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**REPORT**

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**DEPARTMENT FOR EDUCATION AND  
CHILD DEVELOPMENT**

**June 2014**

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## CONTENTS

Jurisdiction	1
Investigation	2
Standard of proof	3
Responses to my provisional report	3
Responses to my revised provisional report	5
Background	7
Whether the department failed to notify the Child Abuse Report Line (CARL) and/or SA Police about the alleged sexual assault of a child in 2010	8
Whether the department responded adequately to the alleged sexual assault to protect the interests of the child and other children at the school	11
Whether the department advised the child's parents about the alleged sexual assault	14
Whether the department responded adequately to the subsequent complaint by the parents in 2013	15
Whether the department had adequate policies in place to deal with the sexual assault of children at the relevant time	16
Whether the department adequately advised the Minister in 2013 about the alleged sexual assault	18
Appendix A	20



OmbudsmanSA

## Report

### Full investigation - *Ombudsman Act 1972*

Complainant	Ombudsman 'own initiative' investigation, section 13(2) <i>Ombudsman Act 1972</i>
Agency	Department for Education and Child Development
Ombudsman reference	2013/09483
Agency reference	CE2013/04208
Date complaint received	2 October 2013
Issues	<ol style="list-style-type: none"><li>1. Whether the department failed to notify the Child Abuse Report Line (CARL) and/or SA Police about the alleged sexual assault of a child in 2010</li><li>2. Whether the department responded adequately to the alleged sexual assault to protect the interests of the child and other children at the school</li><li>3. Whether the department advised the child's parents about the alleged sexual assault</li><li>4. Whether the department responded adequately to the subsequent complaint by the parents in 2013</li><li>5. Whether the department had adequate policies in place to deal with the sexual assault of children at the relevant times</li><li>6. Whether the department adequately advised the Minister in 2013 about the alleged sexual assault.</li></ol>

#### Jurisdiction

Following an approach from the Chief Executive of the department (the CE), I decided to conduct an own initiative investigation into the administrative acts of the department, arising from an alleged sexual assault allegedly committed on a student at a [REDACTED] Adelaide school (the [REDACTED] school) in 2010.

On 16 October 2013 I informed the CE of my decision, under section 18(1a) of the *Ombudsman Act 1972*, to conduct a full investigation.

I note the following preliminary matters.

#### *Title of the department*

At the date of the alleged sexual assault referred to above, the department was titled the Department of Education and Children's Services, but in this report I have referred to the department by its current name of the Department for Education and Child Development (**the department, DECD**).

#### *Identifying information in this report*

In this report I have sought to avoid publishing information that would be prevented from publication by section 58 of the *Children's Protection Act 1993*, or any other legal obligation.

Consequently I have withheld information which may tend to identify certain individuals. This includes information which might identify the suburb, the school or the child connected with the alleged sexual assault, in order to protect the identity of the child and [REDACTED] family, and the alleged perpetrator.

I have therefore not identified by name any persons associated with the school, but I have identified DECD officers whose responsibilities extend across more than one [REDACTED] school in Adelaide.

I have identified the perpetrator of the alleged sexual assault as 'Student X', and the school as 'the [REDACTED] school'.

#### *Ministerial actions*

Actions of the Hon Jennifer Rankine MP, the Minister for Education and Child Development, and her staff are not within my jurisdiction because the offices which they hold are not agencies to which the Ombudsman Act applies. I have referred to these actions only where they are relevant to an understanding of the administrative actions of the department.

#### **Investigation**

My investigation has involved:

- seeking information from the department
- interviewing the student involved (**Student A**) and [REDACTED] parents on oath
- interviewing one of the 2010 Year [REDACTED] Coordinators at the metropolitan school on oath
- interviewing one of the 2010 student counsellors at the [REDACTED] school on oath
- interviewing Ms Anne Kibble, Director, Programs and Regional Management, DECD on oath
- considering:
  - sections 11 and 58 of the Children's Protection Act
  - *Responding to problem sexual behaviour in children and young people: Guidelines for staff in education and care settings*; Department of Education and Children's Services, Catholic Education South Australia, Association of Independent Schools of South Australia, 2010 (**the sexual behaviour policy**)
  - the metropolitan school's Student Behaviour Management Policy, December 2011 (**the SBM policy**)
  - the report of the Independent Education Inquiry (**the IEI report**)<sup>1</sup>
  - the department's *Practice Guide: Extra-Familial Notifications*<sup>2</sup>

<sup>1</sup> South Australia Royal Commission 2012-2013, Edited Report of Independent Education Inquiry, 21 June 2013.

<sup>2</sup> Families SA: *Practice Guide: Extra-Familial Notifications*, endorsed by Executive 30 July 2010.

- preparing a provisional report and sending it to the department; Ms Kibble; the year [REDACTED] coordinator; and the student counsellor for comment
- considering the responses which I received to my provisional report
- collecting further information from the parents of other students involved in the alleged sexual assault
- preparing a revised provisional report and sending it to all parties for comment
- considering the responses which I received to my revised provisional report
- collecting further information from the other student counsellors at the [REDACTED] school
- preparing this final report.

### **Standard of proof**

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>3</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved  
<sup>4</sup>  
... .

### **Responses to my provisional report**

I sought and obtained comments from all parties other than Student A and [REDACTED] family on my provisional report. Whilst I closely considered the comments received and amended my report as I considered appropriate, the responses did not change my provisional views.

By letter dated 30 January 2014, the department provided further information in relation to the policies which it had in place at the time to deal with sexual assault of children. I have included this information in the discussion of this issue below.

By letter dated 22 January 2014, Ms Kibble commented:

- the actions of staff at the [REDACTED] school 'fall within' (sic) the definition of sexual harassment as it appears on the department's website. Given my provisional finding that the incident amounted to more than sexual harassment, she asked that I make a recommendation that DECD provide clearer guidelines for staff who deal with similar matters, and that this should be a key component in the upcoming training for DECD leaders, commencing in February
- new processes were developed in early 2012 to ensure that students and their families are able to access counselling immediately following such incidents
- she considered paragraph 31 of the report to be confusing, and she asked me to consider an alternative statement which she provided. I have substantially adopted that statement
- in relation to paragraph 32 of the report she stated:

If a parent writes to the Minister (which happened in this case on 26 May 2013; the same correspondence was received by PCU) an eCourier is generated from the Minister's office as the normal protocol and a response is prepared for the Minister to consider, hence why a

<sup>3</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* ([1992](#)) 110 ALR 449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>4</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

response from the department would not be expected. The Minister's office informed DECD they would respond as there had been several issues raised by Student A's parents and it was decided that a coordinated response was appropriate.

- in relation to paragraph 33 she commented that:

the email was overlooked by the senior officer due to the pending release of the report of the IEI [i.e. the Independent Education Inquiry]. On the day the email was sent the senior officer was instructed by the then CE to clear all other commitments and to make the release of the report her priority. At the time, there were no resources available to ensure that the senior officer's other responsibilities were attended to and hence, with the increased workload, the email was missed.

- she accepts that Student A's parents deserved a response from the PCU in May 2013 advising them that the matter had been referred to the Minister, and that this did not occur. She asks that I consider including in my final report the actions the department did undertake and the processes that were in place at the time to manage this matter.
- She stated:

I appreciate that this has been a distressing event for the child and [redacted] family, and for my part in adding to that distress, I sincerely apologise.

By letter dated 24 January 2014, lawyers acting for the Year [redacted] Coordinator commented:

- their client is unaware of 'a number of critical matters relating to [my] investigation'. These matters include details of what allegations had been made about what was disclosed to their client; statements from other people I have interviewed; the fact that some other school staff members have not been interviewed; their client's lack of access to departmental records; and the suggestion that 'no attempt has been made to obtain information as to the broader context from which these allegations arise', namely that 'daily interactions between [redacted] students, which ... can result in complaints of sexual harassment'. I consider that my revised provisional report provides sufficient information on the matters which I have investigated to provide natural justice, and to permit the parties to respond
- their client questions the credibility of Student A, and the extent to which statements made to a police investigation by other students support the allegations which Student A has made
- their client questions whether I have obtained information from the police investigation
- their client does not believe that my provisional finding that she should have reported the incident as sexual abuse is fair; that other more senior staff shared her view that the incident should have been characterised as sexual harassment; that she never formed a suspicion that the students had suffered abuse; and that there are other matters which I should have considered in determining how matters of this nature should be considered by teachers or school staff
- their client reiterated her belief that she or other people from the school had contacted parents, but that given the passage of time she was unable to specify exactly which parents she contacted. She sought further investigation of this issue, which I have undertaken
- their client considers that the nature of counselling means that it would be unrealistic to expect any counsellor to recall individual counselling of a student, or a small group of students. She considers that simply because an event cannot be recalled does not mean that it did not occur. Further, I should be cautious in concluding that no counselling occurred based on the statements of the students; and 'one would have expected that if counselling had not occurred, then the [redacted] would have raised that at the time, and it would have been addressed'
- for the above reasons, it is not appropriate to make the three findings foreshadowed in my provisional report. If I make these findings, the record should show that their client does not agree with them.

I received no response to my provisional report from the student counsellor.

### **Responses to my revised provisional report**

After considering the comments which I received in relation to my provisional report, I revised the report and sent it to all parties (including Student A and [REDACTED] family) for comment. I summarise the principal comments made by the parties as follows. Again, whilst I closely considered the comments and amended my report as I considered appropriate, the responses did not change my views on the substantive issues.

By letter dated 3 March 2014, the solicitor for Student A and [REDACTED] family commented as follows:

*Comments made by the lawyers acting for the Year [REDACTED] Coordinator on my provisional report*

- Student A's interaction with the Year [REDACTED] Coordinator was limited to that which immediately followed the incident in question. Student A therefore queries how the Year [REDACTED] Coordinator is in a position to make a comment about Student A's credibility
- the content of the Year [REDACTED] Coordinator's contemporaneous notes of the incident clearly demonstrate notifiable behaviour under section 11 of the Children's Protection Act
- they note the Year [REDACTED] Coordinator's expressed expectation made in response to my provisional report, that if counselling had not occurred, the students would have raised the issue at the time. They consider this comment inappropriate in that it implies that it is the student rather than the teacher responsible, who should be following up in relation to the counselling

*Draft recommendation in my revised provisional report about mandatory reporting*

- guidance provided to DECD staff about mandatory reporting obligations should include 'a clear outline distinguishing between sexual assault and sexual harassment and the reporting obligations attached to each with this forming a key component in the training to be provided for DECD leaders, commencing as soon as practicable'
- 'there must be some means of ensuring that such training is effective, such as being a clear assessable component that must be met in order for teachers to retain their qualifications'

*Notification to parents*

- they consider that I should make a recommendation that the department ensure that the [REDACTED] school address its processes regarding notification of parents and record keeping of such notifications

*The departmental response to their complaint*

- they seek further information on how the department's Incident Management Division will differ from the Parent Complaint Unit and Critical Incident Division that was previously in place. They are concerned about the substantive steps that have been taken to ensure that email correspondence is not overlooked in the future

*Departmental policies*

- they seek reassurance as to the effectiveness of the training foreshadowed by the department in relation to the sexual behaviour policy, and how this will be assessed: for example as a compulsory component for teachers to retain their qualifications
- they seek further information as to the implementation of the recommendations made by the Independent Education Inquiry

*Other matters*

- they note that Student A reported the assault to police on 14 March 2013, accompanied by [REDACTED] mother
- correction of the date in the chronology upon which Student A's mother spoke to Detective Brevet Sergeant Vija Johnston at SAPOL
- a further addition to the chronology indicating that at a meeting with the Premier and Minister and departmental Chief Executive on 27 September 2013, Student A and the parents were advised that school records relating to the incident and what occurred

afterwards would be provided to the parents, but that these records have not been provided.

By email from a departmental officer dated 3 March 2014, the department sought an extension of time to provide its response. I received the response on 11 March 2014. The department commented as follows:

- the breadth of sections 11(1) and 6(1) of the Children's Protection Act make it very difficult to provide mandated notifiers with exact or exhaustive instructions. Since the date of the alleged assault, the education sectors have developed additional instructions and guidance to support staff, in particular through the sexual behaviour policy
- departmental staff each day 'respond to unacceptable behaviours between children and young people that may be described as bullying, sexual harassment, stalking, teasing, violence, assault, sexual assault, sexual abuse, emotional abuse, racial vilification, homophobic abuse, blackmail, an encouragement to commit suicide, and in the relatively new sphere of electronic crimes, the possession, dissemination and production of child pornography, through "sexting". A literal interpretation of the definition of abuse in section 6(1) of the Children's Protection Act could justify a report of all these behaviours
- in these circumstances, the department believes that it is preferable to encourage 'careful consultation between professionals'; and that 'indiscriminate reporting to the CARL is a misuse of a critical component of the child protection system'. It commented:

In the vast majority of cases DECD staff are successful in identifying and intervening in harm and threats of harm to children and young people, in advising parents and in reporting appropriately to CARL, Police, mental health professionals and so on. This occurs because staff are encouraged to use their judgement in consultation with others and to apply contextual understanding to the decisions they make in the best interests of children and young people. However, in such inexact and varying circumstances *some* disagreement about the appropriateness of decisions that fall into 'gray' categories should be expected.

- the department and the non-government sectors are committed to constantly improving the guidance provided to staff, and for this reason the training scheme is re-written every three years
- the department is concerned that an effect of my report's findings 'may be to erode staff confidence in using their own judgement about "suspicion on reasonable grounds" - if, where the grounds are "gray", their decision can later be found to be wrong'. It considers that 'current training schemes rely on staff commitment and confidence to involve themselves in child welfare matters'; and it is hopeful that my final report will formulate recommendations that help limit the risk that this commitment is diminished by the report's findings
- specifically, the department suggests that the use of its existing mandatory reporting training schemes and policies such as the sexual behaviour policy should be continued and promoted; and that the following actions are considered productive ways for DECD to respond to the problems highlighted by this complaint:
  - build into the current training schemes more self-assessment opportunities which deliberately focus on 'suspicion on reasonable grounds'
  - clarify school based record keeping requirements for school counsellors
  - continue to provide leader-specific training in responding to critical incidents
  - continue to improve complaints procedures at school, partnership and corporate levels
  - explore the possibilities of improving the response to allegations of extra familial abuse through a revision of the Interagency Code of Practice.

By letter dated 3 March 2014, Ms Kibble commented:

- she supports my foreshadowed recommendation that the department should provide clear guidance around the distinction between sexual harassment and sexual assault,

but she remains concerned that the mandatory reporting obligation under the Child Protection Act is not sufficiently clear on this point. She comments that 'if schools are to notify CARL and or seek advice from police in all situations of this nature it will place unrealistic demands on the resources of SAPOL and CARL not just the department'

- she notes that the training referred to in my foreshadowed recommendation will be complete by 28 March 2014, and that consequently the recommendation should refer to the 'Responding to Abuse and Neglect' training that is mandated for all staff. She suggests that a circular from the Chief Executive should be forwarded to leaders clarifying the difference as soon as possible following my final report
- she asked that to assist understanding I provide a clear definition of my findings that the department acted contrary to law; in a manner that was unreasonable; and in a manner that was wrong.

The student counsellor contacted my office by telephone on 28 February 2014, and subsequently provided a response by email on 11 March 2014. She commented as follows:

- she confirmed that she does not have 'any specific recollection of these events other than a vague memory of the event taking place'
- she holds Student A in high regard, and had ongoing dealings with [REDACTED]. She would not be surprised at all if Student A's parents recalled her name (either prompted or unprompted) given her dealings with Student A
- over the period of time around the reporting of the alleged assault (29 July 2010), she worked 3 days per week (Monday, Wednesday and Friday). The department's payroll confirms that she was at school at work on Monday 26 and Wednesday 28 July 2010, but she believes she was 'on a panel' on Friday 30 July 2010. She was at work on Monday 2 August 2010 but is unsure of whether she was on school grounds. She was absent on sick leave on Wednesday 4 August 2010
- she suggests therefore that the statement in the file note of 29 July 2010 made by the Year [REDACTED] Coordinator 'referred to counsellors' is either factually incorrect, or the matter was referred to another counsellor at the school as she was not at work on this day. She comments that if the Year [REDACTED] Coordinator had followed the matter up in her absence it should have been referred to one of the other counsellors
- there was another female counsellor working at the school at the time, together with a male counsellor who addressed the matter of the suspension of Student X. These counsellors should be interviewed about the matter
- she cannot verify the assertion that the matter was referred to counsellors, and she is greatly concerned that this statement should be 'taken as true and correct without any corroboration from [her]'
- she sees an inconsistency between the two statements made by the Year [REDACTED] Coordinator and quoted in my revised provisional report. She states that 'these two statements contradict each other as one suggests that the counsellor had spoken with the [REDACTED] late in the week, the other early in the week, which allowed for the parents to be called later in the week afterwards'
- she acknowledges that her alleged involvement in this incident is a small part of the overall issue; and that the primary purpose of this investigation is to improve the processes and refine the policies that govern how issues such as this are dealt with.

I received no further response from the lawyers acting for the Year [REDACTED] Coordinator.

## Background

1. On 29 July 2010, five students at the [REDACTED] school (**Students A, B, C, D and E**) reported to their Year [REDACTED] Coordinator that they had been subjected to unwanted sexualised behaviour (**the alleged assault**) by a year [REDACTED] student (**Student X**).

2. That night at home, the Year █ Coordinator prepared an electronic note about the alleged assault (**the file note**) drawing from her hand written notes, and emailed the file note to the metropolitan school's Year █ Coordinator, and to the Assistant Principal who had responsibility for year █. The email was copied to the other Year █ Coordinator, who is now a █. The concluding words in the note read:

Referred to senior school staff and counsellors - Need to phone parents.

3. The events which occurred before and after the five students reported the alleged assault to the Year █ Coordinator are set out in Appendix A to this report.

**Whether the department failed to notify the Child Abuse Report Line (CARL) and/or SA Police about the alleged sexual assault of a child in 2010**

4. Section 11 of the Children's Protection Act deals with notification of abuse or neglect of children. Reference to 'the department' in this Act is to the Department for Families and Communities.<sup>5</sup> Section 11(1) provides:

(1) If—

- (a) a person to whom this section applies suspects on reasonable grounds that a child has been or is being abused or neglected; and
- (b) the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties,

the person must notify the Department of that suspicion as soon as practicable after he or she forms the suspicion.

Maximum penalty: \$10 000.

- (2) This section applies to the following persons:

...

(e) a police officer;

...

(h) a teacher in an educational institution (including a kindergarten);

...

(j) any other person who is an employee of, or volunteer in, a government or non-government organisation that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, being a person who –

- (i) is engaged in the actual delivery of those services to children; or
- (ii) holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.

5. Sections 10 and 6(1) of the Children's Protection Act define what constitutes 'abused or neglected' for the purposes of section 11(1). They provide:

#### **10—Interpretation**

In this Division—

<sup>5</sup> Regulation 5 of the *Children's Protection Regulations 2010* prescribes the Department for Families and Communities as 'the Department' for the purposes of section 6 of the Childrens Protection Act. However, I note that the department now administers the Childrens Protection Act.

*abuse or neglect*, in relation to a child, has the same meaning as in [section 6\(1\)](#), but includes a reasonable likelihood, in terms of [section 6\(2\)\(b\)](#), of the child being killed, injured, abused or neglected by a person with whom the child resides.

...

## 6—Interpretation

- (1) In this Act, unless the contrary intention appears—

... ...

*abuse or neglect*, in relation to a child, means—

- (a) sexual abuse of the child; or
- (b) physical or emotional abuse of the child, or neglect of the child, to the extent that—
  - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
  - (ii) the child's physical or psychological development is in jeopardy,

and *abused* or *neglected* has a corresponding meaning;

6. It is my understanding that the purpose of notification to CARL is to ensure that the relevant department<sup>6</sup> is advised that a child is or may be being abused or neglected, so that appropriate action may be taken to protect the child. Where it appears that the abuse is or was being perpetrated by a person who is not a member of the child's family (as in this case), notification to police can occur. The following extract from the department's Practice Guide: Extra-Familial Notifications outlines its policy at the time in such situations:

### 5.5 Referral to SAPOL

Referral to police alone can, in certain circumstances, constitute an appropriate response to an *extra familial notification* as an alternative to a child protection investigation. Such circumstances include that it is assessed that there are **NO** concerns regarding willingness or ability of parents to protect and provide appropriate support; **AND** the notification includes allegations of offending that is likely to impact significantly on the health or welfare of the child or young person concerned.

If there is any doubt about whether a matter should be referred to police, consult with police, as it is their role to interpret and apply the *Criminal Law Consolidation Act 1935*. Such matters should only be referred to police following consultation to determine whether this is appropriate. This approach is a foundation for collaborative practice and interagency partnership. In the metropolitan area, contact the Family Violence Unit in your SAPOL Local Service Area, and in the country contact your local police station or the officer with designated responsibility for child protection matters.

7. In this case, the school staff who dealt with the alleged sexual assault plainly considered that it involved sexual harassment, rather than a sexual assault. For example, the file note describes it as a 'complaint of sexual harassment'. However, whether an incident falls within a definition of sexual harassment is irrelevant for the purposes of the notification obligations under section 11(1). What is important is whether a person suspects on reasonable grounds that a child has been or is being abused or neglected.

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<sup>6</sup> As noted above, Regulation 5 of the *Children's Protection Regulations 2010* prescribes the Department for Families and Communities as 'the Department' for the purposes of section 6 of the Children's Protection Act. However, I note that DECD now administers the Children's Protection Act.

8. In any event, no such notification was made. It appears to me that none of the staff members who had knowledge of the alleged assault considered that it warranted notification, presumably because they did not form a suspicion that a child had been abused.
9. Whilst I understand the reasons for the position which the staff took, I disagree with their assessment. It is my view that the alleged sexual assault went beyond what is understood by the term sexual harassment, and constituted sexual abuse within the meaning of sections 10 and 6(1) of the Children's Protection Act. The file note describes the incidents which occurred in the following terms:

**[A]**

Last week the [ ] were playing footy on the oval. [X] came up to [A] and picked [ ] up. [ ] started to feel [ ] up. Yesterday [ ] did it again.

...

**[C]**

[X] put [ ] hands below her [ ] and kept pushing into [ ] and hugging [ ] from behind.

...

**[D]**

Yesterday at Tech, [X] was there. When [ ] saw [ ] came up to [ ] and started hugging [ ] but in more than friendly way. [ ] started feeling [ ] and placed [ ] hands on [ ] buttocks ... [ ] felt uncomfortable and asked [ ] to stop. [ ] denied acting inappropriately, and kissed [ ] on the cheek.

10. I note also that there was a significant age difference between the students involved. I was advised that at the time the alleged perpetrator was [ ] years old, and Student A was [ ] years old.
11. I appreciate that school staff need to deal with a wide range and large number of inappropriate behaviours in the context of all the student interactions which take place in a school, and that perceptions about the seriousness of those behaviours may vary. This point was reinforced in the department's response to my revised provisional report, which stated:

Every day school and pre-school personnel respond to unacceptable behaviours between children and young people that may be described as bullying, sexual harassment, stalking, teasing, violence, assault, sexual assault, sexual abuse, emotional abuse, racial vilification, homophobic abuse, blackmail, an encouragement to commit suicide, and in the relatively new sphere of electronic crimes, the possession, dissemination and production of child pornography, through "sexting". Staff must judge which of these behaviours fall within the definitions of section 6(1) of the Act. A literal interpretation of this section could justify a report of all of the above behaviours to the Child abuse (sic) Report Line (CARL) because all have the potential to mean [here the department quotes the definition in section 6(1)].

12. I am conscious also that the Year [ ] Coordinator had the benefit of hearing about the alleged assault first hand from the five students, a very short time after the incidents. I note also that her assessment was apparently endorsed by the Assistant Principal, the Year [ ] Coordinator and the other Year [ ] Coordinator.
13. Nonetheless, in my view the behaviours outlined in the file note quoted above constitute sexual abuse for the purposes of section 11(1) of the Children's Protection Act. The school staff should have arranged for a notification to be made under that section. In not doing so they breached their legal responsibility.

## Opinion

In light of the above, my final view is that in failing to notify CARL of the alleged sexual assault under section 11(1) of the Children's Protection Act, the department acted in a manner that was contrary to law, within the meaning of section 25(1)(a) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that:

- (a) the department provide clear guidelines for its staff on their mandatory reporting obligations under section 11 of the Children's Protection Act
- (b) this guidance should include a clear outline distinguishing between sexual assault and sexual harassment, and the reporting obligations attaching to each
- (c) in providing this guidance, the department should:
  - build into the current training schemes more self-assessment opportunities which deliberately focus on 'suspicion on reasonable grounds'
  - clarify school based record keeping requirements for school counsellors
  - continue to provide leader-specific training in responding to critical incidents
  - continue to improve complaints procedures at school, partnership and corporate levels
  - explore the possibilities of improving the response to allegations of extra familial abuse through a revision of the Interagency Code of Practice.
- (d) this guidance should be a key component in the 'Responding to Abuse and Neglect' training that is mandated for all staff
- (e) the department should advise my office by **31 October 2014** how it intends to measure the effectiveness of this training.

### **Whether the department responded adequately to the alleged sexual assault to protect the interests of the child and other children at the school**

14. The file note identified - in my view, correctly - that the matter warranted the attention of senior school staff, and the school counsellors. It also correctly identified the fact that the parents of the five students should be notified about the alleged assault. However, based on the documentary and oral evidence I have received, I have concluded that these good intentions were not fully translated into action by the department.
15. In assessing what occurred, I have been limited by the length of time which has passed since the alleged assault arose, and the lack of detailed contemporaneous documentary evidence after the file note was prepared. Unsurprisingly, the witnesses who provided information to my investigation had difficulty in recalling detail, and in some respects their recall of events was conflicting. I have reached the following conclusions based on my assessment of all the information which I obtained.
16. In my view it is clear that having been made aware of the nature of the alleged assault, the school had a duty to take whatever action was necessary to protect the five students, and other children and young people at the school, from further harm. This should have included ensuring that the five students received appropriate support and counselling; that action was taken to limit the possibility that X may cause further assaults or harassment, particularly having regard to [REDACTED] previous history in the school; and that the parents of the five students were advised of what had allegedly occurred so that they could ensure the needs of their children were met. I deal separately with the issue of notification to parents below.
17. Student A and [REDACTED] parents advised my investigation that [REDACTED] had received no counselling from the school counsellors. I was also advised by the parents of the other four students involved that their [REDACTED] had not received counselling support after

the incident. In two cases, the relevant parent stated that they did not consider this to be a problem, as their [REDACTED] did not require any further support.

18. The school staff advised me that counsellors had been involved, and the file note indicates that this was clearly intended. I sought any relevant counselling records from the school. However, I was advised that there were none.<sup>7</sup>
19. In her oral evidence to me, the Year [REDACTED] Coordinator identified a school counsellor as the person with whom she had raised the need for counselling. I questioned the Year [REDACTED] Coordinator about what occurred. The exchange was as follows:

Q. Okay, thank you for that. In relation to the counselling then, what was your understanding about what was organised?

A. I remember talking to [the counsellor] and the [REDACTED] after she met them, and that's probably towards the latter part of the week of the first week in August, and clearly she said no the [REDACTED] were feeling, they felt they were to blame and she advised them that they're okay; and by that time they were okay and what they said to her was what was in my document. So yeah, so there was no alarm bells in any way that she felt was ringing at that time, okay?

Q. Okay, do you know whether she actually contacted the [REDACTED]?

A. I don't know.

Q. What she did in relation to each of them?

A. No. I think when we hand over for counselling, it does become privacy again, they just haven't give (sic) us the notion whether we need to do anything more, or whether it's fine as they saw it. If there's like cause for concern, like "Oh, we need to be seeing the parents to see a psychologist with this child" or something, then they go ahead and do it and they would probably just tell it to me in a confidential way. But there was nothing of that sort that came from her at all.

Q. Okay.

A. And I did contact the [REDACTED] during the week just to check if they're okay. And then I think when [Student X] got suspended and then when [REDACTED] returned to school, I caught up again with the [REDACTED] just to check if they were fine, and no, none of them indicated - well, I can't remember if I spoke to [Student A] in particular or whether it was [Student B], [Student C], and one of the other [REDACTED] or whether [REDACTED] was part of that, that came in. But they didn't mention any, any idea that they were feeling threatened or they were in fear.<sup>8</sup>

20. I also questioned the school counsellor identified by the Year [REDACTED] Coordinator concerning the counselling provided to Student A in particular. The questioning and responses were as follows:

Q. One of the things that has been put to me in the course of this is that the school failed to ensure that there was any counselling support given to [Student A] after this assault. What's your response to that?

A. I mean, again, I cannot remember this incident but I can say without a shadow of a doubt that [the [REDACTED] school] is one that really does support their students and I've done a lot of work with [Student A] around personal development, those types of things. And, yeah, there's been a lot of support put forward for [Student A], just around [REDACTED] general high school development, I guess. Yeah.

Q. But from your point of view that was support which was provided in the absence of knowledge about these alleged sexual assaults; is that fair comment?

A. Mmm-hm.

<sup>7</sup> Telephone conversation between the principal of the [REDACTED] school and the Deputy Ombudsman Ms Megan Philpot on 28 November 2013; and consequent email dated 5.48pm, 29 November 2013.

<sup>8</sup> Transcript of interview, p19, lines 7-44.

Q. So [REDACTED] might be interpreting what you describe as counselling to assist [REDACTED] as (sic) self-esteem and those sorts of things as being in a slightly different category to counselling to enable [REDACTED] to deal with the consequences of a sexual assault?

A. Mmm-hm.

Q. Is that a fair comment, do you think?

A. That again is a hard one to - it is, it's all on speculation, I guess and, yeah, so.<sup>9</sup>

21. In her response to my revised provisional report, the school counsellor noted that she was working on Mondays, Wednesdays and Fridays at the time of the alleged sexual assault. She commented that after the reporting of the alleged assault on 29 July 2010, she was at school at work on Friday 30 July 2010, but she believes she was 'on a panel'. She states that she was at work on Monday 2 August 2010 but is unsure of whether she was on school grounds. She was absent on sick leave on Wednesday 4 August 2010. She suggested therefore that the statement in the file note of 29 July 2010 made by the Year [REDACTED] Coordinator 'referred to counsellors' is either factually incorrect, or the matter was referred to another counsellor. She commented also that if the Year [REDACTED] Coordinator had followed the matter up in her absence it should have been referred to one of the other counsellors.
22. There were two other counsellors working at the school at the time, [REDACTED] [REDACTED] The other [REDACTED] counsellor advised me that [REDACTED] was on leave for the first three weeks of term three, which includes the period when the alleged assault was reported; and that [REDACTED] had no recollection of any involvement in the matter. [REDACTED] subsequently checked her records and confirmed that this was the case. The [REDACTED] counsellor advised me that [REDACTED] had dealt with Student X on previous occasions; that [REDACTED] had no recollection of the alleged sexual assault; and that as a matter of practice if [REDACTED] had been approached about the counselling needs of five [REDACTED] students [REDACTED] would have referred the matter to a [REDACTED] [REDACTED].
23. In these circumstances I am unable to make a finding with certainty as to the precise arrangements the Year [REDACTED] Coordinator made, and with whom, about the provision of counselling for the five students.
24. Further, in my view, it is possible that the apparent difference in opinion as to whether counselling was provided reflects differences in perception as to what constitutes counselling - whether, for example, an informal conversation in a schoolyard setting amounts to counselling is a moot point.
25. In any event, in light of the evidence outlined above, I have concluded that the school did not provide adequate counselling support to Student A in the aftermath of the alleged assault. In my view this conclusion is consistent with the fact that the school determined that the matter should be treated as one involving sexual harassment; rather than a more serious sexual assault.
26. It is unsatisfactory that a student who considers they have been subjected to unwanted sexual behaviour should feel that they were inadequately supported by the school following the event.
27. In relation to X, the chronology set out in Appendix 1 reveals that [REDACTED] was suspended from school as a result of the alleged assault. I have no information as to any other action which the school may have taken to address X's behaviour, and this issue is beyond the scope of my investigation.

<sup>9</sup> Transcript of interview, p12, lines 6-32.

28. Student A's parents have also raised with my office various concerns about the steps which the department has taken to notify the parents of other children at the school about the alleged assault.<sup>10</sup> However, having considered the actions which have been taken by the department, I do not consider it necessary to investigate this matter.

### **Opinion**

In light of the above, my final view is that the department failed to provide adequate counselling support after the alleged assault, and in failing to do so it acted in a manner that was unreasonable, within the meaning of section 25(1)(b) of the Ombudsman Act.

### **Whether the department advised the child's parents about the alleged sexual assault**

29. The file note indicates that the Year █ Coordinator at least was well aware of the need to inform the five students' parents about what had occurred. A report about the alleged assault which she prepared in March 2013 at the request of the then principal of the █ school states as follows:

[iii] In my phone call to the parents I told the parents what the █ told me, that they were referred to the counsellors, and that the school would be issuing out the consequence to the student. Parents were pleased that they were contacted. I was unable to get [Student D]'s and [Student E]'s parents, but the counsellors called.<sup>11</sup>

30. In their oral evidence to me under oath, Student A's parents were adamant that they were not contacted by the school, and I accept that this was the case. I spoke also to the parents of the other four students involved, with the following results:
- in one case, the parent stated that the student had advised the parent about the alleged sexual assault later in the day that it occurred; and that a teacher from the school (whom I believe to be the Year █ coordinator) had confirmed the event with the parent, within the next day or so
  - in the second case, the parent had received a call from the school about the incident at the time. The parent believed the call was from the principal, deputy principal or school counsellor
  - in the other two cases, the relevant parent had heard nothing from the school until the matter came to public attention, and the broader school community was advised about it.

31. In her oral evidence to me, the Year █ Coordinator acknowledged that she may not have contacted all the parents. She said:

Q. So after those discussions, as a consequence of those discussions, who was going to do those things? Who was going to contact the parents?

A. The contacting of the parents was mine, my duty, and the contacting - I had already contacted the counsellors and they were going to call the █ in when they could fit them in, or whatever, and talk to the █. And if there was something that arises then, then the counsellors would phone the parents as well. I do remember that I was trying a lot because of phoning parents and you don't always get them and I made many, many calls this way, that way. I am really hazy about exactly which parents I called and when or which - whether I called the mother or the father or what. And I think I remember - and [the counsellor] - and I don't remember clearly talking to [the counsellor] or - I know I've been trying to get her, she was not in school or she was working part-time, I'm not sure, or there were conferences or whatever, but it was not easy to actually get her. So it was only the following week that I could actually - I

<sup>10</sup> I advised Student A's mother in a telephone conversation on 20 November 2013 that I could not see sufficient evidence of an administrative error to warrant my intervention in relation to this issue. I said I could understand the department's responsibility to advise other students' parents in light of the IEI recommendations; and I invited her solicitor to contact me if she wished to make further representations.

<sup>11</sup> Report prepared by the Year █ Coordinator, March 2013.

think the [REDACTED] could actually get to see the counsellor. And I didn't want to contact the parents and let them know about consequences that didn't happen, so I think - I think, I'm not sure - that I only contacted them the following week, which was like the Tuesday, Wednesday the following week.

Q. So can you be specific about which parents you actually contacted?

A. I can't remember honestly. I know that I have to contact everyone and so I mean I assume I contacted everyone. I can't remember exactly which ones I contacted because we make so many phone calls in - as a year level leader to parents. Honestly, I cannot - I cannot put any guarantee who I called, what and when I called them; all that kind of thing. I really am not sure. I remember here -

Q. [Student A's parents] say -

A. I remember here writing that I was unable to get an answer from [Student E]'s parents. When I was thinking about it the other day, I think I have - I did call their parents. I don't think the counsellors did because I know that it was hard to get the counsellors, and I think I called the parents myself and - but honestly I can't remember. And yes, I did read in the media [Student A]'s mum saying that she was not contacted. I cannot guarantee that I contacted. So honestly, it is too far away. I've contacted too many parents. I know though that I always - I'm really meticulous, I am really thorough and I put kids' safety always first. So I don't know. So I don't - I don't want to say I definitely contacted them because it's too hazy, honestly.<sup>12</sup>

32. Based on the evidence which I have outlined above, I have concluded that whilst the parents of two of the other students involved were contacted, the department failed to contact Student A's parents, and the parents of two of the other students involved. This was most unfortunate, and led to serious and difficult consequences for Student A and [REDACTED] family.

### **Opinion**

In light of the above, my final view is that the department failed to notify Student A's parents about the alleged assault; and in failing to do so, it acted in a manner that was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

### **Whether the department responded adequately to the subsequent complaint by the parents in 2013**

33. The sequence of events which occurred in relation to the alleged assault and to the complaints made by Student A's parents, is set out in Appendix A. From this, three issues are worthy of comment.
34. First, no adequate written response was provided to the initial complaint made by Student A's mother to the Minister and to the Parent Complaint Unit (**the PCU**) on 26 May 2013. Whilst the PCU prepared a cursory draft response dated 4 June 2013, I could find no evidence that it was ever sent; and Student A's parents advised me that they never received it.
35. The department became officially aware of the incident on 14 March 2013 when the CARL report was made by SAPOL. The school was notified; and at a senior officers' meeting held on 19 March 2013, it was determined that the school would work with police and deal with any issues arising from the alleged assault in consultation with the Assistant Regional Director. Following Student A's parents' complaint to the PCU on 26 May 2013 the principal was asked to meet with the parents, and this occurred on 28 May 2013. Nonetheless, it was unfortunate that no formal response was provided by

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<sup>12</sup> Transcript of interview, p18, line 3 to p19, line 5.

the PCU to the complaint made to it - even if only to note that the Minister would respond in due course.

36. Second, no adequate written response was provided to the follow-up email complaint made by Student A's mother to the DECD: Customers inbox on 25 June 2013. In the intervening period between the two complaints, the department provided a briefing and a draft response dated 30 May 2013, and a further briefing dated 19 June 2013 to the Minister. It appears to me that it had been decided that the Minister would respond to Student A's mother.
37. The lack of response was compounded by the fact that when the 25 June 2013 email was forwarded from the DECD: Customers inbox to the relevant senior officer, it was overlooked. Ms Kibble has advised me that the senior officer overlooked the email due to the pending release of the IEI report. On the day the email was sent, the officer was instructed to clear all other commitments and make the release the priority. It was not discovered until 25 September 2013, after the alleged assault was drawn to the department's attention by a member of the media on 23 September 2013.
38. I have identified at least two conversations between Student A's mother and a ministerial staff member which occurred between 25 June 2013 and 23 September 2013. Student A's mother advised me that she was told on 23 July 2013 that 'all of the reports had been received from Families SA and the school, it had been to legal and they were putting a conclusion together for legal to check again before it came to [her]'.<sup>13</sup>
39. I note that on 1 July 2013, the department established an Incident Management Division to ensure the proper coordination of responses in situations such as this. Accordingly I do not intend to make any recommendations regarding the department's response to the complaints.

### **Opinion**

In light of the above, my final view is that the department failed to respond adequately to the complaints made by Student A's mother on 26 May 2013 and 25 June 2013. In doing so, it acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

### **Whether the department had adequate policies in place to deal with the sexual assault of children at the relevant time**

40. I have found above that the department failed to meet its reporting responsibilities under section 11(1) of the Children's Protection Act. In my view this is *prima facie* evidence that its policies at the time, and/or the extent of departmental staff knowledge of the policies, were inadequate.
41. In response to my provisional report, the department advised me as follows:

The Department has promoted its child protection policies through the provision of compulsory staff training since 2006. The responsibility of all staff to report suspected child abuse and neglect as per the *Children's Protection Act 1993* has been a central feature of these training programs.

Since 2006, this legislated responsibility has included a deliberate focus on:

- problem sexual behaviour involving children and young people;
- communication and recording responsibilities of staff when responding to welfare concerns and suspected abuse and neglect; and

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<sup>13</sup> Transcript p36, lines 27-32.

- an awareness of adult conduct and the expectations to report inappropriate adult behaviour, as per the Protective Practices Guidelines.

Please find attached extracts from both the 2006 and 2009 workforce training programs which illustrate these areas of emphasis. The 2012 training content is not included as you recently received relevant extracts of that program as part of the Department's response to the complaint (Ombudsman's reference: 2012/04207).

While the finalised guideline, Responding to Problem Sexual Behaviours, was not distributed to schools until 2010, mandatory reporting responsibilities and expectations that appropriate responses are made to young people's sexual behaviours have been included explicitly in workforce training since 2006. In addition, the 2009 workforce training course included the behaviour chart used in the finalised guideline. Please refer to handout two in the 2009 attachments.

The Department recognises the challenge of ensuring that its workforce is consistently and adequately responsive to all threats to children and young people's safety and wellbeing. For this reason, the Department will continue to make meeting this challenge a focus of its workforce training scheme and leaders' professional development programs.

As background information, the workforce training scheme requires that all staff undertake the updated course within 12 months of its release in order to get as many of the 27,000 workforce 'on the same page at the same time.' Now that the Department has established an online mode of delivery, it is expected that the requirement will be met in a much shorter time frame, such as one term, when it is next released in 2015.

42. In light of this advice, I accept on balance that the department's policies at the time in themselves were not inadequate. However, I remain of the view that the simple fact that the notification of the alleged sexual assault did not occur when it should have demonstrates that the policies were not adequately implemented.
43. In 2010 the department, in conjunction with Catholic Education South Australia, and the Association of Independent Schools of South Australia, adopted the sexual behaviour policy. This policy was not in place at the time of the alleged assault, but it now governs the department's response to such matters.
44. In my provisional report I commented that whilst the sexual behaviour policy mentions the notification obligation under section 11(1) of the Childrens Protection Act,<sup>14</sup> this is certainly not prominent. It is simply one of a list of relevant requirements listed, which range from the United Nations Convention on the Rights of the Child, through to the National Safe Schools Framework and the DECS Keeping Safe child protection curriculum. In my view the notification obligation should be more obvious to a reader of the policy.
45. In its response to my provisional report, the department stated:

The Department also takes this opportunity to identify where mandatory notification responsibilities are highlighted in the Responding to Problem Sexual Behaviours guideline and does so in response to your view that this responsibility could be more prominent. Pages 16 and 17 set out the checklist of actions that a site leader must ensure are followed in these circumstances. The mandatory reporting responsibility is included in the list of immediate actions for both the child who engaged in the behaviour and the child affected by the behaviour.

On pages 20 and 21, further advice is provided on the process of contact with the Child Abuse Report Line (CARL), including whether police or the CARL should be contacted first; what to do if the site disagrees with the response made by the CARL; how Families SA will determine if they have a role to play; and on page 23, what actions sites should take if they do not receive advice from Families SA or police by the time children are due to go home.

<sup>14</sup> In the section headed 'Underpinning, convention, law and policy', p9.

46. I note also that the policy describes serious sexual behaviour<sup>15</sup> in a young person aged 13 to 18 years as including ‘forced sexual contact (touch/assault/rape)’; and ‘sexual contact with others of significant age and/or developmental difference’. In my view these characteristics describe what occurred in the alleged sexual assault, and properly ascribes to it the level of seriousness with which it should have been treated.

### Opinion

In light of the above, my final view is that the department failed at the relevant time to properly implement adequate policies to deal with the sexual assault of students, and that in failing to do so it acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I note that the IEI report contains a number of recommendations concerning the sexual behaviour policy and notification obligations;<sup>16</sup> and that in connection with another complaint,<sup>17</sup> the department has an obligation to report to my office on the implementation of these recommendations.

On 30 December 2013, the Acting Chief Executive of the department provided me with a document outlining the action taken in relation to these recommendations. By letter dated 9 January 2014, I accepted the department’s implementation advice.

In these circumstances I do not consider it necessary to foreshadow any further recommendation.

### Whether the department adequately advised the Minister in 2013 about the alleged sexual assault

47. The chronology set out in Appendix A shows that a notification about the alleged assault was made to CARL on 14 March 2013, apparently by an officer of South Australian police after Student A, accompanied by the mother of Student A, reported the alleged assault to police.
48. On the following day the matter was drawn to the attention of relevant senior officers in the department and was discussed at a senior level meeting, the role of which was to advise the Chief Executive of ‘[REDACTED] matters’.<sup>18</sup> The decision made at that meeting was that the principal of the school should deal with the matter. I have no evidence that the Minister was advised about it at that time.
49. I have been provided with a copy of the relevant Extra-Familial Intake Report outlining the nature of the notification. Whilst the copy is undated, I assume that it was prepared at, or shortly after, the notification was received. Based on the information contained within it, I consider that it was reasonable for the matter to be handled by the school principal.
50. I have noted above that the department provided a briefing and a draft response dated 30 May 2013, and a further briefing dated 19 June 2013 to the Minister; and that it appears to me that it had been decided that the Minister would respond to the complaints made by Student A’s mother.

<sup>15</sup> This is the highest category identified in the sexual behaviour guide in the policy, at pp12-13. The lesser categories are ‘age appropriate’ and ‘concerning’.

<sup>16</sup> See IEI report, recommendations 14-17 and 27.

<sup>17</sup> Ombudsman reference 2012/04207. This report is available at <http://www.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Education-and-Childrens-Services-handling-of-a-child-sex-offence.pdf>.

<sup>18</sup> Letter to me from Ms Anne Kibble, Director, Intervention, Improvement and Programs, DECD, 22 January 2014.

51. I note also that the department subsequently prepared a separate briefing dealing with issues raised by Student A's parents about the operation of the Child Abuse Reporting Line. This outlines the details included in the Extra-Familial Intake Report. It appears to me that it was provided to the Minister on 19 June 2013, in conjunction with the briefing referred to above.

### **Opinion**

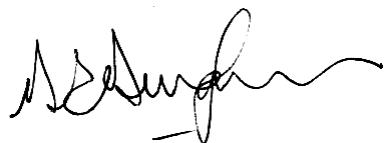
In light of the above, my final view is that in advising the Minister about the alleged assault, the department did not act in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

### **Final comment**

In accordance with section 25(4) of the Ombudsman Act, the department should report to the Ombudsman by 31 October 2014 on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.



Richard Bingham  
**SA OMBUDSMAN**

30 June 2014

## Appendix A

### CHRONOLOGY OF EVENTS

DATE	EVENT
31 May 2007	<p>Student X suspended from school for the period Thursday 31 May 2007 to Tuesday 5 June 2007.</p> <p>Advice to X's parents signed by the school principal states:</p> <p>[X] has been suspended because I have reasonable grounds to believe that [REDACTED] has interfered with the rights of other students to learn or of teachers to teach.</p> <p>A brief reason for the suspension is: [X] has admitted to verbally and sexually harassing another [REDACTED] student. [REDACTED] was persistent in [REDACTED] manner and [REDACTED] also touched [REDACTED] inappropriately.</p>
14 Nov 2007	<p>Incident Report for Positive or Negative Behaviours concerning Student X filed by Year [REDACTED] Coordinator:</p> <p>[Student X] wrote a note about another student during science. There has been constant friction between the students. The harassment has continued despite discussion with [Student X].</p> <p>The note in question reads:</p> <p>[Student Y] had sex with 90 old (sic) man.</p>
14 Nov 2007	<p>Student X suspended from school for the period Wednesday 14 Nov. 2007 to Friday 16 Nov. 2007.</p> <p>Advice to Student X's parents signed by the Year [REDACTED] Coordinator states:</p> <p>[Student X] has been suspended because I have reasonable grounds to believe that [REDACTED] has interfered with the rights of other students to learn or of teachers to teach.</p> <p>A brief reason for the suspension is: Yesterday [Student X] wrote a note that was harassing in nature and passed it around for other students to read. There has been a previous incident of harassment between the two students which has obviously continued.</p>
17 Sept 2008	<p>Student X suspended from school for the period Wednesday 17 Sept. 2008 to Tuesday 23 Sept. 2008.</p> <p>Advice to Student X's parents signed by the Year [REDACTED] Manager states:</p> <p>[Student X] has been suspended because I have reasonable grounds to believe that [REDACTED] has threatened the good order of the school by refusing to follow the school's behaviour code.</p> <p>A brief reason for the suspension is: [Student X] has been sexually harassing a [REDACTED] student at this school. [REDACTED] sat on a [REDACTED] lap in a library and touched [REDACTED] and continually slaps this [REDACTED] bottom on an ongoing basis. It has also been brought to attention that [Student X] touches this [REDACTED] at the bus stop after school.</p>

May - July 2010	Two alleged assaults on Student A occurred.
Unspecified dates	Alleged assaults on Students B, C and E occurred.
28 July 2010	Alleged assault on Student D occurred.
29 July 2010	<p>Students A, B, C, D and E report the matter to Year █ Coordinator. A note apparently prepared by her records that only Student B had told █ parents about the assaults, and continues:</p> <p>I listened to each of them and recorded what their complaint was. In no way did any of them mention that they were raped, despite my asking them several times if there was anymore(sic) that they needed to tell me.</p> <p>I thanked them for having the courage to seek help, and indicated that we would need to contact their parents as they need to know to ensure their safety. I remember [Student A] being upset about contacting █ parents. I reassured █ that █ parents needed to know especially if █ was following them around, and their safety was an issue. I also told the █ that I would refer them for urgent counselling (sic) - which I did.</p> <p>...</p> <p><b>Follow-up</b></p> <ul style="list-style-type: none"> <li>(i) The counselors (sic) met with the █ We verbally compared notes after that, and it was clear that they said the same things to the counsellors, never mentioning rape.</li> <li>(ii) Spoke to [Ass. Principal] - who advised on what to do</li> <li>(iii) In my phone call to the parents I told the parents what the █ told me, that they were referred to the counselors, and that the school would be issuing out the consequence to the student. Parents were pleased that they were contacted. I was unable to get [the parents of Students D and E], but the counselors called</li> <li>(iv) █ School Year Level Leader handled the matter</li> <li>(v) Spoke to [unknown person] about [Student X]</li> <li>(vi) Checked with █ a few times to see how they were going.</li> </ul>
? Aug 2010	Students A, B, C, D and E follow up meeting with Year █ Coordinator.
2 Aug 2010	<p>Student X suspended from school for the period Monday 2 August 2010 to Friday 6 August 2010.</p> <p>Advice to Student X's parents signed by the Principal states:</p> <p>[Student X] has been suspended because I have reasonable grounds to believe that █ has threatened the safety or well being of a student, member of staff or other person.</p> <p>A brief reason for the suspension is: [Student X] has admitted to several incidents of sexually harassing █ students in the recent past at school.</p>
14 March 2013	Child Abuse Report Line (CARL) notification about the assault on Student A made by SA Police. Extra-familial intake report C3MS ID no. 50166832 refers.
15 March 2013	Email from Ms Nicole STASIAK (Director Statewide Services, Families SA, DECD) to Mr David WATERFORD (Executive Director, Families SA, DECD) advising of the notification to CARL.

	WATERFORD forwarded the email to Ms Anne KIBBLE (Director, Programs and Regional Management, DECD) on 15 March 2013.
19 March 2013	<p>The CARL notification is discussed at a 'Gold' meeting.<sup>19</sup> It was decided to seek relevant documents from the school so that they were easily accessible if required in the future.</p> <p>I infer also that at this stage it was determined that the school should deal with the matter.</p>
22 March 2013	<p>The principal of the [REDACTED] school forwards information about the matter by email to KIBBLE. This includes the file note prepared on 29 July 2010 by the Year █ Coordinator.</p> <p>KIBBLE advises Chief Executive and others by email.</p>
26 May 2013	Student A's mother emails Minister RANKINE, the DECD Parents Complaints Unit (PCU); and the 'Police Ombudsman/Commissioner' attaching a letter raising concerns about failure to report the assaults to CARL in 2010. Automatic response received from PCU.
28 May 2013	Student A's parents meet with the school principal, who advised that the Year █ Coordinator did not report either assault as she felt they amounted only to harassment and not sexual assault.
29 May 2013	<p>1.09pm - internal email sent by Ms Leanne WILLIAMS (Manager, School Care, DECD) to KIBBLE forwarding draft minute to Minister 're the 2010 incident at [the [REDACTED] school] - indecent assault/attempted abduction allegations'. The minute was generated as a result of the 26 May 2013 complaint from Student A's parents in consultation with Families SA and the Legislation and Legal Unit of DECD.<sup>20</sup> It includes the following:</p> <ul style="list-style-type: none"> <li>2.4 None of the staff involved in managing the matter at the time can recall any detail about the incident. [The Year █ Coordinator] did however have in her possession a detailed written record of the incident details. The suspension paperwork and associated student behaviour management (SBM) documentation for [Student X] was also located.</li> <li>...</li> <li>2.8 All of the [REDACTED] students were offered school based counselling and their parents were contacted and advised of the incident and that the school would be issuing a consequence (a five day suspension) to [Student X]. The school record reflects that the parents of all of the [REDACTED] students reported to the school that they were pleased that they had been contacted in relation to the matter.</li> </ul> <p>1.10pm - internal email WILLIAMS to Ms Cassie CHAN (Senior Policy Officer, PCU) forwarding the draft minute</p>

<sup>19</sup> This refers to a meeting of a group consisting of the CE (or when his attendance was not possible, the Deputy CE), Head of Schools, Executive Directors and KIBBLE established in November 2012, immediately following the announcement of the Independent Education Inquiry. Its purpose was to provide updates for the CE on what was happening in various cases being managed, as well as advise the CE of any new issues that were emerging. At this time the group met weekly. Email advice from KIBBLE, 10.43am, 19 December 2013.

<sup>20</sup> Advice from KIBBLE by email at 12.26pm on 16 December 2013.

	<p>3.29pm - internal email CHAN to Ms Sophie ROSE (A/Manager, PCU) forwarding the draft minute.</p> <p>It appears that the minute was sent to the Minister's office on 30 May 2013. On 19 June 2013 the Minister's office sought further information about the matter.</p> <p>(time not known, but printed at 1.07pm) - critical incident detail report completed by WILLIAMS, referring to incident on 29 July 2010.</p>
30 May 2013	KIBBLE signs Minute to Minister.
31 May 2013	Police Ombudsman advises Student A's mother that no further action will be taken, because the offender has been arrested.
4 June 2013	<p>3.07pm - internal email from DECD Parent Complaint to ROSE with draft response to Student A's parents</p> <p>3.19pm - internal email from Mr Stephan HUTCHINSON (PCU) to WILLIAMS forwarding proposed PCU response</p> <p>3.27pm - acknowledgement WILLIAMS to HUTCHINSON.</p> <p>There is no evidence this response was ever sent to Student A's parents.</p>
12 June 2013	<p>Further briefing prepared by Ms Kendra CLANCY A/Coordinator, Families SA Briefing Unit, following the 30 May 2013 briefing to the Minister. It attached a draft response to Student A's parents, but it appears this was never sent.</p> <p>The briefing was forwarded to Ms Rosemary WHITTEN, Acting Executive Director, Operations, Families SA, DECD; and dealt with issues raised by Student A's parents about the operation of the Child Abuse Reporting Line.</p> <p>WHITTEN forwarded the briefing to KIBBLE on 13 June 2013 seeking information, and CLANCY followed up this request with KIBBLE on 25 June 2013.</p>
12 June 2013	Student A's mother speaks to Detective Brevet Sergeant Vija JOHNSON at SAPOL asking for charges to be laid against the school and the teacher for failing to report. She is subsequently advised that it's not a police matter, and she needed first to complain to KIBBLE.
14 June 2013	Minister's office seeks further information from the department.
19 June 2013	<p>KIBBLE forwards further briefing to the Minister. This states:</p> <p>As per the request for further information from the Minister's Office date 14 June 2013, the school records (attachment 1 - detailed notes prepared by [the Year █ coordinator]) reflect that all of the parents were contacted in relation to the incident.</p> <p>As requested please find all of the information held by the school in relation to this incident (attachments 1-10).</p>

25 June 2013	<p>12.26pm - Student A's mother writes to KIBBLE by email. The email is sent to the inbox 'DECD: Customers'. Its subject heading is 'for the urgent attention of Anne KIBBLE', and two letters are attached.</p> <p>The first letter is headed:</p> <p>'For the urgent attention of the Complaints &amp; Grievances department regarding: Investigation into Mandatory Reporting of a Sexual Assault. Inadequate (sic) time on hold for the Sexual Abuse Hotline Number'.</p> <p>The second letter is headed:</p> <p>'For the Urgent Attention of the (sic) Anne KIBBLE: Request for investigation regarding neglect of Mandatory reporting by [REDACTED] and [the [REDACTED] school]'.</p> <p>1.15pm - the email is forwarded to KIBBLE from the DECD: Customers inbox by Ian STAMFORD (Online Communication Adviser, DECD).</p>
27 June 2013	<p>Student A's mother emails again to Minister RANKINE, and the PCU. Copies of her letter of 26 May 2013, and her letter of 25 June 2013 to KIBBLE, are attached.</p>
28 June 2013	<p>11.53am - internal email DECD: Parent Complaint (apparently HUTCHINSON) to WILLIAMS:</p> <p>The school involved was [the [REDACTED] school]. I sent the PCU's reply on the 4<sup>th</sup> of this month.</p> <p>11.57am - internal email WILLIAMS to DECD: Parent Complaint (apparently HUTCHINSON) suggesting addition to next response</p> <p>11.58am - email DECD: Parent Complaint to WILLIAMS advising any further email will be sent to her before dispatch</p> <p>12.09pm - acknowledgement WILLIAMS to DECD: Parent Complaint.</p>
1 July 2013	<p>Student A's mother receives phone call from Mr Michael HICKS, Minister RANKINE's office, indicating that complaint had been received and reports had been sought.</p>
4 July 2013	<p>According to a Parliamentary Briefing Note provided to KIBBLE for comment by HICKS at 7.00pm on 24 September 2013, a Families SA brief was provided on 4 July. The Parliamentary Briefing Note states:</p> <p>FSA brief provided. Confirms info provided to family on 4 June re; mandatory notification requirements and FSA complaint manager details.</p>
23 July 2013	<p>Student A's mother discusses matter with HICKS. She states she was advised that 'all reports had been received and a conclusion was being put together by DECD legal before it came to me'.</p>
23 Sept 2013	<p>1.32pm - Mr Michael OWEN (Adelaide Bureau Chief, The Australian) emails Mr Peter ADAMS (Manager DECD Media Unit) advising that he is working on a story 'we intend to publish tomorrow' about the matter, and asking whether the department is aware of it, whether the</p>

	<p>department investigated it, and whether any determination has been made about it.</p> <p>1.48pm - ADAMS seeks advice by email to four senior DECD officers, including KIBBLE.</p> <p>2.11pm - KIBBLE advises ADAMS that the matter was first raised on 15 March 2013 by WATERFORD and 'was discussed at Gold'. She comments:</p> <p style="padding-left: 40px;">Please find attached a copy of the Minister's Minute that was sent up on 30 May and then updated on 19 June. I do not have the signed ones from the Minister but they must have come down as we were asked for an update. Also attached is the original CI.</p> <p>6.02pm - ADAMS provides a statement to OWEN in response to his questions.</p>
24 Sept 2013	<p>1.03pm - Ms Sheradyn HOLDERHEAD (Political Reporter, The Advertiser) emails ADAMS advising she has documents showing that Student A's mother 'has sent two letters to Anne KIBBLE, asking for follow up and investigation on the matter, siting (sic) failure to do a mandatory notification report'.</p> <p>1.43pm - KIBBLE advises ADAMS that she has 'checked her files and has no record of this...'. She comments:</p> <p style="padding-left: 40px;">I may have overlooked something but I cannot recall a request of this nature and I did automatically recall the incident yesterday so would think I would remember if a parent sent me a letter.</p> <p style="padding-left: 40px;">If Sheradyn has the letters can she provide them so we can see.</p> <p>2.10 pm - ADAMS advises four senior officers including KIBBLE of a media statement made by the Minister. It notes:</p> <p style="padding-left: 40px;">The family says that they were not contacted by the school in respect of either incident. Accordingly I have asked that the Chief Executive meet with the family as soon as possible.</p> <p>(time not known) - Student A's mother receives call from Mr Tony HARRISON (CE, DECD) directly after parliamentary question time. Meeting with Premier, Minister and HARRISON arranged.</p> <p>3.47pm - internal email ROSE to KIBBLE, noting that HUTCHINSON recalls speaking to Student A's mother 'who complained of the long waiting time to make a notification to CARL'. HUTCHINSON gave her contact details for the Families SA complaints line. The contact was not recorded in the PCU spreadsheet.</p> <p>3.49pm - KIBBLE forwards email from ROSE to Mr Blair BOYER (Chief of Staff, Minister's office) and HICKS stating:</p> <p style="padding-left: 40px;">Have just received this from the PCU looks like the call was not recorded and they gave her information to contact FSA re the complaint. I have told them this does not help and is not within the procedures of how they should be operating.</p> <p>3.51pm - HICKS emails KIBBLE stating:</p>

	<p>I also triple checked our corre register and found a short email from [Student A's mother] on 27 June following up the original email of 26 May.</p> <p>I spoke to [Student A's mother] at the time to advise we were waiting on info from FSA to go with the info we had already received from Office for Schools.</p> <p>4.11pm - internal email KIBBLE to ROSE acknowledging 3.47pm email.</p> <p>4.45pm - KIBBLE emails BOYER and HICKS forwarding HUTCHINSON's email of 3.19pm on 4 June 2013, which outlines a draft response to Student A's mother's letter of 26 May 2013. It appears KIBBLE believes this email was sent to Student A's mother, although there is no evidence that in fact it was.</p> <p>6.08pm - Student A's parents' contact details provided to HARRISON by Trevor RADLOFF (DECD) after advice from KIBBLE</p> <p>7.00pm - Parliamentary Briefing Note provided by HICKS to KIBBLE for comment. This sets out a timeline of events.</p> <p>7.32pm - Other students' parents' contact details provided to HARRISON by KIBBLE, after advice from [REDACTED]</p> <p>7.47pm - Parliamentary Briefing Note provided to HARRISON by KIBBLE</p>
25 Sept 2013	<p>2.50pm - Email from HICKS to KIBBLE forwarding JPG image of email from Student A's mother at 12.26pm on 25 June 2013</p> <p>6.26pm - KIBBLE emails HARRISON apologising for overlooking 25 June 2013 email from Student A's mother. She states:</p> <p style="padding-left: 40px;">At the time the letter was sent, I had already prepared two briefings for the Minister on this matter; their letter came via customer services and I simply did not open it, overlooking it for some reason. I cannot say why as I simply do not know.</p>
26 Sept 2013	<p>Minute from ROSE to Ms Alana GIRVIN (Co-Director, Incident Management Division, DECD) outlining PCU contact with Student A's mother. It notes that following receipt of her letter of 26 May 2013:</p> <p style="padding-left: 40px;">At a meeting involving Mr Hutchinson, Ms Anne Kibble, Ms Leanne Williams, Ms Sophie Rose and Mr Don Mackie, it was decided that the PCU would provide to [Student A's mother] information regarding the mandatory reporting requirements for DECD and the details for the FSA complaints unit to make her complaint about the long waiting times for CARL directly to that unit.</p> <p style="padding-left: 40px;">The PCU response was sent by email dated 4 June 2013. A copy of the email response is at Attachment 2.</p> <p>The minute notes that in her letter of 27 June 2013 Student A's mother stated she had not received any contact from the PCU regarding her letter of 26 May 2013.</p>

	3.11pm - email from GIRVIN to KIBBLE forwarding Certificate Of Record from Magistrates Court, relating to alleged offender's appearance on 12 July 2013.
27 Sept 2013	2.39pm - email ROSE to HICKS, forwarding copies of emails (details not clear).
27 Sept 2013	Meeting between the Premier, Minister and departmental CEO with Student A and [REDACTED] parents. Student A and [REDACTED] parents indicate that they were advised that school records relating to the incident and what occurred afterwards would be provided to the parents, but that these records have not been provided.
28 Sept 2013	9.42am - email from Student A's mother to Premier (3 different email addresses); Mr Simon BLEWETT (Premier's Chief of Staff); Minister RANKINE and DECD: Parent Complaint attaching letter of 28 September 2013 addressed to the Premier, Minister RANKINE and HARRISON.
30 Sept 2013	<p>9.51am - email ROSE to HICKS seeking confirmation Minister's office will respond to letter of 28 September 2013 from Student A's mother.</p> <p>9.53am - email ROSE to BOYER.</p> <p>9.57am - email ROSE to Student A's mother stating that Minister's office will respond.</p> <p>5.09pm - email from Anna HIGGINS (DECD) to KIBBLE forwarding draft minute for Inter Agency Task Force regarding 'the extent and content of any notification to the relevant school community'.</p> <p>6.12pm - read receipt: Student A's mother to ROSE.</p>
1 Oct 2013	11.50am - Mr Brett DIXON (A/Manager, Investigations Unit, Incident Management Division, DECD) emails senior officers of DECD with details of alleged offender's court appearance on this date.
11 Oct 2013	HARRISON seeks Ombudsman investigation.
15 Oct 2013	HARRISON advises matter had been referred to Debelle task force, and school community was to be notified. Student A's parents object through their lawyer, but the notification goes ahead.
16 Oct 2013	Ombudsman commences own initiative investigation.