Telecommunications (Interception and Access) Act 1979* (Commonwealth), p.17.

<sup>7</sup> Legislative Assembly of Western Australia Parliament Hansard for 20 October 2004, p.6947.

<sup>8</sup> *Sexual Contact With Children By Persons in Authority in the Department of Education and Training of Western Australian* (tabled in the Parliament of Western Australia on 16 October 2006).

<sup>9</sup> Letter of 7 February 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Teacher A.

<sup>10</sup> See Tony Krone, “Does Thinking Make It So? Defining Online Child Pornography Possession Offence”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 299 (April 2005), pp.2-3.

<sup>11</sup> Letter of 10 April 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sharyn O’Neill, Director General, Department of Education.

<sup>12</sup> Emails to Student H of 23 October 2007, at 8.27 p.m., and 13 August 2007, at 10.35 p.m., from Teacher A.

<sup>13</sup> Email to Student H of 13 December 2007, at 5.14 p.m., from Teacher A.

<sup>14</sup> Sections 17 and 18 of the *Corruption and Crime Commission Act 2003* (WA).

<sup>15</sup> *Sexual Contact With Children By Persons in Authority in the Department of Education and Training of Western Australian* (tabled in the Parliament of Western Australia on 16 October 2006).

<sup>16</sup> Letter of 10 April 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sharyn O’Neill, Director General, Department of Education.

<sup>17</sup> *Ibid.*

<sup>18</sup> See Kim-Kwang Raymond Choo, “Responding to Online Child Sexual Grooming: An Industry Perspective”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 379 (July 2009), p1; and “Online Child Grooming Laws”, *Australian Institute of Criminology of High Tech Crime Brief*, No 17 (2008), p.1.

<sup>19</sup> “Online Child Grooming Laws”, *Australian Institute of Criminology of High Tech Crime Brief*, No 17 (2008), p.1.

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- <sup>20</sup> See Marianne James, “Paedophilia”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 57 (June 1996), p.3.
- <sup>21</sup> Angelique Grosskopf, “Online Interactions Involving Suspected Paedophiles Who Engage Male Children”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 403 (December 2010), pp.1-6.
- <sup>22</sup> *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority* (November 1995), at item 3.47 to 3.53.
- <sup>23</sup> Janet Stanley, “Child Abuse and the Internet”, *Child Abuse Prevention Issues*, Number 15 (Summer, 2001); Queensland Crime Commission and Queensland Police Service, *Child Sexual Abuse in Queensland: The Nature and Extent: Volume 1. Project Axis* (Queensland Crime Commission, Queensland) 2000, and; A. Tomison, “Update on Child Sexual Abuse”, *Issues in Child Abuse Prevention*, No 5 (Australian Institute of Family Studies, Melbourne) 1995.
- <sup>24</sup> *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority* (November 1995), at item 3.44.
- <sup>25</sup> *Ibid.*
- <sup>26</sup> *Ibid.*, at item 3.46.
- <sup>27</sup> *Ibid.*
- <sup>28</sup> *Ibid.*, at item 2.2, and; Marianne James, “Paedophilia”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 57 (June 1996), p.2.
- <sup>29</sup> *Royal Commission into the New South Wales Police Service, Final Report, Volume IV: The Paedophile Inquiry* (August 1997), p.15.
- <sup>30</sup> See Marianne James, “Paedophilia”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 57 (June 1996), p.3.
- <sup>31</sup> *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority* (November 1995), at item 2.28
- <sup>32</sup> *Royal Commission into the New South Wales Police Service, Final Report, Volume IV: The Paedophile Inquiry* (August 1997), p.15.
- <sup>33</sup> Marianne James, “Paedophilia”, *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, No 57 (June 1996), p.3.
- <sup>34</sup> *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority* (November 1995), at item 2.19.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> *Ibid.*, at item 2.18.
- <sup>37</sup> *Ibid.*, at item 2.26.
- <sup>38</sup> Letter of 7 February 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Teacher A.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> *Ibid.*
- <sup>41</sup> *Ibid.*
- <sup>42</sup> Representations from the Department of Education, the Western Australian College of Teaching and the Department for Child Protection Working with Children Screening Unit have been incorporated into this chapter.
- <sup>43</sup> Letter of 10 April 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sharyn O’Neill, Director General, Department of Education.

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<sup>44</sup> Letter of 20 February 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sandie van Soelen, Director, Working with Children Screening Unit, Department for Child Protection.

<sup>45</sup> Letter of 10 April 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sharyn O'Neill, Director General, Department of Education.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> Letter of 7 March 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Dr Suzanne Parry, Director, Western Australian College of Teaching.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> Letter of 20 February 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sandie van Soelen, Director, Working with Children Screening Unit, Department for Child Protection.

<sup>53</sup> *Review of the Working with Children (Criminal Record Checking) Act 2004* (tabled in the Parliament of Western Australia in July 2012), Recommendation 2(a), p.4

<sup>54</sup> *Ibid.*, Recommendation 11, p.5

<sup>55</sup> Letter of 10 April 2012 to Mr Roger Macknay, QC, Commissioner of the Corruption and Crime Commission, from Ms Sharyn O'Neill, Director General, Department of Education.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*