



# Supplementary Submission

While acknowledging that this supplementary submission is provided after the closure of the consultation period, the AISNSW believes the information provided is salient to the NSW Government's consideration of the recommendations of the Royal Commission.

In the course of preparing the first submission to the NSW Government regarding the civil litigation recommendations of the Royal Commission, the AISNSW asked Aon Risk Solutions for information regarding the insurance cover available to independent schools in New South Wales for risk arising out of child abuse.

There are a number of matters raised in the advice received by the AISNSW that are of relevance to Issue C: Requirement to have insurance:

1. As an example of a provider of litigation cover, QBE is requiring extensive information regarding the operations of child related institutions in connection with the measures taken by them to reduce the risk of child abuse.

While this is not objectionable it should be noted that if an institution provides a false or misleading answer it is possible that cover would be denied in the event of a claim.

This may leave a person seeking financial redress with limited recourse if the school has limited funds. Alternatively it may cause a school to close if cover is denied.

2. It would appear that the number of insurers willing to provide this cover is small and getting smaller. This in itself can have an effect on the premium being paid. It is also noted that insurers are restricting the cover provided by reducing limits on increasing deductibles.
3. The AISNSW notes that if a claim is made the insurer will usually take over the defence of the proceedings. The insurers approach to the defence of the school may well be different to the approach that the school itself may take.

Please find the relevant excerpt of the response from Aon Risk Solutions below:

The General Liability insurance policies that Aon currently arranges for schools provide cover for civil liability arising from child sexual abuse for which the insured school is liable (subject to the policy terms and conditions). Similar policies that schools may have arranged in the past may also provide cover but that will depend on the specific terms and conditions of such policies.

Current policies arranged by Aon:

1. Provide cover for liability arising from child sexual abuse on a 'claims made' basis meaning that they cover claims made against the school and reported by the school to the insurer during the period of insurance. The alleged abuse must have occurred either during the period of insurance or during the retroactive period (see point 6 below).
2. Will not cover liability arising from or connected with abuse that has been notified to a previous insurer.



3. Will not cover liability arising from abuse that should have been notified to the current insurer but was not (although we have negotiated an extension with the insurer for cases where the insurer has been the same continuously since the time the abuse should have been notified – but it is critically important that abuse is notified when it is first suspected or known).
4. Provide cover for the school, its employees and others but not the perpetrator of the abuse for damages and defence costs.
5. Will not cover fines or penalties or costs associated with defending criminal proceedings.
6. Provide retroactive cover for abuse that is alleged to have occurred back to 1 January 1986.

It is imperative that under 'claims made' policies, the discovery of any information that might result in a claim against the school or other parties be reported immediately to Aon or the insurer. From an insurance perspective, it is preferable to allow the insurer to deal with such matters and arrange legal representation.

It is essential that schools maintain records of insurance held over the years to facilitate sexual abuse claims that can take up to 30 years or more to manifest. Ideally, records should include the original policy documents. This is because whilst current insurance may be on a 'claims made' basis, prior insurance may be on an 'occurrence basis' meaning that the policy that responds is the policy in force when the abuse occurred.

The insurance market for Liability cover including sexual abuse is already limited, with only a handful of insurers willing to provide cover. Since the announcement of the Royal Commission into Institutional response to Child Sexual Abuse some insurers and re-insurers have withdrawn from the market. The period following the announcement of the Royal Commission has been characterised a substantial increase in reported claims. The response of the remaining insurers has been a combination of restricting cover by reducing limits, or increasing deductibles, particularly where a serial perpetrator is involved, and to seek additional underwriting information, with tighter guidelines and increased technical pricing.

It is practically certain that the remaining insurers willing to provide cover for this risk will have seen and considered the Royal Commission's recommendations, including those now being considered in the NSW paper. It is possible that in the future, the remaining insurers could decline to provide sexual abuse cover, or significantly increasing the pricing the cover. We do not presently expect new insurers to begin writing this sort of cover to replace any reduction in insurance capacity.

Most remaining insurers extensive Sexual Abuse Questionnaires that seek to identify the measures undertaken by an institution to prevent abuse. We expect this to continue or increase. Prospective insureds who are unable to demonstrate 'reasonable measures' are unlikely to secure an offer of insurance, and if they do secure an offer they will find the terms both restrictive and expensive.



Please also find attached as an example of the information collected by insurance providers, the QBE Sexual Abuse Liability Insurance Questionnaire.

# Sexual Abuse Liability Insurance Questionnaire

QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239 545



This questionnaire is required to be completed in full as any failure to do so may result in a decision by QBE not to provide cover. If there is insufficient space to provide your detailed response, please attach your response and detail the relevant question number that you are responding to.

## Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Privacy

Our Privacy Policy describes how we collect, disclose, store and use personal information as well as how to access it, correct it or make a complaint. When we say personal information we may also mean sensitive information such as health information, criminal history or professional memberships that's relevant to us issuing, administering or managing products or providing services and the terms on which we will do these things. We use personal information to issue, administer and manage products and provide services. You can view our Privacy Policy at [www.qbe.com.au/privacy](http://www.qbe.com.au/privacy), or to obtain a copy by phoning us on 133 723 or requesting it from our authorised representatives or service providers.

We may share your information with other QBE Group companies, our authorised representatives and service providers, each of which may be based outside of Australia.

By giving us personal information you consent to us collecting, disclosing, storing and using it in accordance with our Privacy Policy. If you give us someone else's personal information you confirm you've obtained their consent to do so.

If you don't provide all of the personal information we've requested we may be unable to issue, administer or manage products or provide services.

## Proposer details

Name									
Postal address									
						State		Postcode	
Tax status	Registered business	ABN				Taxable percentage		%	
	Registered charity or not for profit organisation				Charity ABN				
Period of Insurance	From 4.00pm on the (dd/mm/yyyy)			(Local standard time)					
	To 4.00pm on the (dd/mm/yyyy)			(Local standard time)					

1. Please describe in full the extent of your activities and/or services provided in respect to children and/or vulnerable persons:

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2. Please provide the numbers of children and/or vulnerable persons in your care, being cared for, under your supervision or under your control:

2.1 Pre school		2.2 Kindergarten	
2.3 Primary school		2.4 Middle school	
2.5 High/Secondary school		2.6 Boarding school	
2.7 Pre and/or after hours school care		2.8 Crèche or child minding	
2.9 Sports clubs/groups		2.10 Youth clubs/groups	
2.11 Intellectually and/or physically handicapped		2.12 Aged Care	
2.13 Foster care		2.14 Other	

## Proposer details

3.	How often and for how long are these activities and /or services provided for:		
4.	What is the maximum number of children and /or vulnerable persons in your care, being cared for, under your supervision or under your control at any one time:		
5.	What are your maximum and /or minimum supervision ratios:		
	5.1 Maximum		5.2 Minimum
6.	Where situations arise or regularly involve supervision ratios of 1 to 1 what other precautions /measures do you have in place to monitor such:		
7.	Do you have a documented Child /Vulnerable Person Protection Policy or Procedure?	Yes	No
	Do you have a documented Code of Conduct?	Yes	No
	Do you have a documented procedure for dealing with complaints including whistle blowing? (If 'yes', please provide a copy of each document)	Yes	No
8.	Do you have a breach register /incident register /complaints register (if yes, please provide a copy of that document)? If 'yes', where and how is this information recorded, maintained and retained ?	Yes	No
9.	Are all current persons and prospective persons engaged by you or on your behalf or volunteers who come into contact with children and /or vulnerable persons subject to police criminal background checks and appropriate screening in accordance with relevant government legislation for such persons including volunteers?		
10.	What method is used for such checks and /or screening:		
11.	Does your recruitment and/or volunteer policies include:		
	11.1 Verification of all accredited qualifications including when and where those qualifications were obtained and ongoing maintenance of qualification:	Yes	No
	11.2 Details of previous employment and /or voluntary work and reference checks are undertaken with those previous employers or where such voluntary work was undertaken:	Yes	No
	11.3 Appropriate screening where changes in employment or voluntary work occur:	Yes	No
	11.4 Are all files maintained and regularly updated of employees and volunteers:	Yes	No
	Are applicants including volunteers required to complete a statutory declaration that the applicant has:		
	11.5 Read and understands your policy on Child/Vulnerable Persons Protection and Code of Conduct including investigations and disciplinary procedures:	Yes	No
	11.6 Ever been in breach of another organisations Child Vulnerable Persons Protection Policy or Code of Conduct:	Yes	No
	11.7 Ever had concerns raised about their behaviour towards children or vulnerable persons:	Yes	No
	11.8 Ever been subject to an investigation or convicted of a criminal offence relating to abuse or inappropriate behaviour:	Yes	No
12.	Do you provide any boarding or accommodation services? If 'yes', do you have documented procedures in place relating to the reporting of any incidents involving bullying, harassment, physical, sexual or other abuse?	Yes	No
	Are all policies and procedures clearly made available to and known by all staff, volunteers and residents?		
13.	Are external consultants used for the recruitment of staff or volunteers? If 'yes', are these external consultants compliant with your recruitment policies and how is this monitored by you.	Yes	No
14.	Does your organisation's relevant board of oversight or governance regularly review and document minutes of all reported incidents or complaints relating to any abuse and review policies and procedures in light of such? Please list those persons who are responsible for your organisations policies and procedures for Child/Vulnerable Persons Protection and Code of Conduct:	Yes	No
15.	Do you engage any external consultants to review your policies and procedures? If 'yes', by who and how often?	Yes	No

## Proposer details

16. Have you ever received any complaint from any person regarding actual or alleged sexual abuse or any other abuse or inappropriate behaviour involving past or present persons engaged by you or on your behalf including volunteers? Yes No

If 'yes' please supply full details.

17. Are you, after reasonable enquiry, aware of any known or alleged circumstance which gave rise to a claim against you, or which may give rise to a claim against you (whether reported to insurers or not) of any person, past or present, engaged by you or on your behalf or volunteer involving sexual assault, sexual or any other abuse, or attempt at sexual assault or sexual or any other abuse? Yes No

If 'yes' please supply full details.

For reference in the completion of this questionnaire the following definitions apply:

Vulnerable person means either of the following:

- (i) A person below the age of 18 years or
- (ii) A person of any age who is being cared for, under the supervision of, or under the control of a Person in a Position of Trust.

**Person in a Position of Trust** means any person who is supervising a Vulnerable Person in any capacity including caring for the Vulnerable Person, teaching, otherwise in control or assisting to supervise or control a Vulnerable Person.

**Sexual Abuse** means any activity within any of the following sub-paragraphs;

All acts of a sexual nature involving physical contact.

- (i) All acts of a sexual nature involving physical contact.
- (ii) All acts of a sexual nature not involving physical contact including voyeurism, exhibitionism whether in public or private, exposing a person to or involving a person in pornography.
- (iii) Grooming being actions undertaken with the aim of befriending and establishing a connection with a person to lower that person's inhibitions in preparation for acts of a sexual nature with that person.
- (iv) All acts of a sexual nature performed on oneself in the presence or sight of another person.
- (v) For the avoidance of doubt sub-paragraphs (i) to (iv) apply whether or not the acts referred to in those sub-paragraphs were by consent or not, and irrespective of the age of the persons involved in those acts.

**Note:** sub-paragraph (i) above 'all acts of a sexual nature' refers to the working definition of child sexual abuse in Chapter 3.1 of Volume 1 of the Interim report released on 30 June 2014 by the Royal Commission into Institutionalised Responses to Child Sexual Abuse. (Copy can be made available upon request)

# Statutory Declaration

Oaths Act 1900, NSW, Ninth Schedule

I  of   
(name of declarant) (residence)

do hereby solemnly declare and affirm that:

1. the answers to the Insurance Questionnaire concerning Sexual Abuse Liability are true; and

2. my position at  is   
(name of institution) (title of position)

and in this position I am the person responsible for the protection of Vulnerable Persons defined as persons under the age of 18 years or persons of any age being cared for, under the supervision of, or under the control of persons in a position of trust.

I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law in this behalf made - and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared at:  on (dd/mm/yyyy)   
(place) (date)

Signature of declarant

in the presence of an authorised witness, who states:

I  a   
(name of authorised witness) (qualification of authorised witness)

certify the following matters concerning the making of this statutory declaration by the person who made it:  
(\* please cross out any text that does not apply)

1. \*I saw the face of the person OR \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. \*I have known the person for at least 12 months OR \*I have confirmed the person's identity using an identification document and the document I relied on was

(describe identification document relied on)

Signature of authorised witness

Date (dd/mm/yyyy)