



## Grooming Behaviours and Schools

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*An Important briefing paper for Principals, Bursars and Business Managers*

*The information in this briefing paper is current as at 14 January 2016. The legal and regulatory obligations in this area are in a constant state of change. Please visit [www.complispace.com.au](http://www.complispace.com.au) to ensure that you have the most up-to-date version of this briefing paper.*

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## Background

Grooming is the means by which a person creates or exploits opportunities to safely engage in sexual contact with a particular child or children.

In Australia, the grooming or procurement of a child for sexual or unlawful activity is a criminal offence in each State and Territory. It is also a Federal criminal offence to use a carriage service, such as the internet, to procure a person under the age of 16 to engage in sexual activity.

Despite the existence of criminal laws prohibiting either grooming behaviour or the procurement of children for sexual activity, in many jurisdictions, 'grooming behaviour' has not been defined in the legislation. This makes it difficult for schools to understand:

- how to **identify grooming behaviours** involving students and/or staff;
- at what point a **school should take action** when behaviour is ambiguous; and
- what their **legal obligations** are to report grooming behaviours.

Traditionally, many cases of grooming behaviour have gone unreported because staff members don't know what is or isn't 'appropriate conduct' between another staff member and a child and they are afraid to report a colleague for 'inappropriate conduct' which might be innocent behaviour.

However the work of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) is putting pressure on the way Australian schools should view grooming behaviour and their duties in relation to identifying and reporting it. In addition, the Royal Commission's work is also putting pressure on State and Territory Governments to introduce legislation to improve the child protection measures taken by schools and other organisations that offer child related services.

Consequently, it is anticipated that the Royal Commission's findings will lead to increased registration requirements for schools which will require them all to take steps to create child safe environments in which policies, training and guidance in relation to grooming behaviour is provided to all staff and the broader school community.

## What is Grooming?

There is no single definition of grooming. In general terms, grooming is the means by which a person creates or exploits opportunities to safely engage in sexual contact with a particular child or children.

In Victoria, grooming behaviour also includes establishing a relationship with a person who is in a position of care, supervision or authority with a child, such as a parent, teacher or sports coach *with the intention to facilitate sexual activity at a later date with that child* under the parent, teacher or sports coach's care.<sup>1</sup>

Examples of behaviours that are indicative of grooming behaviours include:

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<sup>1</sup> s 49, *Crimes Act 1958* (Vic).

- ❖ inappropriate personal communication;
- ❖ inappropriately extending a relationship outside of school hours;
- ❖ testing professional boundaries (for example talking about sex with students); and
- ❖ developing a 'special relationship' with a student and attempting to keep it a secret.

The grooming process will follow a pattern where a child is identified and targeted with the intention that the process will result in the sexual abuse of that child.

The challenge for schools is the ambiguity regarding whether grooming conduct constitutes reportable conduct. This is because grooming behaviour, in most cases, does not constitute child abuse subject to mandatory reporting, but instead is regarded as the process or behaviour that precedes such child abuse.<sup>2</sup>

Certain behaviours or acts by a staff member will not, in isolation, constitute grooming behaviour, for example giving a student a lift home, or talking after school hours about an issue a student may have.

Situations become considerably more complicated when there is a pre-existing relationship between students and teachers, for example where a student's parents may be friends of the teacher, or the teacher is a coach of a local sporting team. Situations in schools which are located in rural areas or where the school is part of a geographical, religious or other demographic community are also far more complex and ambiguous.

Where the conduct is ambiguous, the legislation provides little help, as the determining factor is the 'intent' of the person to use the conduct to eventually commit a sexual offence against the student. Determining intent is extremely difficult unless there is a discernible pattern of behaviour. This pattern may not be visible to colleagues or school leaders. For example, staff participation in social media.

## The law on 'Grooming'

At present Queensland, NSW and Victoria are the only jurisdictions that have enacted legislation that specifically prohibits 'grooming', however the specifics of each criminal offence differ between those jurisdictions.

Other States and Territories do not criminalise 'grooming' per se, but have related offences regarding conduct that would be recognised as 'grooming behaviour' in Queensland, NSW and Victoria.

For example, in other States and Territories, there are offences which involve the 'procurement of a child for sexual activity.' Again, the elements of these offences vary between jurisdictions.

See **Appendix 1** for a table listing State and Territory legislation, relating to the grooming or procurement of a child.

The legislation must be seen in the context of a school's general duty of care to ensure the safety and welfare of its students. The combination of the grooming legislation and that duty, when exercised properly, is intended to help to prevent those criminal offences from occurring.

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<sup>2</sup>Victoria has introduced a new definition of 'child abuse' which includes any act committed against a child involving a sexual offence or a grooming offence. The new definition is included in the *Education and Training Reform Act 2006* (Vic) and the *Child Wellbeing and Safety Act 2005* (Vic).

## Legislative demand for child safe environments

In response to the Royal Commission and various State and Territory inquiries into institutional child abuse, some States and Territories are introducing legislation that requires organisations including schools to introduce policies and procedures to create 'child safe environments'.

For example, in South Australia (where non-government school registration standards do not currently exist), the *Children's Protection Act 1993* (SA) requires that a school has in place appropriate policies and procedures for ensuring that child safe environments are established and maintained within the school. Those policies and procedures must be created in compliance with Child Safe Environments Principles of Good Practice which expressly include the creation of a clear and accessible child protection policy.

Victoria has recently introduced legislation that amends the registration standards in that State to require schools to introduce policies and procedures to manage the risk of child abuse and adhere to new minimum standards for a child safe environment. Victorian schools must also have policies and procedures in place to respond to allegations of child abuse committed against a student at the school by a student, staff member or other person connected with the school.<sup>3</sup>

## The work of the Royal Commission into

## Institutional Responses to Child Sexual Abuse

The work of the Royal Commission has drawn attention to the prevalence of grooming behaviours in institutions including schools and, traditionally, their failures in reporting such conduct and taking action to stop it.

In early August 2015, the Royal Commission released Case Study 12<sup>4</sup> which examined the response of a Perth independent school in relation to concerns raised by staff about the grooming behaviours of a male teacher towards a number of students in the prep school.

The Case Study found that there was a culture of non-reporting within the school at the time of the alleged offences, which was heightened by the fact that mandatory reporting laws were not introduced in Western Australia until 2009. The Royal Commission found that the school had failed to attach sufficient significance to the teachers' reports and a lack of training and adequate policies on identification and reporting at the school contributed to this failure. This failure occurred even though the Royal Commission found that the school's policies were compliant with the registration standards in Western Australia during the period of the offences.

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<sup>3</sup> Part 4.3.1(6)(d) *Education and Training Reform Act 2006* (Vic).

<sup>4</sup> 'Report of Case Study No.12 The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009 (June 2015)' available at <http://www.childabuseroyalcommission.gov.au/getattachment/ef4f35e9-1e57-4c72-8846-7de6e1365d81/Report-of-Case-Study-No-12>

The Royal Commission found the school's child protection management system to be inadequate in three key areas:

- ✔ they failed to include references, definitions and indicators of grooming behaviour;
- ✔ they failed to establish adequate record keeping policies and a centralised database of concerns or complaints; and
- ✔ there were no separate guidelines for reporting grooming behaviour as opposed to child sexual abuse.

The Royal Commission also found that a school should be required to report to the Department where a staff member has received a formal warning for grooming behaviour and that a clearly enunciated and sufficiently detailed stand-alone child protection standard including grooming behaviours should be introduced for registration of non-government schools.

### *Confusion around what constitutes grooming behaviour*

A research report commissioned and funded by the Royal Commission was released in October 2015.<sup>5</sup> The report was commissioned to identify the challenges which prevent schools from creating and maintaining a safe school environment where staff members are quick to recognise grooming or abusive behaviour, trigger a process that investigates concerns, and take appropriate action to protect children from harm.

Of particular significance is the finding that many of the behavioural indicators of abuse and grooming are ambiguous, requiring individual judgement or interpretation to decide if they are cause for concern. The Royal Commission has noted that grooming is usually only identified as such with the benefit of hindsight and once sexual abuse has been committed.

### *What Schools should do*

The Royal Commission's research report identified that for a school to achieve an environment where a child can be protected from sexual abuse, there are two dimensions involved:

- ✔ **a reactive dimension**— seeking to identify abuse and stop it; and
- ✔ **a preventative dimension** including:
  - screening out job applicants who have a certain history; and
  - aiming to identify abusive behaviour and intervene in the early stages of 'grooming' a child.

Professor Stephen Smallbone, an expert in child safety in the school environment, a psychologist and a professor of Criminology and Criminal Justice at Griffith University, made a statement at the Royal

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<sup>5</sup>Hear no evil, see no evil: understanding failure to identify and report child abuse in institutional contexts', Professor Eileen Munro (London School of Economics and Political Sciences) and Dr Sheila Fish (Social Care Institute for Excellence) (September 2015) available at <https://www.childabuseroyalcommission.gov.au/getattachment/3d61d8c9-452e-4dc7-b32f-d6a23ff93e1b/Hear-no-evil,-see-no-evil>

Commission hearing for Case Study 12. Professor Smallbone defined 'best practice' requirements for a child safe school environment including having:

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

In addition, schools must have an organisational culture that encourages questioning and promotes confidence in reporting processes.

Although the risks to child safety posed by grooming behaviours is not new, the Royal Commission's report emphasises that schools must have policies and procedures in place to address that risk.

## Addressing ambiguous behaviours

A key reason why grooming behaviour may not be reported is because a staff member who may have witnessed grooming behaviour by a colleague may dismiss the behaviour because they believe that it is done without the necessary criminal 'intent'.

The issue of intent as a barrier to reporting can be addressed to a large extent by schools having clear guidelines and educating staff members on what conduct is or isn't appropriate conduct between staff and students. This would include how and when it is appropriate to meet with students and parents, have social media restrictions, have physical contact or contact with students after hours.

In addressing the additional complexities relating to pre-existing relationships and close-knit communities, schools should consider introducing measures to encourage all staff members to disclose relationships with students which might result in them interacting after schools hours.

Having clear policies on inappropriate staff/student conduct which all staff understand will increase compliance and make it easier for staff to report breaches.

### *For more guidance on grooming behaviours*

Information on identifying grooming behaviours can be found in guidance materials produced by State and Territory governments and authorities. While the law is different in each State and Territory, the underlying grooming behaviours that those laws regulate are the same. Consequently, the indicators of grooming behaviour and the nature of the grooming process described in the following materials are relevant, from a guidance perspective, for all States and Territories:

- ✔ 'Protective Practices for Staff in their Interactions with Children and Young People: Guidelines for staff working or volunteering in education and care settings', Government of South Australia, Department of Education and Children's Services, 2011;
- ✔ Crimes Amendment (Grooming) Bill 2013 (Vic) Research Brief, 2014;
- ✔ 'Child Grooming: "Offending all the way through from the start": Exploring the call for law reform', Trisha Randhawa & Scott Jacobs for Child Wise, 2013;
- ✔ 'Responding to Allegations against Employees in the Area of Child Protection', NSW Department of Education and Training, 2010; and
- ✔ 'Managing allegations of sexual misconduct in SA education and care settings', Government of South Australia, Department for Education and Child Development, 2013.

## Appendix 1

The following table lists the Federal, State and Territory legislation relating to the grooming or procurement of a child.

State/Territory	Criminal Offence
Commonwealth	<i>Criminal Code Act 1995 (Cth)</i> s 474.26 'Using a carriage service to procure persons under 16 years of age' and s 474.27 'Using a carriage service to "groom" persons under 16 years of age'
New South Wales	<i>Crimes Act 1990 (NSW)</i> s 66EB 'Procuring or grooming a child under 16 for unlawful sexual activity'
Victoria	<i>Crimes Act 1958 (VIC)</i> s 49B 'Grooming for sexual conduct with child under the age of 16 years'
Australian Capital Territory	<i>Crimes Act 1900 (ACT)</i> s 66 'Using the Internet etc to deprave young people'
Queensland	<i>Criminal Code Act 1899 (QLD)</i> s 217 'Procuring young person etc for carnal knowledge'; s 218A 'Using internet etc to procure children under 16'; and s 218B 'Grooming children under 16',

South Australia *Criminal Consolidation Act 1935 (SA)*  
s 63B 'Procuring child to commit indecent act etc'

Tasmania *Criminal Code Act 1924 (TAS)*  
s 125C 'Procuring unlawful sexual intercourse with person under 17 years etc'; and  
s 125D 'Communications with intent to procure person under 17 years etc'

Western Australia *Criminal Code Act Compilation 1913 (WA)*  
s 320 'Child under 13, sexual offences against'; and  
s 321 'Child of or over 13 and under 16, sexual offences against'

Northern Territory *Criminal Code Act 1983 (NT)*  
s 131 'Attempts to procure child under 16 years'; and  
s 132 'Indecent dealing with child under 16 years'

## *What can CompliSpace do to help?*

At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to enable schools across Australia to implement and maintain sustainable platforms to meet their legal and regulatory requirements.

Our team of legal and industry professionals actively monitor Federal, State and Territory laws and regulations to develop up-to-date best-practice policies, procedures and governance programs across a range of key areas to assist clients to continuously comply with their obligations.

To support schools in creating a child safe environment, CompliSpace has developed a comprehensive suite of policies, procedures, training resources and tools to address a range of Child Protection issues, including detecting, reporting and addressing grooming behaviours outlined in this briefing paper.

For more information please feel free to contact us on:

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