



**ACT HUMAN RIGHTS
COMMISSION**

Australian Capital Territory

Final report to a complaint brought to the ACT Human Rights Commission regarding the provision of a service for a child or young person by Brindabella Christian College

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**Disability & Community Services Commissioner
ACT Human Rights Commission**

Final report to a complaint brought to the ACT Human Rights Commission regarding the provision of a service for a child or young person by Brindabella Christian College

Contents

- Introduction
- Background
- Brindabella Christian College's response
- Findings from our consideration
- Recommendations
- Implementation
- Appendices

Introduction

This report under section 81 of the *Human Rights Commission Act 2005* ('the HRC Act') arises from a complaint made by a mother, on behalf of two of her sons, about a service for children and young people provided by Brindabella Christian Education Limited trading as Brindabella Christian College (BCC) and by the Chairperson of the BCC Board. The mother also complained of victimisation for having made a previous complaint to the Human Rights Commission (HRC).

Under section 40A of the HRC Act, a person may complain to the commission about a service for children and young people if –

- (a) *the service is not being provided appropriately; or*
- (b) *the provider of the service has acted inconsistently with any of the following:*
 - (i) *the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates;*
 - (ii) *any other standard prescribed by regulation; or*
- (c) *the service is not being provided.*

In her complaint, the mother stated that her two sons attended BCC. The Commission understands that after the family moved to the ACT from interstate, the family's four children were enrolled at BCC in 2016. The complaint relates to two of the children. The younger son was due to commence Year 9 in 2020, and the older son was due to commence Year 12 in 2020. The mother said that BCC and the Chairperson of the BCC Board had made a decision to not allow her two sons to be 're-enrolled' at BCC in 2020, which was causing a great deal of distress for her sons. She said that she was informed by the BCC, a fortnight only before they were to recommence school, that this

decision was based on the alleged conduct of the parents and had nothing to do with either of her sons' behaviour or conduct at the school.

The mother also alleged that the decision to cancel her sons' enrolment at BCC was an act of victimisation for having made a previous complaint in September 2019 to the HRC about a service for children and young people provided by BCC and by the Chairperson of the BCC Board. This complaint, made by the mother, centred on comments made by the Chairperson about their daughter who was in Year 12 at the time and was the College Captain, and on the response by BCC and the Board to the concerns raised by her daughter.

Section 98 of the HRC Act provides that:

- 1) *A person (the first person) commits an offence if the first person causes or threatens to cause a detriment to someone else (the other person) because —*
 - a) *the other person has —*
 - i) *made a complaint under this Act; or*
 - ii) *given information or produced a document or other thing to a person exercising a function under this Act or a rights Act; or*
 - iii) *given information, produced a document or other thing or answered a question as required under this Act;*
 - b) *or the first person believes that the other person intends to do something mentioned in paragraph (a).*

In our consideration of the complaint, and following our review of the information provided to the Commission, we are of the view that the decision to not allow the two brothers to re-enrol at BCC in 2020 is inconsistent with the National Principles of Child Safe Organisations, and the school did not appropriately provide a service for children and young people.

Background

A mother made a complaint to the ACT Human Rights Commission about a decision made by BCC and by the Chairperson of the BCC Board, to not allow her sons to be re-enrolled at BCC in 2020, as notified to her in a letter from the legal representative acting for BCC, on 17 January 2020.

In that letter, the legal representative stated that he acted for BCC and that '[d]ue to recent events of concern the School requests that you find alternate education for the children. Please now understand that your children are not going to be re-enrolled at the School'. He went on to state that the reasons for this decision were as follows:

1. *The School believes that you as parents are not confident in the current policies, procedures and educational standards of the school.*
2. *You have displayed outward displeasure at the administration of the School.*
3. *You have encouraged others to also find issues with the way in which the School and the education is administered in a way that has created an unhealthy environment of anger and disunity.*

The mother stated that this decision had caused a great deal of distress for herself, her sons and her family. She said she wanted her sons' enrolment maintained as she was concerned about the

detriment this would cause her sons' studies and their wellbeing. She explained that the older brother was to commence Year 12 in 2020, that he had a strong cohort of friends and good relationships with his teachers at BCC, and he that had also been appointed House Captain of the Sport Team for 2020. She added that being forced to move schools in Year 12 would also have a negative impact on his university entrance score. She said that the younger brother, who was due to commence Year 9 in 2020, also had a strong cohort of friends at BCC, and the family had established relationships with teachers and parents at BCC who had provided a sound and stable learning environment for him. She explained this was particularly important due to his disabilities. She stated that his continuation at BCC was paramount to his well being and learning effectiveness.

The mother asserted that the action the school took had nothing to do with either of her sons' behaviour or conduct but was because of alleged conduct on the part of their parents. This was supported by the information provided in the letter sent to her on 17 January 2020 from BCC's legal representative, which referred to 'recent events that have transpired', those being the events surrounding the mother's initial complaint to the HRC in September 2019.

The mother stated that in the action the school took to cancel her sons' enrolment, there was 'no regard for their welfare, insufficient notice or procedural fairness ... and no opportunity provided for discussion or negotiation'.

The Commission understands that while the *Education Act 2004* (ACT) sets out procedural fairness requirements where students attending a non-government school are excluded from school or suspended for behavioural or conduct reasons, no such legislatively protected procedural fairness requirements are in place for exclusions for other reasons, such as those set out in a private enrolment contract. This means that the brothers had no protections available to them under the *Education Act 2004* for their exclusion from school on the basis of their parents' alleged conduct in contravention of BCC's enrolment agreement.

In an email to the Commission dated 11 February 2020 the mother advised the Commission she had attempted to bring an application before the ACT Civil and Administrative Tribunal (ACAT) regarding a breach of section 105 of the *Education Act 2004* and had attended a mediation conference at ACAT but had subsequently discontinued her application on the basis that ACAT did not have jurisdiction to hear the application.

BCC's response

The Commission wrote to the BCC and to the Chairperson of the BCC Board on 29 January 2020, asking for a response to the mother's complaint, in particular her claim that the decision to not allow her sons to re-enrol at BCC was 'a direct result of our attempts to hold the school accountable for their conduct towards their older sibling and ourselves, as parents in our attempts to speak with the Board about the quality of services they were not providing'. The Commission requested BCC provide us with information and documents, including information regarding the basis for the decision to not allow the two brothers to re-enrol and for a copy of all relevant documents in relation to this decision-making process.

A response was provided to the Commission by BCC's legal representative on 12 February 2020. In this response BCC asserted that the complaint was misconceived, declaring that 'there has been no

action of the school which breaches the *Human Rights Commission Act 2005*. No action of the School relates to s 98 Victimisation or s 40A failure to deliver a service'. BCC's response did not address the questions asked by the HRC as set out in our letter to them. Given this, we must rely on the information we have available to us.

The Commission notes that a draft copy of this report was provided to BCC's principal and legal representative for their comment, however no response has been received.

Findings from our consideration

1. Service for children and young people not provided appropriately

Based on the information available to the Commission, it is our view that the service for children and young people provided by BCC has not been provided appropriately. In particular, the decision to exclude the two brothers from the school without any opportunity to be consulted, to provide their views and to participate in the decision, is not consistent with general principles of procedural fairness.

The *Education Act 2004* provides some guidance on what constitutes an appropriate education service for children and young people in its requirements for registration of non-government schools in Chapter 4 of the Act. In order for a non-government school to be registered, it must demonstrate that it has appropriate policies, facilities and equipment for the curriculum offered by the school, and for the safety and welfare of its students. The ACT Manual for the Registration of Non-Government Schools provides some additional information, and states that policies, programs, procedures and guidelines that relate to the safety and welfare of students should have regard to the [National Safe Schools Framework](#) or its equivalent or alternative framework or set of policies agreed to by the Registrar of Non-government Schools. The Australian Student Wellbeing Framework provides a foundation for the whole school community to promote student wellbeing, safety and learning outcomes through its five elements of leadership, inclusion, student voice, partnerships, and support. The framework states that an effective practice relating to 'student voice' is that students have the opportunity for authentic decision-making over matters that affect them.

The Commission considers that in not providing an opportunity for the voices of the two students to be heard and in not consulting them about the proposal to exclude them from BCC prior to the decision being made, BCC did not appropriately provide a service for children and young people. We note that while section 105 of the *Education Act 2004* is not the only basis upon which students can be excluded from non-government schools, it does provide some useful guidance on how and when principals may exclude students. The principal may do so, only if:

- the student's parents have been given an opportunity to be consulted, and told in writing, about the proposed exclusion of the student and the reasons for it; and
- the student has been given a reasonable opportunity to attend counselling, undertake relevant educational programs or receive other appropriate assistance; and
- as far as the student's maturity and capacity for understanding allow, the participation of the student has been sought, and any views of the student considered, in deciding whether to exclude the student; and

- the student has been given sufficient information about the decision-making process, in a language and way that the student can understand, to allow the student to take part in the process; and
- the student has been offered information about alternatives for continuing the student's education after the exclusion.

These requirements indicate the seriousness of a decision to suspend or exclude a student, and the importance of procedural fairness in making such a decision. The Commission is concerned that similar requirements do not exist regarding a decision made to exclude a student from their school, which in this case the brothers had been attending since 2016 when the family moved to the ACT, in a situation where the school itself made clear was not because of any disruptive behaviour on the part of the students, but because of a view that their parents had 'displayed outward displeasure at the administration of the school'. Indeed, it is clear from the information available to the Commission that the students were held in high regard by their peers and teachers, with the older brother being elected House Captain of the Sport Team for 2020 (and the older daughter having been previously elected College Captain).

2. Service provider has acted inconsistently with the National Principles of Child Safe Organisations

After considering the information provided, it is the Commission's view that the school's decision to not allow the two brothers to re-enrol at BCC in 2020 is inconsistent with the National Principles of Child Safe Organisations as endorsed by all Commonwealth, state and territory governments on 1 February 2019, arising out of a recommendation from the Royal Commission into Institutional Responses to Child Sexual Abuse.

In particular, it is inconsistent with Principle 2 which provides that children and young people are to be informed about their rights, participate in decisions affecting them and are taken seriously, and with Principle 3 which provides that families and communities are informed, and involved, in promoting child safety and wellbeing.

The Commission has not been provided with any information which would suggest the two young people were able to participate in the decision-making concerning their re-enrolment or to provide their views on the proposed decision and raise their concerns. Nor does the Commission have any information which would suggest that the family was able to participate in decisions affecting their children, which is one of the key action areas for Principle 3. Further, one of the key action areas for Principle 2 is that the importance of friendships is recognised and support from peers is encouraged. The Commission understands that the two young people expressed deep sadness at being separated from their student cohort and at the loss of their friendship and peer support groups. The Commission does not have any information available to it that would indicate BCC considered the importance of friendships to these two young people, in particular the young person about to start the final year of their studies in Year 12.

The decision to not allow the two brothers to re-enrol is also inconsistent with principle 4 which states that equity is upheld and diverse needs respected in policy and practice. One of the key action areas for this Principle is that children and young people have access to information, support and complaints processes in ways that are culturally safe, accessible and easy to understand. This is

supported by Principle 6 which provides that processes to respond to complaints and concerns are child-focused. From the information provided to the Commission, it does not appear that BCC's complaints policy prioritises the safety and wellbeing of children and young people or that complaints are taken seriously, and responded to promptly and thoroughly, with consideration for fairness to all parties. There was also no information provided to the Commission which would indicate BCC considered the additional vulnerabilities of the younger brother with disabilities and the impact changing schools would have on him.

3. Victimisation contrary to HRC Act

The mother had previously brought a complaint to the Commission in September 2019 regarding the management and handling of a student complaint involving her daughter by BCC and the BCC Board. This complaint had centred on comments made by the Chairperson about her daughter who was in Year 12 at the time and was the College Captain, and on the response by BCC and the Board to the concerns raised by her daughter.

Section 98 of the HRC Act provides that:

- 2) *A person (the first person) commits an offence if the first person causes or threatens to cause a detriment to someone else (the other person) because —*
 - a) *the other person has —*
 - i) *made a complaint under this Act; or*
 - ii) *given information or produced a document or other thing to a person exercising a function under this Act or a rights Act; or*
 - iii) *given information, produced a document or other thing or answered a question as required under this Act;*
 - b) *or the first person believes that the other person intends to do something mentioned in paragraph (a).*

In the letter of 17 January 2020 from BCC's legal representative to the mother, it was stated that the reason the two brothers would not be allowed to re-enrol at BCC was because of 'recent events that have transpired' and because she and her husband had 'displayed outward displeasure at the administration of the School' and 'encouraged others to also find issues with the way in which the School and the education is administered in a way that has created an unhealthy environment of anger and disunity'.

The Commission understands the reference to 'recent events' to be those events which led to the mother lodging the first complaint with the HRC in September 2019, and the events which followed this. The Commission is of the view that BCC has caused a detriment to the mother and to her family in not allowing her sons to be re-enrolled because she had made a complaint to the HRC about the way in which BCC and the BCC Board were providing a service to a child or young person.

Recommendations

Recommendation 1

That BCC conduct a review of its current 'Enrolment Agreement', 'Enrolment Policy', other associated enrolment documents, and enrolment practices, to ensure that they are consistent with the National Principles of Child Safe Organisations, the *Discrimination Act 1991*, and the *Education Act 2004* (ACT).

Recommendation 2

That BCC conduct a review of its complaints policy, any other associated complaints guidelines and documents, and complaints management practices, to ensure that they are consistent with the National Principles of Child Safe Organisations, the *Discrimination Act 1991*, and the *Education Act 2004*.

Recommendation 3

That BCC provide a report of the reviews (referred to in Recommendations 1 and 2 above) to the ACT HRC, the ACT Education Directorate and the Commonwealth Education Department, outlining how each of the policies, agreements, and any other associated documents and practices are, or have been amended to be, consistent with each of the principles outlined in the National Principles of Child Safe Organisations, with the protections against discrimination in *Discrimination Act 1991* and the obligations in the *Education Act 2004*.

Recommendation 4

That the ACT Education Directorate develop a program of work regarding comprehensive registration standards for non-government schools and the oversight mechanisms of non-government schools to ensure it is able to investigate complaints or concerns about non-compliance with registration standards. As part of this program of work, the ACT Education Directorate should consult with the Association of Parents and Friends of ACT Schools and other forums to ensure the views of young people, parents and guardians who have attended, or attend, non-government school are heard.

The Victorian Registration and Qualifications Authority's Guidelines to the Minimum Standards and Other Requirements for Registration of Schools may provide a useful model which could be adapted to meet the needs of the ACT, as do the Western Australia's Department of Education Guide to the Registration Standards and Other Requirements for Non-Government Schools. We also note the requirements in the Commonwealth *Australian Education Act 2013* and *Australian Education Regulation 2013* have requirements and standards for non-governments schools including for approved authorities and bodies to be 'fit and proper'.

The ACT Education Directorate should provide a progress report to the ACT Education Minister arising from this program works within twelve months of being provided with this report.

Recommendation 5

That the ACT Government introduce amendments to the *Education Act 2004* to ensure due process safeguards apply to all decisions made to not enrol or re-enrol students, including decisions made by non-government schools.

The Commission notes the ACT Government, as a public authority, has obligations under the *Human Rights Act 2004* to act consistently with human rights, including the right to equality before the law, freedom of expression, and the right to education. This includes taking steps to protect individuals from having their rights breached by third parties.

Implementation

The Commission requests that BCC provide an initial response to Recommendations 1-2 made in this report within sixty days, and then provide the Commission with the report under Recommendation 3 within six months of receiving the final report.

The Commission requests that the ACT Education Directorate provide an initial response to Recommendation 4 within sixty days, and a final response within twelve months of receiving the final report.

The Commission requests that the ACT Government provide an initial response to Recommendation 5 within sixty days, and a final response within twelve months of receiving the final report.

Appendices

Appendix A: *National Principles for Child Safe Organisations*

Appendix B: *Guidelines to the Minimum Standards and Other Requirements for Registration of Schools Including Those Offering Senior Secondary Courses* (Victorian Registration and Qualifications Authority)

Appendix C: *Guide to the Registration Standards and Other Requirements for Non-Government Schools* (WA Department of Education)