

Concerned Catholics Tasmania Inc.

28 August 2024

The Secretary

Inquiry into Discrimination and Bullying in Tasmanian Schools Parliament House

Hobart 7000

assemblygaa@parliament.tas.gov.au

Dear Ms Murphy

Concerned Catholics Tasmania Inc – submission to Inquiry

This submission is made on behalf of Concerned Catholics Tasmania Inc (CCT).

About CCT

CCT is an organisation of 174 registered members and another 150 supporters which, amongst other things, has a deep ongoing concern for the welfare of Catholic Education in Tasmania. Some of our members and Board are former senior educators in the Catholic Education system.

Preamble

Current senior educators in the Catholic Education system have contacted CCT and expressed their distress and dismay that the [REDACTED] of Catholic Education Tasmania (CET), [REDACTED] and other senior CET officers behave in ways that they describe as discriminatory, unequal, bullying and harassing.

Accordingly, we raise our concerns with your Committee as it has been appointed to inquire and report to the Parliament on those areas of concern in schools. While our concern is for all students and staff in all Tasmanian schools, our knowledge and experience is limited to CET.

Before addressing the terms of reference, we point out that the Tasmanian Law Reform Institute (*Institute*) has produced a report entitled *Bullying Final Report No. 22 January 2016*¹ (*Bullying Report*). Our submission adopts much of what the *Institute* proposes and

¹ https://www.utas.edu.au/data/assets/pdf_file/0011/789698/Bullying_FR_A4_Print.pdf

acknowledge that we have had difficulty finding recent data on the nature and extent of bullying.

Excerpts taken from relevant legislation and official documentation are set forth in Appendix A including some related inferences, emphases and conclusions that our reading of them has evoked for us.

The sequence of those measures is important. This is especially so given the recent development of the National Principles for Child Safe Organisations (*National Principles*) following the Royal Commission into Institutional Responses to Child Sexual Abuse (*Royal Commission*).

Those recent developments have concentrated on the protection of children rather than the protection of adults. In terms of achieving cultural change, that preferential treatment may delay such change, as there is less protection provided to adults and the focus is on children.

Responses to the Terms of Reference

We have used case studies to support our responses to the terms of reference where we can. Not all of the case studies describe events within schools but are indicative of the managerial style and culture within *CET* and which permeate *CET*.

Terms of Reference (a)

- (a) *inquire into and report upon direct and indirect discrimination, prohibited conduct, unequal and disadvantageous treatment, bullying and harassment in Tasmanian schools in regard to students and staff.*

Incidents *CCT* is aware of:

A *Female student teacher*

A young female student teacher on work experience at a Catholic primary school experienced repeated prohibited conduct from a senior male member of staff, namely, unwelcome, suggestive comments of a personal and sexual nature directed towards her and repeated over weeks.

The student teacher was informed by an older staff member of long-standing that others had been subjected to similar conduct by the alleged perpetrator. Other staff corroborated that.

The student teacher reported the matter to a senior officer within the Tasmanian Catholic Education Office (*TCEO*) who had responsibility for the primary school at which she was employed.

The student teacher later learned that the alleged perpetrator had been transferred to another Catholic school where he would be teaching secondary school female students.

Being aware of the propensity of the alleged perpetrator, some of the student teacher's colleagues, whose children attended the school to which the alleged perpetrator was transferred, expressed dismay that such an arrangement was sanctioned by *CET* senior management.

This instance points to a failure of senior management to properly investigate using due process and report to relevant authorities allegations of:

- (a) *prohibited conduct* in breach of section 17(1) and paragraphs 17(3)(c), (d) and (e) of the Anti-Discrimination Act 1998 (*A-D Act*);
- (b) *bullying and harassment* of the student teacher;
- (c) *sexual harassment* in breach of paragraphs 17(3)(c), (d) and (e) of the *A-D Act*; and
- (d) a breach of section 789D of the Fair Work Act 2009.

Further, the conduct of the alleged perpetrator is in breach of *CET's*:

- (i) Adult Behaviour policy²;
- (ii) Code of Conduct;³ and
- (iii) Workplace Behaviour Policy.⁴

Those policies require employees to behave in ways that promote the safety, welfare and well-being of students, fellow employees and others in their workplace environment in accordance with relevant occupational, health and safety legislation.

In addition, the Workplace Behaviour Policy⁵ states in Attachment 4: Sexual Harassment A4-1:

Sexual Harassment Defined

- (a) *Sexual harassment is any unwanted or unwelcome conduct which:*
 - (i) *is of a sexual nature with a sexual element, overtone or implication, which may not in isolation appear to be sexual in nature, but may become so because of the surrounding circumstances (e.g. unsolicited act of physical contact of a sexual nature, unwelcome sexual advance or request for sexual favours, unwelcome gesture, action or comment of a sexual nature); and*
 - (ii) *is unreasonable in the circumstances; and*
 - (iii) *a reasonable person having regard to all the circumstances would have anticipated that the other would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.*

² <https://catholic.tas.edu.au/policies>

³ *ibid*

⁴ *ibid*

⁵ *ibid*

- (b) *Sexual harassment can be a one-off occurrence and a specific intent or motive is not necessary.*
- (c) *Sexual harassment is unlawful.*

B Female TCEO employee

A TCEO female employee was subjected to frequent unsolicited and unwelcome, personal remarks from a very senior manager about her dress, her body shape, appearance and personal life.

This conduct continued for months resulting in the employee experiencing both stress and discomfort culminating in the employee taking extended stress leave.

The employee decided to resign for the good of her health and well-being and has taken up other employment outside the Catholic education system.

The TCEO offered the employee 'hush' money and pressured her to sign a confidentiality agreement. She declined the offer and refused to sign the agreement. This instance points to a failure of management to properly investigate using due process and report to relevant authorities allegations of:

- (a) *prohibited conduct* which is in breach of section 17(1) and paragraphs 17(3)(c), (d) and (e) *A-D Act*;
- (b) *bullying and harassment* of the student teacher; and
- (c) a breach of section 789D of the Fair Work Act 2009.

Further, the conduct of the alleged perpetrator is in breach of Catholic Education Tasmania's:

- (iv) Adult Behaviour policy⁶;
- (v) Code of Conduct;⁷ and
- (vi) Workplace Behaviour Policy.⁸

C Prospective principal [REDACTED]

As we understand, [REDACTED] is part of Edmund Rice Education Australia (EREA) a system of schools offering a Catholic education in the tradition of Blessed Edmund Rice.

An applicant for the position of principal had been advised that his application had been successful. The College wrote to him congratulating him of his successful application.

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

However, subsequently, he was informed by the College that the [REDACTED] [REDACTED] and the Archbishop of Hobart had intervened and insisted that the College should not appoint him because of his marital status.

The male applicant had separated from his wife, was seeking an annulment of that marriage and was in another relationship with another woman.

This case may result in both the Archbishop of Hobart and the [REDACTED] [REDACTED] being investigated and perhaps prosecuted for engaging in *prohibited conduct* in breach of paragraphs 17(3)(f) and (fa) of the *A-D Act*, if their discriminatory behaviour falls outside the exemptions in section 51 of the *A-D Act*.

***D Consent and Respectful Relationships Education:
unequal and disadvantageous treatment***

The [REDACTED] received national attention on 4 December 2023, after posting an article on the Archdiocese of Hobart website questioning the Consent and Respectful Relationships Education (*CRRE*) measure, a new measure announced by the Australian Curriculum, Assessment and Reporting Authority (*ACARA*) in the Health and Physical Education learning area.

The *CRRE* measure is intended to support the wellbeing of Australian primary and secondary school students and school communities through investment in high-quality evidence-based, age-appropriate *CRRE*.

In that article, the [REDACTED] expressed his concerns about aspects of *CRRE*, some of which he regards as amoral. His focus was on consent education in so far as it relates to sexual activity. He emphasises that such activity should only occur within the sanctity of marriage between a man and a woman.

The *CRRE* is part of a national curriculum approved and adopted by Federal, State and Territory governments. The aim of the measure is to teach children that they have the right to personal space, human dignity and respectful relationships in every encounter. It is to be age appropriate and the curriculum is available on the *ACARA* website.

Consent education regarding romantic or sexual relationships occurs in Years 9 and 10, and is focussed very much on boundaries and respectful relationships. Religious schools are encouraged to tailor programs to include religious teachings.

CCT is alarmed that the [REDACTED] is seeking to facilitate the unequal and disadvantageous treatment of students in Catholic schools by:

- reducing consent education to “sexual activity,” when it is intended to teach children about bodily autonomy, i.e. the right to have boundaries and those boundaries to be accepted;

- failing to provide students in Catholic schools from an early age with the opportunity to learn about respectful boundaries as well as to how to protect themselves from unwanted physical attention from other children or adults;
- insisting that the sexual and moral formation of the child is the exclusive right of parents, when in fact most sexual abuse occurs within families, and therefore, schools have an important educative role;
- failing to provide students in Catholic schools from an early age with the opportunity to learn that being subjected to unwanted touching, hugs and kisses is no longer acceptable behaviour, being both unlawful and socially unacceptable; and
- obscuring by his article the importance and necessity of consent and respectful relationships education in combatting the scourge of sexual violence in Australian society.

F Maltreatment surrounding Gender Dysphoria

We are aware that *CET* through the [REDACTED] has insisted upon a policy that principals must provide him with particulars of any child experiencing gender dysphoria. The procedural response is for *CET* to then provide a counsellor to counsel the child.

Such a policy amounts to, in our view, *direct and indirect discrimination, prohibited conduct, unequal and disadvantageous treatment, bullying and harassment*. Our reasons are that this policy, in respect of the:

- (a) parent of the child, is both directly and indirectly discriminatory by virtue of subsection 17(1) coupled with paragraph 16(j) of the A-D Act;
- (b) child, is directly discriminatory by virtue of subsection 17(1) coupled with paragraph 16(j) of the A-D Act;
- (c) parent of the child, subjects the parent to unequal and disadvantageous treatment in that:
 - (i) the parent is compelled to authorise the participation of that person's child in a procedure which should be the prerogative of the parent to accept or reject
 - (ii) the parent is compelled to divulge private and personal information to the [REDACTED] and others which not all other parents are compelled to divulge;
- (d) child, subjects the child to unequal and disadvantageous treatment in that:
 - (i) the child is compelled to participate in procedures which not all other students are compelled to participate; and

- (ii) the child is compelled to divulge private and personal information to the [REDACTED] and others which not all other students are compelled to divulge;
- (e) parent is both an abuse of power and bullying and harassment as compliance is required without there being any countervailing benefit or advantage to be derived by the parent and the risk that harm may be caused to that person's child by the intervention of a counsellor with no pre-existing practitioner client relationship with the child;
- (f) child is both an abuse of power and bullying and harassment as compliance is required without there being any countervailing benefit or advantage to be derived by the child and the risk that harm may be caused to that child by the intervention of a counsellor with no pre-existing practitioner client relationship with the child;
- (g) principals in Tasmania are being subjected to direct discrimination, unequal and disadvantageous treatment and bullying and harassment by being deprived of one of their principal and primary functions and responsibilities, specifically, the pastoral care for students in their care which is in breach of one of the primary principles of Catholic Social Doctrine, namely, Subsidiarity.

The principle of Subsidiarity reminds us that larger institutions in society (such as the state or federal government) should not overwhelm or interfere with smaller or local institutions (such as the family, local schools, or the Church community). Yet larger institutions have essential responsibilities when local institutions cannot adequately protect human dignity, meet human needs, or advance the common good.

Subsidiarity reflects the essential freedom and innate human dignity of each person while also recognizing the role higher authorities, such as government, can play to ensure that all people are able to thrive. Respecting this principle promotes the flourishing of each individual person and the realization of the common good. As Pope Francis has explained, the principle of Subsidiarity "allows everyone to assume his or her own role in the healing and destiny of society."

By participating in public life locally, each person and the voluntary associations of civil society to which they belong can be "leaven," bringing "enrichment" to neighbours, to communities, and to society as a whole.⁹

Terms of Reference (b)

- (b) *inquire into and report upon the measures necessary to prevent and remedy discrimination and bullying in Tasmanian schools in regard to students and staff*

CCT is concerned that for CET measures to prevent and remedy bullying are urgent especially given the case studies mentioned and senior management's intimidation, ostracism and rejection of those who are not heterosexual or are

⁹ <https://www.usccb.org/resources/Subsidiarity.pdf>

in relationships other than married heterosexual couples. A journey through the *Institute's Bullying Report* has been a useful stepping off point for CCT and may assist the Committee.

That is not to diminish the need to prevent and remedy discrimination which is mentioned below.

Bullying - harm & suggested responses

The *Institute* highlights the harm caused by bullying when it notes:

2.2.3 Even if evidence suggesting a potential decrease in the prevalence of bullying is accepted, bullying remains a substantial problem in the community. The harm caused by bullying can be very victim-specific as the consequences of different types of bullying vary widely depending on the victim. In relation to mental harm in particular, the same bullying behaviour that causes very serious harm in one victim may be almost entirely 'brushed off' by another.

*2.2.4 Given the serious harm that can be caused by bullying, a social response alone may be insufficient and a legal response may be justified. **The law has an important declaratory and deterrent function and rendering behaviour 'unlawful' provides a clear statement of society's unwillingness to accept the behaviour. Recognition of the wrongfulness of the behaviour and provision of accessible legal avenues for resolution of the problem may also be beneficial to victims.***¹⁰ (our emphasis)

Response – remedial measures

The *Institute* noted that several respondents favoured a tiered approach expressed in these terms:

2.2.9 Respondents favoured a tiered approach to legal reform to address bullying. The Tasmanian Anti-Discrimination Commissioner submitted that the broad ranging nature of what constitutes bullying makes a single response difficult and responsibility for addressing it must be borne by a range of stakeholders. Given the breadth of behaviour covered by bullying, it is unlikely that a single response to bullying will be effective in all situations.

The Commissioner further noted that:

- (1) dealing with bullying at a local level or within the organisation in which it occurs, including by setting up processes for receiving and dealing with reports of bullying behaviour seriously and establishing programs to protect victims from further abuse, must be a priority;*
- (2) there is a need for a more structured civil-law response aimed at addressing ongoing or persistent behaviour or behaviour that has a severe and/or continuing effect on the victim;*
- (3) in some circumstances there may be a need for a criminal justice response.*

¹⁰ https://www.utas.edu.au/data/assets/pdf_file/0011/789698/Bullying_FR_A4_Print.pdf page 16

*The Law Society of Tasmania also submitted that a tiered approach should be adopted in addressing the problem of bullying. The Society noted that the types of bullying that can occur are wide ranging and that the types of bullying that should be considered include physical bullying, social exclusion, intimidation, cyberbullying and verbal abuse. **The Society further submitted that it is necessary for a legal definition of ‘bullying’ to be sufficiently wide to cover bullying behaviours and that a tiered response could prevent ‘minor’ examples of bullying being litigated by allowing these cases to be mediated or resolved out of court.***¹¹ (our emphasis)

The *Institute* and respondents to the issues paper proposes a three-tiered approach should be open to a prospective complainant alleging bullying. The proposal is as follows:

3.1.2 Respondents to the Issues Paper favoured a tiered approach to legal reform to address bullying. It is the view of the Institute that the recommendations in this report establish a three-tiered approach that decreases in punitiveness, which is sufficiently wide to accommodate a range of bullying behaviours and diversity amongst individual cases. The three-tiered approach allows for:

- *Severe cases of bullying to be dealt with by the criminal law;*
- *Less severe cases or those that present poor prospects of proof beyond reasonable doubt to be dealt with by the civil law, including a mediated response through the Anti-Discrimination Commissioner or the Magistrates Court, and a statutory duty of care on employers to prevent bullying; and*
- *An education-based regulatory response through the imposition of anti-bullying requirements on educational institutions, mandating their implementation of anti-bullying policies and procedures.*¹²

The Law Society pointed out that creating a criminal offence targeted at bullying should be both a deterrence and show the community’s condemnation of bullying behaviours.¹³ The Anti-Discrimination Commissioner noted that the creation of an offence of bullying or harassment under the Police Offences Act 1935 (Tas) has the capacity to provide for significant deterrence in serious instances of bullying and that a separate offence may offer flexibility to specify a broad range of behaviours, as well as remedies, conditions and exceptions.¹⁴

The Anti-Discrimination Commissioner also noted that a specific offence may be a useful mechanism for structuring a progressive response to bullying, based in the first instance on alternative dispute resolution processes and escalating to more severe sanctions if the behaviour is of a more serious nature

¹¹ https://www.utas.edu.au/data/assets/pdf_file/0011/789698/Bullying_FR_A4_Print.pdf page 17

¹² Ibid page 19

¹³ https://www.utas.edu.au/data/assets/pdf_file/0011/789698/Bullying_FR_A4_Print.pdf para 3.3.22 page 25

¹⁴ Ibid page 25

or the alternative dispute resolution processes do not achieve an agreed outcome.¹⁵

It was noted that a civil law response to bullying enables a focus on restorative justice approaches and that a civil law response provides victims with the power to initiate the procedure and the capacity to be proactive in prevention and systemic change.¹⁶

In addition, both the Law Society and the Anti-Discrimination Commissioner canvassed reform to provide a civil framework for a 'bullying intervention order' or 'stop bullying order', through amendment to the current restraint order scheme. Both suggested that it may be valuable to link applications for a 'bullying intervention order' to a requirement that processes aimed at resolving the dispute be undertaken prior to the application being granted.¹⁷

The Tasmanian Anti-Discrimination Commissioner did not support the threshold behaviour needed to warrant the imposition of a 'bullying intervention order' should be 'repeated unreasonable behaviour' because this may result in too narrow a focus. A magistrate hearing an application should be able to form a judgment about whether, in all the circumstances, the behaviour warrants the imposition of an order to prevent future occurrence.¹⁸

Response – preventative measures

We support the Institute's Recommendation 6 which contends:

It is desirable to grant jurisdiction to the Tasmanian Industrial Commission to deal with bullying complaints from workers who are not able to use the Fair Work jurisdiction, and it is desirable that this jurisdiction mirrors the anti-bullying provisions contained in Pt 6-4B of the Fair Work Act 2009 (Cth). It is also desirable that measures for dealing with bullying in state legislation address the limitations identified in the Fair Work Act 2009 (Cth), specifically the fact that the Act precludes the making of orders requiring the payment of a financial remedy, and the fact that resolution is not available if a worker has left the workplace. Consideration should be given to allowing workplace bystanders as well as the bullied victim to initiate an application for an order to stop the bullying.¹⁹

Hand in hand with Recommendation 6 is Recommendation 7 which we fully support as it will impose upon legal duties upon senior management of *CET* and in particular our Archbishop. The Archbishop should be far more vigilant about stamping out bullying. Recommendation 7 reads:

¹⁵ Ibid page 25

¹⁶ Ibid page 32

¹⁷ Ibid page 35

¹⁸ Ibid

¹⁹ Ibid page 50

It is desirable that a duty to prevent bullying, so far as is reasonably practicable, be imposed on employers to encourage them to implement effective anti-bullying policies and procedures. This duty could be included within Division 2 or Division 3 of Part 2 of the Work Health and Safety Act 2012 (Tas), or it could be enacted in separate legislation.²⁰

The Institute elaborated the reasons for its conclusions saying:

3.5.17 Nevertheless, it is the view of the Institute that the weight of responses to the Issues Paper regarding workplace bullying suggests that further workplace specific measures are necessary.

3.5.18 With respect to facilitating cultural change within workplaces, consideration should be given to funding workplace bullying specialists to deliver education and training to employers and within workplaces, and to devising templates for effective workplace bullying policies and procedures that workplaces can implement. Anti-bullying training should include educating employees and management personnel about their role as bystanders and the effect of their response or non-response to bullying on the workplace, victim and participant.

*3.5.19 Consideration should also be given to placing an express duty of care on people conducting a business or undertaking to, as far as reasonably practicable, prevent bullying within the workplace. Such a duty could be imposed through an amendment to the Work Health and Safety Act 2012 (Tas) or through other legislation, and the duty could be enforced by WorkSafe Tasmania. This duty would encourage workplaces to implement effective anti-bullying policies and procedures. **An express duty to, as far as reasonably practicable, prevent bullying would avoid the problems encountered when attempting to apply traditional workplace health and safety laws to psychosocial hazards.** (our emphasis) This duty would treat workplace bullying as a cultural issue, with the workplace responsible for taking preventative measures and effectively addressing bullying when it does arise.²¹*

CCT is very supportive of recommendation 7. It moves the onus of confronting and preventing bullying to all those within the workplace rather than leaving it to the individual worker to challenge behaviours that endanger the health of workers and the productivity of the enterprise. Any capable employer, facing the risk of loss of productivity and staff and exposure to prosecution, is likely to take steps to prevent employees either acquiescing in bullying or failing to draw it to the employer's attention.

Developing measures necessary to prevent discrimination and bullying require formulating standards, changing culture and safeguarding and shielding citizens from harm. From the reports CCT receives, the problem with CET is not so much the treatment of students but the treatment of staff. We understand that senior management both condone and commit *direct and indirect*

²⁰ Ibid page 51

²¹ Ibid page 49

discrimination, prohibited conduct, unequal and disadvantageous treatment, bullying and harassment.

Without implementing Recommendation 7 or protection for whistleblowers or both, we do not see how the culture of fear and intimidation within *CET* can be cauterized.

We denounce such abhorrent behaviour within *CET* and reject any suggestion that it aligns in any way with the Gospel call to love our God and neighbour.

Conversely, leaving the reduction of bullying behaviour to complainants is not a wholistic approach. That would be appropriate if the task were simply to eliminate unacceptable behaviour. The reality is that bullying injures people and it is not possible to predict who may be impacted or injured.

Consequently, *CCT* reiterates that serious consideration must be given to Recommendation 7. From a financial perspective, the cost of including effective anti-bullying policies and procedures and enhancing existing training programs is minimal. In terms of State budget additional expenditure, we refer the Committee to the concerns expressed below.

Conclusions on current frameworks and resources

CCT accepts that the current legal framework is inadequate to address the prevalence of bullying. Furthermore, the current allocation of public resources is inadequate. The *Institute's* conclusion was:

2.1.32 It can be seen that there is no overarching legal framework covering bullying in Tasmania and not all common bullying behaviours are caught by the current laws. Moreover, the piecemeal assortment of legal avenues which may potentially be pursued in response to claims of bullying means that it can be difficult to recognise and enforce legal rights and difficult to understand and abide by legal responsibilities. The patchwork of laws that are potentially relevant to bullying behaviour raise questions about the accessibility and clarity of the law and consequently about its human rights compliance.²²

Responses to the *Institute's* issues paper included these:

3.4.37 The Anti-Discrimination Commissioner submitted that the procedures for resolving complaints under the Anti-Discrimination Act, which are underpinned by restorative justice principles, are sufficiently flexible to be adapted to a broad range of bullying behaviours. The Commissioner also noted that an expansion of the jurisdiction would involve considerable additional work by her office and additional resources would be required. The Law Society also stated that an extension of the Anti-Discrimination Commissioner's jurisdiction would require additional resourcing.

3.4.38 The Law Society expressed some concern with regard to the time taken to deal with discrimination complaints, noting that, although there is now an

²² Ibid page 16

emphasis on seeking to resolve complaints early, in many instances an early conference between the parties does not occur until 10-12 weeks after the complaint has been made, and that the time taken to progress a complaint through an investigation by Equal Opportunity Tasmania is generally between 8-12 months and that delays of a further 12 months for a hearing of the Anti-Discrimination Tribunal to conclude are not uncommon.

3.4.39 The Law Society of Tasmania also noted that a discrimination complaint is currently the only situation where compensation may be awarded for workplace bullying. The Society submitted however, that awards of damages in cases involving 'bullying' in Tasmania are generally very modest. The Society referred to a 2011 'workplace bullying' case before the Anti-Discrimination Tribunal, where the behaviour resulted in the complainant resigning from employment, becoming depressed and contemplating suicide. The Tribunal Member was satisfied that the discriminatory conduct was serious and sustained and had a significant effect both emotionally and financially on the complainant, and assessed compensation at \$3000.²³

CCT reiterates that priority should be given to efforts to eliminate bullying in schools and changing inappropriate and non-compliant behaviour on the part of senior management, behaviour which can adversely affect principals and senior staff.

Discrimination – prevention and remediation

Caring and safeguarding students has been boosted by the adopting of the *National Principles* recommended in the findings of the *Royal Commission*. In Tasmania those principles have cascaded down through the Child and Youth Safe Organisations Act 2023 (*CYSO Act*) and The Tasmanian Education Regulations 2017 (*Regulations*). The national approach has resulted in agreed nationwide principles for all educational institutions regarding the welfare of students.

CCT is concerned that both the reporting mechanism and reportable allegations as defined in the *CYSO Act* both have a narrow ambit. Unlike the Children, Young Persons and Their Families Act 1997 (*CYPTF Act*), there is no obligation for staff working within schools to disclose a reportable allegation either to the head of the relevant entity or the Regulator as defined in the *CYSO Act*. Section 33 of the *CYSO Act* gives staff working within schools the option to disclose a reportable allegation but there is no obligation to do so. On the other hand, section 33 of the *CYSO Act* obliges the head of a relevant entity to report a reportable allegation to the Regulator should such an allegation come to the head's attention. The Regulator can then investigate the allegation pursuant to section 35 of the *CYSO Act*.

²³ Ibid page 39

Importantly, essentially, an allegation is only reportable under the *CYSO Act* if it involves a worker who is working in the entity. The definition of worker does not encompass more than teaching staff, their assistants, volunteers and grounds persons.

The net cast by the *CYPTF Act* has fine mesh. That cast by the *CYSO Act* is not fine and only designed to catch workers. The *CYSO Act* gives the Regulator power to follow up reportable allegations. However, the Regulator is not bound to pursue every reportable allegation and has been given a discretion to act or not to act rather than imposing an obligation to do so.

CCT is deeply concerned aware of unease being expressed that the Regulator is under resourced and unable conduct by way of investigation into allegations referred to it.

Terms of Reference (c)

- (c) *examine the obligations and duties of Tasmanian schools under the Anti-Discrimination Act 1998 and other relevant statutes and policies in regard to students and staff;*

As CCT understands there is no obligation or duty imposed on individuals or school entities under the *A-D Act* to report any suspicion or allegation of discrimination to which a student may have been subjected to.

Section 14 of the *CYPTF Act* provides that if a prescribed person (as defined, which would include a teacher), in carrying out official duties or in the course of his or her work (whether paid or voluntary), believes, or suspects, on reasonable grounds, or knows that a child has been or is being abused or neglected or is an affected the prescribed person must inform the Secretary or a Community-Based Intake Service of that belief, suspicion or knowledge as soon as practicable after he or she forms the belief or suspicion or gains the knowledge.²⁴

It is important to note that there is no general obligation to disclose reportable conduct under the *CYSO Act*.

Section 33 of the *CYSO Act* enables a person to disclose a reportable allegation or reportable conviction (as defined) but only in relation to a worker of a relevant entity to the head of the relevant entity, or, the Regulator.

Section 34 of the *CYSO Act* requires the head of a relevant entity who becomes aware of a reportable allegation or a reportable conviction against a worker of the relevant entity, the head must notify the Regulator, in writing within 3

²⁴ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028#GS14@EN>

business days after becoming aware of the reportable allegation or reportable conviction and provide prescribed information.

Accordingly, CCT takes the view that the *CYSO Act* is confined to addressing allegation levelled against workers within schools and does not provide much assistance in preventing or remedying either bullying or discrimination. Nevertheless, CCT has yet to see any cultural change within *CET* following adoption of the *National Principles*.

As the *Institute* made clear eight years ago in its *Bully Report* and CCT maintains, the *CYSO Act* has made little difference for complainants,

*The patchwork of laws that are potentially relevant to bullying behaviour raise questions about the accessibility and clarity of the law and consequently about its human rights compliance.*²⁵

Terms of Reference (d)

- (d) *examine and recommend what efforts are being made and should be made towards meeting those obligations by Tasmanian schools in regard to students and staff;*

CCT has little to add to our previous remarks about what current efforts are being made towards meeting obligations to Tasmanian school students and staff other than to point out the Non-government Schools Registration Board has an obligation to oversee non-government schools and would have some insights into how well the *National Principles* are being implemented. In addition, the Regulator appointed under the *CYSO Act* should be well aware of current efforts to implement the *National Principles*.

Further, CCT has little to add to our previous remarks about what efforts should be made towards meeting obligations to Tasmanian school students and staff.

Terms of Reference (e)

- (e) *examine what other legislative or policy reforms may be required to address discrimination and bullying in regard to students and staff;*

CCT refers to our previous remarks and have nothing to add.

²⁵ Ibid page 16

Terms of Reference (f)

- (f) *determine the impact of discrimination and bullying on student participation, retention and educational outcomes, and on staff recruitment, retention, workplace safety and career development;*

CCT has nothing to contribute on this aspect.

Conclusions

In conclusion *CCT* reiterates:

- A Bullying remains a concern and the means whereby the Government is able to address that concern the *Institute* proposed eight years ago;
- B Within *CET*, there is a need for urgent attention as senior management are perpetrators;
- C Both remedial and preventative approaches by Government need to be adopted and the three tiered approach highlighted in the *Institute's Bullying Report* contains inexpensive elements;
- D Preventative measures by the Government can include conferring power and jurisdiction on the Industrial Commission to deal with bullying complaints and creating obligations on employers to take reasonable steps to eliminate bullying are ways of both addressing bullying and enhancing productivity;
- E Resources need to be provided to adequately resource the Equal Opportunity Commissioner and the Regulator; and
- F The *CYSO Act* is helpful in terms of advancing the *National Principles* as a remedial measure but is light on preventative measures as it lacks the reporting and investigative process in the *CYPTF Act*.

Should the Committee wish an officer of *CCT* to appear before it, then please contact our Chair, Susan Chen.

APPENDIX A

Applicable National and State Legislation and Definitions

Children, Young Persons and Their Families Act 1997 (CYPTF Act)

In subsection 3(1) of the CYPTF Act abuse or neglect are defined in these terms,

abuse or neglect means –

- (a) *sexual abuse; or*
- (b) *physical or emotional injury or other abuse, or neglect, to the extent that –*
 - (i) *the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing; or*
 - (ii) *the injured, abused or neglected person's physical or psychological development is in jeopardy –*

and "abused or neglected" has a corresponding meaning;

It is conceivable *direct and indirect discrimination, prohibited conduct, unequal and disadvantageous treatment, bullying and harassment in Tasmanian schools* may amount to abuse or neglect of a student by reason of that behaviour resulting in emotional injury to the student and physical or psychological harm detrimental to the student's wellbeing. A similar outcome would obtain were such behaviour to put the injured, abused or neglected student's physical or psychological development in jeopardy.

The CYPTF Act does not protect school staff because it protects children and young persons who are less than 18 years of age.

Part 1A of the CYPTF Act details the principles to be observed in dealing with children in sections 10A to 10G inclusive. It seems that the objects of the CYPTF Act are to cast the primary responsibility for the welfare of children on children's parents and family – see paragraph 7(1)(c).

It would be of interest to know how many prosecutions the Secretary of the Department has authorised under section 91 of the CYPTF Act which provides,

91. Offence to fail to protect child from harm

- (1) *A person who has a duty of care in respect of a child must not intentionally take, or fail to take, action that could reasonably be expected to result in –*
 - (a) *the child suffering significant harm as a result of physical injury or sexual abuse; or*

- (b) *the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or*
- (c) *the child's physical development or health being significantly harmed.*

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

Anti-Discrimination Act 1998

Direct discrimination and indirect discrimination are defined and addressed in sections 14 and 15 respectively of the Anti-Discrimination Act 1998 (A-D Act). *Prohibited conduct* is defined and addressed in Part 4 Division 2 of the A-D Act. The phrase *unequal and disadvantageous treatment* is not defined or mentioned in the A-D Act. This phrase presents some difficulties because the A-D Act permits one person to gain an advantage over another to the second person's disadvantage and provisions in the A-D Act facilitate that.

It is no longer unusual for preference to be given to particular groups such as indigenous Australians, females and those with a disability and such preferences are regarded by many as good public policy. Part 5 of the A-D Act has ten divisions creating exceptions and exemptions running from section 23 to section 55 inclusive.

Neither *bullying* nor *harassment* as such are defined in the A-D Act. However, as is apparent from the Equal Opportunity Tasmania website²⁶, the Anti-Discrimination Commissioner maintains that *bullying usually involves the persistent bad treatment of a person by one or more other people.*

Nowadays, the Commissioner points out, *bullying is sometimes done through electronic communication systems such as e-mail, texting, social media, online forums, etc.* However, the Commissioner acknowledges that some *bullying is covered by discrimination laws. Bullying may be a form of less favourable treatment under subsection 17(1) of the A-D Act which stipulates that a person must not offend, humiliate, intimidate, insult or ridicule another person on the bases set forth in that subsection "where a reasonable person, having regard to all the circumstances, would anticipate the other person would be offended, humiliated, intimidated, insulted or ridiculed."*

As previously mentioned, *harassment*, as such, is not defined in the A-D Act. *Sexual harassment* is defined in subsection 17(3) of that Act. It reads,

- (3) *Sexual harassment takes place if a person –*
 - (a) *subjects another person to an unsolicited act of physical contact of a sexual nature; or*

²⁶ XXXX

- (b) *makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person; or*
- (c) *makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence; or*
- (d) *makes any unwelcome gesture, action or comment of a sexual nature; or*
- (e) *engages in conduct of a sexual nature in relation to another person that is offensive to that person –*

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

As this is a criminal offence, any allegation needs to be proved beyond a reasonable doubt and investigated by police. History suggests that complainants are generally female and are reluctant to be subjected to rigours of investigation and trial.

Fair Work Act 2009

Bullying in the workplace is addressed by the Fair Work Act 2009, Federal legislation, and in section 789FD of that Act which provides:

“When is a worker bullied at work?”

- (1) *A worker is bullied at work if:*
 - (a) *while the worker is at work in a constitutionally - covered business:*
 - (i) *an individual; or*
 - (ii) *a group of individuals;**repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and*
 - (b) *that behaviour creates a risk to health and safety.*
- (2) *To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.*
- (3) *If a person conducts a business or undertaking (within the meaning of the Work Health and Safety Act 2011) and either:*
 - (a) *the person is:*
 - (i) *a constitutional corporation; or*
 - (ii) *the Commonwealth; or*
 - (iii) *a Commonwealth authority; or*
 - (iv) *a body corporate incorporated in a Territory; or*
 - (b) *the business or undertaking is conducted principally in a Territory or Commonwealth place;**then the business or undertaking is a **constitutionally - covered business.**”*

The Fair Work Act 2009 applies to staff working in schools and is compatible with and compliments the A-D Act but has no application to students.

Accordingly, there is no legislation expressly outlawing forms of bullying and we can find no all-encompassing general prohibition of bullying.

Commissioner for Children and Young People Act 2016 (CCYP Act)

This legislation created the office of Commissioner for Children and Young People. The functions of the Commissioner are set down in section 8 of the *CCYP Act* are as follows:

8. General functions of Commissioner

- (1) The Commissioner has the following functions:
 - (a) advocating for all children and young people in the State generally;
 - (b) acting as advocate for a detainee under the Youth Justice Act 1997;
 - (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
 - (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
 - (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
 - (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally;
 - (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them;
 - (h) such other functions as are prescribed.

The powers of the Commissioner set down in section 11 the *CCYP Act* are as follows:

11 General powers of Commissioner

- (1) The Commissioner has the power to do all things necessary, or convenient, to be done in connection with the performance of his or her functions, and the exercise of his or her powers, under this or any other Act.
- (2) Without limiting subsection (1) , the Commissioner may –
 - (a) require any person to provide information, answer questions, or produce documents, so far as may be relevant to the performance of the functions, or the exercise of the powers, of the Commissioner or the administration of this Act; and
 - (b) require information and data for the purposes of –
 - (i) collating, studying, interpreting and maintaining information in relation to the wellbeing of children and young people in the State; and
 - (ii) identifying and monitoring trends in respect of the wellbeing of children and young people in the State; and

- (c) investigate, and make recommendations in respect of, the systems, policies and practices of organisations, government or non-government, that provide services that affect children and young people; and
- (d) investigate, and make recommendations in respect of, the effects of any legislation, proposed legislation, documents, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people; and
- (e) advise and make recommendations, in relation to the rights and wellbeing of children and young people, to Ministers, State authorities and other organisations; and
- (f) provide information to other organisations in accordance with this Act or any other Act; and
- (g) report publicly on the wellbeing of children and young people in the State; and
- (h) exercise such other powers as are prescribed.

Section 3 of the *CCYP Act* sets down the principles to be observed by the Commissioner or any other person performing a function, or exercising a power, under the *CCYP Act*, namely, to:

- (a) do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- (b) observe any relevant provisions of the United Nations Convention on the Rights of the Child.

This highlights that the *CCYP Act* predates the *Royal Commission* the Commonwealth Child Safe Framework (*Framework*) and Child and Youth Safe Organisations Act 2023.

The Criminal Code

Section 192 of the Criminal Code criminalises *stalking and bullying* but requires one of types of conduct particularised in that section and would seem to have has no general application within a school or education setting. Bullying behaviour was included the section in 2019.

The Commonwealth Child Safe Framework

The *Framework*²⁷ aims to protect children and young people from the risk of harm or abuse.

As part of its response to the *Royal Commission* which was established in 2013, the Australian Government, in August 2017, committed to the development and implementation of a new Commonwealth-wide framework to protect children and young people who may have contact with Commonwealth entities: the *Framework*.

²⁷ <https://www.homeaffairs.gov.au/commitments/files/commonwealth-child-safe-framework-2nd-edition.pdf>

In its considerations, the *Royal Commission* examined what makes an organisation child safe, and how to embed child safety in an organisation's culture. This includes adequate recruitment and screening practices to assist in the selection of appropriate people to work with children, establishing and implementing child safe policies, and developing complaint handling procedures that are child safe.

A recommendation of the Final Report of the *Royal Commission* was that all institutions should act with the best interests of the child as their primary consideration and should implement a number of principles identified by the *Royal Commission* to achieve this. The *Framework* sets minimum standards for Commonwealth entities to create and maintain behaviours and practices that are safe for children. The Framework includes four key requirements and guidance for implementation.

Child safe cultures

Child safety is more than a framework. The *Framework* provides minimum standards for Commonwealth entities to protect children.

However, the Australian Government has emphasised that,

child safety goes beyond policies and compliance activities. While compliance with this Framework helps keep entities accountable for their child safe practices, creating a culture that prioritises the safety and wellbeing of children requires genuine commitment at all levels of an organisation. Child safe cultures are a protective factor—without a child safe culture, organisations are at a greater risk of child safety incidents occurring and being underreported, as children and adults may not feel confident identifying or raising child safety concerns.

Creating policies and procedures to protect children is the first step in the journey to being a child safe organisation. Leaders should demonstrate and champion child safe approaches, all staff must be made aware of the policies and procedures, and abide by them, and child

safety incidents must be acknowledged and managed appropriately by staff and the broader organisation. Maintaining a child safe culture requires ongoing effort and continuous improvement.

Protecting children is everybody's business. Regardless of the size of an organisation or how often they interact with children, every member of every organisation has a role to play in keeping children safe.

Child and Youth Safe Organisations Act 2023 (CYSO Act)

This legislation, which was enacted on 13 June 2023, commenced on 1 July 2023 and, by virtue of section 32 and paragraphs 2 (f)(iii) and (iv) of Schedule 3 of the *CYSO Act*, requires

government and non-government schools to comply with the *reportable conduct scheme* established by that act and the standards set forth in schedule 1 of the *CYSO Act*.

That scheme is defined in section 4 of the *CYSO Act* as meaning “*the obligations and requirements in relation to reportable conduct set out in Part 4*”. For the purposes of this submission the material reportable conduct is set out in subsection 7(2) and is underlined in this excerpt:

- (2) For the purposes of this Act, reportable conduct is –
 - (a) a relevant offence committed against, with or in the presence of a child, whether or not criminal proceedings in relation to the offence have been commenced or concluded; or
 - (b) sexual misconduct, that does not form part of a sexual offence, against, with or in the presence of a child; or
 - (c) physical violence against a child; or
 - (d) grooming of a child; or
 - (e) conduct that causes, or is likely to cause, significant emotional or psychological harm to a child; or
 - (f) significant neglect of a child; or
 - (g) conduct prescribed for the purposes of this section –
regardless of whether or not the alleged conduct occurred within the course of a worker's duties in respect of an entity.

In both paragraphs 7(2)(e) and (f) of the *CYSO Act* the word “significant” is utilized. “significant” is defined in subsection 7(1) of the *CYSO Act* thus:

significant, in relation to emotional or psychological harm or neglect, means that the harm or neglect is more than trivial or insignificant, but is not required to be deemed serious or deemed to have a lasting permanent effect

Accordingly, behaviour that is “*direct and indirect discrimination, prohibited conduct, unequal and disadvantageous treatment, bullying and harassment in Tasmanian schools in regard to students*” may also be “reportable conduct” and fall within the jurisdiction and function of the Regulator pursuant to paragraph 16 (c) of the *CYSO Act* which is underlined in the excerpt below:

The Regulator has the following functions in relation to the standards and the universal principle:

- (a) *educating, and providing advice to, entities to promote compliance by entities with the standards and the universal principle;*
- (b) *educating, and providing advice to, entities to ensure that, in the operation of the entity –*
 - (i) *the safety of children is promoted; and*
 - (ii) *child abuse is prevented; and*
 - (iii) *allegations of child abuse are responded to properly;*

- (c) oversight and enforcement of compliance by entities with the standards and the universal principle; et seq.

The Tasmanian Education Regulations 2017 (*Regulations*) and their application to Catholic Schools

Regulation 11 of the *Regulations* provides “*The standards for the registration of a system of non-government schools are set out in Schedule 2*”.

Schedule 2 paragraph 1 in the *Regulations* provides, “**relevant standards** means the standards for registration of non-government schools as referred to in regulation 12”.

Regulation 12 of the *Regulations* provides “*For the purposes of sections 154(1), 161(1) and 162(1) of the Act, the standards for the registration of non-government schools are the standards for the renewal of registration of registered individual schools set out in Schedule 4.*”

Schedule 4 paragraph 14 in the *Regulations* provides, “*A registered individual school must have such policies as are necessary to ensure that it complies with all relevant laws.*”

Accordingly, Catholic schools and the Catholic Education system is obliged to comply with the standards set forth in schedule 1 of the CYSO Act: essentially the *National Principles for Child Safe Organisations*.