

27 March 2023

Dear Member of the Tasmanian Parliament

Re: Child and Youth Safe Organisations Bill 2022

I am aware that you will soon likely debate the Child and Youth Safe Organisations Bill 2022.

The introduction of this Bill constitutes a significant reform to strengthen the protection and promotion of the safety and wellbeing of children and young people in Tasmanian organisations. I have long supported the establishment of legislatively mandated standards that Tasmanian organisations must meet to protect the safety and wellbeing of children and young people, a reportable conduct scheme, and independent oversight to build organisations' capacity and to monitor and enforce their compliance.

This Bill is long overdue. It implements recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) more than five years ago. The Bill forms a critical part of the architecture of a system for independent oversight of the rights and wellbeing of children and young people in Tasmania.

Section 8 of the *Commissioner for Children and Young People Act 2016* provides that the Commissioner's statutory functions include advocating for all Tasmanian children and young people, influencing policy development into matters relating to children and young people, promoting the wellbeing of children and young people, and empowering their participation in decision-making that may affect their lives. The Commissioner also assists to ensure that Tasmania satisfies its national and international obligations in respect of children and young people.

In exercising my functions and powers, I uphold the principle that the wellbeing and best interests of children and young people are paramount and observe relevant provisions under the UN Convention on the Rights of the Child (s.3 of the *Commissioner for Children and Young People Act 2016*).

My support for this Bill has been based on the premise that it would be implemented through a child-centred, independent oversight body. Such a body would similarly be required to uphold fundamental child-rights principles - including that the wellbeing and best interests of children and young people are the paramount consideration - in the execution of its various functions.



Real and tangible improvements to the safety and wellbeing of children and young people in institutions will only be achieved if and when the Bill is implemented in a child-centred way, within a child-centred organisation, which is a part of a “child-safe system.”¹

As the recent report commissioned by the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings (Commission of Inquiry) observed, there is a fundamental “need to create child-safe systems that have a shared and joined-up approach to minimising risk, meeting children’s safety needs and providing those who have been maltreated the supports and services oriented towards healing and recovery.”²

I have made submissions to all iterations of the Bill. The first Draft Bill, which was entirely inadequate, was released for consultation in late 2020 and failed to include any model for independent oversight. A copy of my March 2021 submission to the first Draft Bill is **attached**. My October 2022 submission to the development of the current Bill is also **attached**.

In the latter submission, I advised strongly for the inclusion of purposes and principles in the Bill to ensure it reflects the UN Convention on the Rights of the Child and relevant recommendations of the Royal Commission. While the object of the legislation is to protect and promote the best interests of children, the Bill does not require that the wellbeing and best interests of children and young people are the paramount consideration in the performance of the Independent Regulator’s functions and powers. Nor does the Bill include fundamental child-rights principles to guide decision-making (see for example s.3 of the *Commissioner for Children and Young People Act 2016*).

In my witness statement to the Tasmanian Commission of Inquiry, I spoke of the existing oversight mechanisms in Tasmania constituting a ‘disconnected patchwork of systems and processes which do not provide an integrated and systemic approach to keeping children safe from abuse in institutional settings’. It is important that the implementation and oversight of child safe standards and a reportable conduct scheme do not inadvertently add to this disconnected patchwork, making it even more difficult to navigate for children, families and those who support them.

I have expressed my views on the best ways forward for the implementation of child safe standards and a child-focused reportable conduct scheme in my submission to the Commission of Inquiry (**attached**) and witness statement (available here: [Statement-of-Leanne-McLean,-Commissioner-for-Children-and-Young-People,-12-April-2022.pdf](#) (commissionofinquiry.tas.gov.au)), and the Government has been clear on my position for some time. In December 2022, I communicated my views as to the best way forward for the implementation of the Bill directly to the Attorney-General and the Premier. I include a copy that letter and a recent media report relating to that letter as **attachments** for your consideration.

¹ Moore, T., & McArthur, M., (2022). Take notice, believe us and act! Exploring the safety of children and young people in government run organisations. Melbourne: Institute of Child Protection Studies, Australian Catholic University. DOI: 10.24268/acu.8xw6w, chapter 7.

² Moore & McArthur, p. 106.



I have recently been advised by the Government of its imminent intention to advertise and appoint the Independent Regulator. While I am pleased that implementation of the Bill is being prioritised by the Government, I am concerned that if the Independent Regulator is to operate in isolation from existing child-centred oversight mechanisms it would add to the patchwork of oversight. This approach may increase the complexity and opacity of the systems to protect and promote the rights, wellbeing and safety of our children and young people rather than assist to provide a co-ordinated and integrated child-safe system.

This far-reaching legislative reform should unequivocally place the best interests of children and young people at its centre. This is an area of public policy that we must get right.

I am happy to provide more information about my views on the Bill and the level of consultation I have had with Government upon request.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

Attachments:

- CCYP Submission – Child and Youth Safe Organisations Bill 2022
- CCYP Submission – Child and Youth Safe Organisations Bill 2020
- CCYP Submission – Commission of Inquiry
- CCYP Letter to Premier and Attorney-General
- Media article - 'Call to better protect kids', *Saturday Mercury*.

Commissioner wants new agency

Call to better protect kids

DAVID KILICK

THE state's children's commissioner has called on the government to establish a new agency with more resources and stronger powers to protect the welfare of Tasmanian children.

Commissioner for Children and Young People Leanne McLean has written to Premier Jeremy Rockliff and Attorney-General Elise Archer calling for the establishment of a Commission for Children and Young People.

Ms McLean said the new commission could follow the model that had been successfully operating in Victoria and would administer proposed new laws aimed at embedding child safety into organisation culture.

"Think about WorkSafe. Has it made a difference to the safety of people in the workplace? It's made a huge difference," she said. "And it's placed personal obligations on employers and

business owners to keep people safe. We need the same level of commitment for children."

In her letter, Ms McLean said the commission could command the additional funding needed to improve outcomes.

"It would, in my view, be in the best interests of Tasmanian children that you invest in establishing a new entity, a Commission for Children and Young People," she said. "This would, in my view, be the most cogent and practical way forward to ensure a single, child-centred body is responsible for independent oversight and advocacy to promote and protect the best interests of children and young people."

Ms McLean said a Bill before parliament would create Child and Youth Safe Standards and establish a Reportable Conduct Scheme, but who will administer them was still up in the air.

"Are we going to debate a Bill through the parliament about the regulation of thousands and

thousands of organisations in Tasmania against new sets of standards, without knowing who's responsible?" she said.

"The Bill itself does what it needs to do. It establishes those two schemes, and it does it relatively well. The big question is about implementation."

Attorney-General Archer said she was "absolutely committed" to ensuring the safety and wellbeing of young people.

"The Child and Youth Safe Organisations Bill 2022 draws heavily on the Victorian model, and the Department of Justice has been actively engaging with the Commissioner for Children and Young People during its development," she said.

"The final design for the Office of the Independent Regulator and how they will best serve the needs of children and young people will be finalised following the full passage of the Bill through parliament."

david.kilick@news.com.au



Leanne McLean wants a commission for children. Picture: Nikki Davis-Jones

Your Ref:
Our Ref: 870

05 December 2022

The Hon Jeremy Rockliff MP
Premier
jeremy.rockliff@dpac.tas.gov.au

The Hon Elise Archer MP
Attorney-General
elise.archer@dpac.tas.gov.au

Dear Premier and Attorney-General

Child and Youth Safe Organisations Framework

Thank you for agreeing to meet with me on 29 November, and for the opportunity to discuss my views on promoting the safety of Tasmanian children and, in particular, options for implementation, oversight and regulation of the Child and Youth Safe Organisations Framework. I note, Premier, that you were unable to join the meeting due to ill health. However, I have included you in this correspondence noting the considerable priority you have both placed on undertaking reforms in this important area of government policy relating to children's rights, safety and wellbeing.

As discussed during our meeting, my intent in providing my views to you at this stage is to fulfil my role and function as Tasmania's Commissioner for Children and Young People, according to the principle that the wellbeing and best interests of children and young people are paramount.

Throughout 2022, I have participated in the public hearings of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission of Inquiry), including by listening to much of the evidence and appearing as a witness on three occasions. While the work of the Commission of Inquiry will continue until it reports on its findings and recommendations in May 2023, the Commission has also clearly encouraged Government to progress the reforms it already knows are necessary.

I welcome your commitment to progressing the implementation of a Child and Youth Safe Organisations Framework for Tasmania (Framework) and the recent tabling of the Child and Youth Safe Organisations Bill 2022. I had input into the draft Bill through the public consultation process and have had regular contact with Child Abuse Royal Commission Response Unit.

Given your intent to establish a new dedicated and independent oversight and regulation body to implement the new Framework by 1 July 2023, I believe it is important to consider the location of that new regulatory function as an urgent matter to enable time for its establishment.

As you are aware, I hold a view that the Victorian Commission for Children and Young People provides an excellent model from which Tasmania can draw in designing the implementation of the Framework. I am also of the view that there is currently a considerable gap between the legislated



functions of Tasmania's Commissioner for Children and Young People, and the community expectation of what a children's commissioner should be able to do.

It is clear from the evidence heard through the Commission of Inquiry hearings process that the current oversight mechanisms in Tasmania are complex and opaque. In my view, a new and more comprehensive independent statutory body is warranted to ensure an integrated and systematic approach to keeping children safe from abuse in institutional settings. My views as expressed in this letter are consistent with and build upon the evidence I have given to the Commission of Inquiry.

It would, in my view, be in the best interests of Tasmanian children that you invest in establishing a new entity - a Commission for Children and Young People (Commission). The Commission could absorb the functions of the Commissioner for Children and Young People, subject to some refinement of existing functions, and new functions could be designed and added to implement the Framework. This would, in my view, be the most cogent and practical way forward to ensure a single, child-centred body is responsible for independent oversight and advocacy to promote and protect the best interests of children and young people in Tasmania.

In summary, my proposal consists of the following:

- Creation of a new entity through a single piece of legislation establishing a *Commission for Children and Young People* while repealing and re-enacting with amendments relevant provisions of the *Commissioner for Children and Young People Act 2016*;
- The new Commission would include the current functions of the Commissioner for Children and Young People, while clarifying the role of the Commission with respect to monitoring Tasmania's systems for out-of-home care (OOHC), child safety and youth justice;
- The new Commission would have functions to provide independent advocacy for individual children and young people in OOHC, as well as for those in custody as watch-house detainees and youth justice detention. (Alternatively, these functions could be set aside from the new Act and given to the Public Guardian, with appropriate information-sharing arrangements established. However, housing functions related to oversight and advocacy in a single child-centred body would make the integrity system simpler and easier to navigate for system users, including children and young people.)
- The Commission structure would, in my view, be best to include a Principal Commissioner to lead the Commission, as well as a Deputy Commissioner, with at least one of these positions required to be occupied by a Tasmanian Aboriginal person and who could fulfill the role of a Commissioner for Aboriginal Children and Young People in Tasmania. These positions could respectively be appointed as the Independent Regulator and Deputy Independent Regulator for the purposes of the Child and Youth Safe Organisations Bill 2022.
- Transitional and saving provisions applied to the new legislation establishing the Commission would enable the current work and activities of the office of the Commissioner for Children and Young People to continue uninterrupted under the new statutory arrangements.

I note that at the time of the introduction of the *Commissioner for Children and Young People Act 2016*, the Government indicated that the Act, and consequently the functions and powers of the Commissioner, would be reviewed within five years.¹ While a review has not yet taken place, the

¹ Jacquie Petrusma MP, Second Reading Speech, *Commissioner for Children and Young People Bill 2015*: "It is standard practice to review the effectiveness of any piece of new legislation after a period of time to ascertain whether it is achieving its intention effectively and efficiently. In the case of this Bill, it is proposed that the Act be reviewed within 5 years to ensure that it satisfies the needs and expectations of the Community".



introduction of the Child and Youth Safe Organisations Bill 2022 offers an opportunity to undertake that review within the context of establishing a Commission.

The office of Commissioner for Children and Young People has established a unique child-centred identity within Tasmania. This includes significant expertise underpinning the promotion and protection of children's rights and wellbeing. The work of the office is recognised locally, nationally, and internationally. The integrity, good will and professional capacity built by the office over the past 20 years has been acknowledged and is valued by children, young people, and their families, as well as decision makers.

The current office of the Commissioner for Children and Young People provides a strong foundation from which to transition to a new, more comprehensive Commission that absorbs, clarifies and enhances the functions and powers of the Commissioner, in line with community expectations. Importantly, establishment of a new organisation such as this would send a very clear message to the Tasmanian community, and particularly to Tasmanian children and young people, that the Government places the highest priority on the promotion and protection of their rights and wellbeing, and particularly their safety in organisations across Tasmania.

Thank you again for meeting with me, and for engaging in frank discussion regarding my position on this matter.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc Hon Roger Jaensch MP, Minister for Education, Children and Youth
Jenny Gale, Secretary, Department of Premier and Cabinet
Ginna Webster, Secretary, Department of Justice
Tim Bullard, Secretary, Department for Education, Children and Young People

Your Ref:
Our Ref:

21 October 2022

Ginna Webster
Secretary
Department of Justice

By email to: secretary@justice.tas.gov.au

Dear Secretary

Re: Child and Youth Safe Organisations Bill 2022

Thank you for the opportunity to comment on the Child and Youth Safe Organisations Bill 2022 (the draft Bill).

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) found that strengthened approaches to preventing, identifying, and responding to child sexual abuse and other forms of abuse in organisations will ultimately reduce the risk of child abuse occurring.

All children in Tasmania deserve to grow up being and feeling safe in their home, in their community, and in the organisations they interact with, and we all have a responsibility to ensure this future is realised. I therefore welcome the Tasmanian Government's commitment to introducing a new legislative framework to guide and regulate child safe practice and responses to inappropriate conduct towards children in Tasmanian organisations.

As I said in my [submission](#) to the draft Child Safe Organisations Bill 2020, the development and implementation of a child safe legislative framework and associated reforms is fundamental to our efforts to promote and protect the safety and wellbeing of all children and young people in Tasmania. Actions we take now, including through much needed investment in education and support to drive changes in organisational culture, will have long lasting consequences for children and young people in Tasmania.



Background

According to the information accompanying the request for comment, the reforms proposed by the draft Bill:

- Establish an Independent Regulator responsible for administering the Child and Youth Safe Standards and Reportable Conduct Scheme
- Adopt the 10 National Principles for Child Safe Organisations as the Child and Youth Safe Standards and a universal principle embedding Aboriginal Cultural Safety
- Require compliance with the Child and Youth Safe Standards by 13 classes of institutions, expected to cover around 8000 organisations
- Require 9 classes of high-risk institutions to report to the Independent Regulator on their investigation of Reportable Conduct that is alleged to have been committed by an employee or volunteer
- Provide powers to the Independent Regulator to ensure compliance with the Child and Youth Safe Standards and Reportable Conduct Scheme
- Allow for the flow of information between the Independent Regulator and other relevant parties

At the outset, I note that it is especially pleasing to see that the draft Bill reflects, to a large degree, the [feedback](#) I provided on the Child Safe Organisations Bill 2020 in March 2021. This feedback included, among other things, that the government should commit to developing a framework for the independent oversight of the child safe standards, that the standards should reflect the National Principles for Child Safe Organisations, and that the framework should include a reportable conduct scheme. Together, the child safe standards and the reportable conduct scheme will strengthen the capacity of organisations to prevent and respond properly to allegations and incidents of child abuse.

I draw to your attention my written contributions to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings which include a written [submission](#) and witness statement. My contributions to the Commission provide additional detail about my views on the need for comprehensive legislative reform to provide a co-ordinated and integrated child safe system for Tasmania and assist to provide context for my comments on the draft Bill.

Role of the Commissioner

My role as Commissioner for Children and Young People is governed by the *Commissioner for Children and Young People Act 2016* (CCYP Act).

Section 8 of the CCYP Act outlines, *inter alia*, my functions as follows:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;



- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and
- (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

In performing my functions, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child*; and
- give special regard to the needs of children and young people who are disadvantaged or vulnerable.

Legislation to progress recommendations of the Royal Commission relating to the promotion of child safety in institutions and organisations in Tasmania is clearly a matter relevant to my functions as Commissioner.

Comment

My more detailed comments on the draft Bill are enclosed in an Appendix (Appendix A - Child and Youth Safe Organisations Bill 2022). The commentary is laid out according to the clause provisions and sets out any concerns or issues with relevant provisions, asks questions about the interpretation of the relevant provision, and, from time to time, notes other or preferable legislative formulations or considerations.

Please note, the Appendix should not be read as an exhaustive commentary on the draft Bill. I would greatly welcome the opportunity to engage in further discussion on the matters that I have raised, or indeed on matters that may be raised by other stakeholders through the public consultation process.

Some of the key features of the attached commentary are as follows:

- The lack of “Purposes” or “Objectives” provisions and the lack of “Principles” provisions in the Bill is a clear oversight. Fundamental principles ought to be enshrined in the legislation, reflecting the UN Convention on the Rights of the Child and the Royal Commission recommendations.¹

¹ Recommendation 6.4 of the Royal Commission states: “All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.” The Royal Commission’s work on child safe institutions was underpinned by the United Nations *Convention on the Rights of the Child* and guided by the child’s rights to:

- have their best interests as a primary concern in decisions affecting them
- non-discrimination



- As has been done in both New South Wales and Victoria, the Tasmanian legislative child safe framework should provide that the same independent oversight entity has responsibility for the administration of both the child safe standards and a reportable conduct scheme. It is therefore pleasing to see that the draft Bill provides for this arrangement. However, the policy decision reflected in clause 7(1) of the draft Bill appears to be that the functions and powers of the proposed Independent Regulator will be vested in a “person” appointed by the Governor, rather than in a statutory body, differently constituted. There has been no explicit public consultation on or communication regarding who the Independent Regulator will be. Noting the importance of this public policy decision, it would be appropriate for the legislation to also enable appointment of a ‘body’ as the Independent Regulator. I would encourage further thorough consideration of the best and most effective model for independent child-centred oversight, regulation, and education for Tasmania’s framework.
- The enforcement powers of the Independent Regulator regarding both the Child and Youth Safe Standards (Part 3) and the Reportable Conduct Scheme (Part 4) could be significantly strengthened (see clauses 12,13,14,15, 18, 19, 20, 21, and 22). The draft Bill currently offers no or limited guidance on how the powers and functions of the Regulator are to be enforced. For example, what recourse does the Regulator have to enforce their powers, apart from via the offence provisions? Can the Regulator, in the context of the child safe standards, refer information about a non-compliant entity to a relevant authority, or request an authority to take action to promote and require compliance by an entity?
- Related to the above, there appears to be a lack of legislative guidance on how offences under the draft Bill (some of which are included in Part 6) are to be prosecuted and who is to do bring the prosecution. How will charges under the Act be laid and what is the role of the Regulator, if any, in taking a matter to Court? It is recommended that any laying of charges and prosecutions under the Act be independent of Government. Further consideration should be given to this and related issues (eg in the event of an administrative appeal of an internal review).
- At various points in the draft Bill the term “best interests of children” test is used rather than a “public interest” test in the context of the performance of a function or the exercise of a power (see for example clauses 24 and 26 of the draft Bill). The “best interests of children” test is unnecessarily limiting in certain situations and the broader and inclusive “public interest” test ought to be used where relevant in the Act.
- It is my view that a stronger formulation on the co-regulation of entities between the Regulator and existing regulatory bodies than is currently presented in clause 25 of the draft Bill (“Liaison with entity regulators”) is required. The importance of clear legislative provisions outlining how co-regulation is to work in practice was noted in a recent review of the equivalent Victorian legislation. A co-regulation model in Tasmania needs to be more clearly articulated than is currently the case in the draft Bill.

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- have the responsibilities of parents or carers respected
 - participate in decisions affecting them
 - be protected from all forms of violence, including all forms of sexual exploitation and sexual abuse, including while in the care of parents, guardians or other carers
 - special protection for children with disability.

Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6: Making Institutions Child Safe*, p. 136.



- Likewise, Part 3 should include a provision providing for or permitting a framework for co-regulation of the child safe standards. The child safe model in Victoria enables this and it would appear pragmatic to avoid duplication with industry regulators, especially in a small state like Tasmania, with the Independent Regulator taking a higher-level oversight role where relevant/appropriate.²
- The information sharing provisions contained in Part 5 of the draft Bill, whilst broad in scope, appear to be vague and uncertain. While I welcome the provision in the draft Bill that the *Right to Information Act 2009* and *Personal Information Protection Act 2004* do not apply in certain circumstances, the Victorian legislation appears to be more detailed in its approach.³
- I am also encouraging of additions to the range of entities (organisations) that should be considered for inclusion in Schedule 3 (Relevant entities to which Reportable Conduct Scheme applies). Some entities that are not currently within scope exercise a high degree of responsibility for children and/or engage in activities that involve a heightened risk of child sexual abuse due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children with whom the entity engages. The current review of the scope of the Victorian reportable conduct scheme will no doubt assist in deciding the right approach for Tasmania.

Additional detail on these matters as well as a range of other matters contained or reflected in the draft Bill are outlined in the Appendix.

Conclusion

I thank you for the opportunity to comment on this important draft Bill. I am available to discuss my comments if that would be of assistance.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc Hon Jeremy Rockliff MP, Premier of Tasmania

cc Hon Elise Archer MP, Attorney-General and Minister for Justice

cc Hon Roger Jaensch MP, Minister for Education, Children and Youth

Encl. APPENDIX A – Commentary on Child and Youth Safe Organisations Bill 2022

² Recommendation 6.10(b) of the Royal Commission provides that state and territory governments should ensure that “the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory body, such as a sector regulator”.

³ See the *Child Wellbeing and Safety Act 2005* (Vic):

ss 41A (Disclosures made in good faith), 41B (Disclosure of information by relevant person prohibited), 41C (Disclosure to other relevant persons permitted), 41D (Disclosure to report concerns permitted), 41E (Disclosure to protect child permitted), 41F (Disclosure to court or tribunal permitted), 41G (Disclosure to obtain legal advice permitted), 41H (Disclosing information to other authorities).

Your Ref:
Our Ref: 885

29 July 2021

Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings
GPO Box 229
Hobart TAS 7000

By email: contact@commissionofinquiry.tas.gov.au

Dear Commissioners

Re: Submission to the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*

Thank you for the opportunity to provide a written submission to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the Commission). I acknowledge the Commission's *Terms of Reference* and the *Information Paper* released by the Commission on 13 May 2021 inviting written submissions. I am grateful for the extension of time within which to provide my submission.

Aspects of this submission may be confronting or upsetting for victim-survivors of child sexual abuse or others affected by child sexual abuse. Support is available from the organisations listed on page 2 of the [Information Paper](#).

Child sexual abuse is truly abhorrent and is perpetrated against the most vulnerable in our society. Notwithstanding the incredible strength and resilience of victim-survivors of child sexual abuse in institutional settings, its effects are often profound and long-lasting. I note also that harmful sexual behaviour exhibited by children can have similarly significant effects on children who are the recipients of the behaviour as well as on children who exhibit such behaviours. The final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) described both the scale and the personal toll of child sexual abuse occurring within Australian institutions, including here in Tasmania. It highlighted the nature and adequacy of institutional responses to child sexual abuse and identified persistent problems with those responses as well as the impact of those responses on victim-survivors, their families, and others in the community. The Royal Commission also found that abuse within institutional settings can undermine trust in institutions and people in positions of authority. The Royal Commission also identified that child sexual abuse within institutional settings, sadly, remains a contemporary issue.

There has been a comprehensive examination undertaken by the Royal Commission and the Tasmanian Government has either accepted, or accepted in principle, the vast majority of its recommendations. Notwithstanding this, progress in Tasmania to implement recommendations has to date largely focussed on discrete amendments to existing legislation rather than comprehensive child safe legislative reform. Whilst these legislative changes are welcome steps in the right direction, many Tasmanian victim-survivors of child sexual abuse and their advocates do not feel they have been heard because they have not yet seen tangible or broadscale changes to Tasmania's systems and practices in response to their concerns. I acknowledge these reactions and concerns and, for the reasons outlined above, wholeheartedly support this Commission of Inquiry.



To date in Tasmania there has not been broad community consultation on options for systemic reforms to implement a child safe framework in Tasmania. This Commission of Inquiry is our opportunity to learn from the past, and look to the future, by doing all that we can to reduce the risk of child sexual abuse occurring in institutional settings in Tasmania. This means continuing to strengthen our approaches to preventing, identifying and responding to child sexual abuse in organisations, and helping to build child safe communities. All children in Tasmania deserve to grow up being and feeling safe in their home, in their community, and in the organisations they interact with, and we all have a responsibility to ensure this future is realised.

Role of the Commissioner for Children and Young People

The Commissioner for Children and Young People is an independent statutory office established under Tasmania's *Commissioner for Children and Young People Act 2016* (the CCYP Act). My functions and powers and the principles to which I must have regard are set out in that Act.

Section 8 of the CCYP Act outlines my general functions as follows:

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

In performing my functions, I am required to:

- Do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- Observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (CRC); and
- Give special regard to the needs of children and young people who are disadvantaged or vulnerable.

As noted in the Royal Commission's Final Report, "valuing children and their rights is the foundation of all child safe institutions".¹ The following articles of the CRC are of particular relevance to child safety in institutional settings:

- Article 3 - the child's right to have their best interests taken into account as a primary consideration in all actions and decisions that affect them;
- Article 12 - the child's right to have a say in all matters affecting them and for their views to be taken into account; and
- Article 19 - governments should ensure that children are properly cared for and protect them from physical or mental violence, abuse, neglect, maltreatment or exploitation.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Preface and Executive Summary*, p. 7.



Section 7 of the CCYP Act requires the Commissioner to prepare an annual plan describing the Commissioner's proposed program of work and activities for the following financial year and to provide a copy of that plan to the Minister. My [Annual Plan 2021-2022](#) sets out my program of work and activities for the current financial year. The Plan sets out streams of activity beneath identified priority areas of work, relating to my functions as outlined above.

Consistent with my statutory functions, my comments below focus on matters that are particularly relevant to promoting and protecting the rights, wellbeing and best interests of children and young people in Tasmania.²

Focus of this submission

This submission focuses on the systems and structures currently in place in Tasmania to prevent, identify and respond to child sexual abuse in Tasmanian organisations and institutions. Further, this submission identifies the systemic changes that I believe are required to further strengthen our systems and structures and to truly embed a culture of safety for children, as well as to enable more effective prevention, identification, reporting, and responses to allegations and incidents of child sexual abuse. My submission does not detail personal stories of victim-survivors. However, my views are very much informed by the individual experiences that are regularly raised with me through the many contacts my office receives from members of the public, for which I am thankful as they help inform how I undertake my role on behalf of Tasmania's children and young people.

My comments are not intended to be exhaustive. It is beyond the scope of this submission to detail all of the recommendations of the Royal Commission, and the approaches taken by our own and other jurisdictions to implement all of those recommendations.

For ease of reading, I have divided this submission into two parts. **Part 1** details where we are now (nationally and in Tasmania) in implementing child safe legislative frameworks to keep children safe. Part 1 includes a specific focus on out-of-home care (OOHC) and youth justice, as well as the role of the Tasmanian Commissioner for Children and Young People in promoting and advocating for a child safe legislative framework. **Part 2** details the key elements of what I believe must be done in Tasmania to ensure we have a comprehensive and robust child safe system to prevent, identify and respond to child abuse in organisational settings.

Part 1. Where are we now?

1.1 The national context

The Royal Commission examined in detail what makes an institution child safe and it also made extensive recommendations on how to improve child safety within institutions.³

Volume 6 of the Royal Commission's Final Report titled *Making institutions child safe* provides recommendations regarding the prevention of child sexual abuse through child safe communities, the development and implementation of National Child Safe Standards, and the way that regulatory oversight and practice should be improved to facilitate the implementation of the Child Safe Standards in institutions. In response to the Royal Commission's recommendations, the [National Principles for Child Safe Organisations](#) (the National Principles) were developed and in 2019 were endorsed by members of the Council of Australian Governments, including the Tasmanian Government. The National Principles aim to provide a nationally consistent approach to creating

² Pursuant to section 3 of the CCYP Act, "child" means a person who has not attained the age of 18 years; and "young person" means a person, who has not attained the age of 18 years, as determined by the Commissioner in accordance with section 8(4).

³ Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, *Volume 6, Making institutions child safe; Volume 7, Improving institutional responding and reporting; and Volume 8, Recordkeeping and information sharing.*



organisational cultures that foster child safety and wellbeing. The National Principles are intended to guide the implementation of the recommendations of the Royal Commission; and have a broad scope that seeks to address all forms of child abuse in organisational settings.

The National Principles are:

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture;
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously;
3. Families and communities are informed and involved in promoting child safety and wellbeing;
4. Equity is upheld and diverse needs respected in policy and practice;
5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice;
6. Processes to respond to complaints and concerns are child focused;
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training;
8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed;
9. Implementation of the national child safe principles is regularly reviewed and improved;
10. Policies and procedures document how the organisation is safe for children and young people.

The Australian Government has not resourced a nationally consistent approach to the implementation of the National Principles. Several Australian jurisdictions have established their own child safe frameworks including through legislation, policies and regulatory functions. In the absence of a nationally consistent approach, variations have emerged between jurisdictions – meaning that children’s safety from abuse in organisational settings in some jurisdictions is now arguably better protected than it is in others.

For example, in Victoria, the Victorian Child Safe Standards have been fully operational since 1 January 2017 (prior to the establishment of the National Principles). All organisations that provide services or facilities specifically for, or employing, children or young people in Victoria must comply with the standards. The Victorian Commissioner for Children and Young People (CCYP VIC) promotes children’s safety in organisations in Victoria by administering legislated mandatory requirements under the Child Safe Standards. In addition, the CCYP VIC is responsible for administering the Victorian Reportable Conduct Scheme. This role includes supporting and guiding organisations that have received allegations of abuse to ensure that their responses are fair, effective, timely and appropriate, as well as independently overseeing, monitoring, and where appropriate, making recommendations to improve the responses of organisations.

Further, a Bill is currently before the New South Wales (NSW) Parliament to embed the Child Safe Standards as the primary framework guiding child safe practice in organisations in NSW (Children’s Guardian Amendment (Child Safe Scheme) Bill 2021). The Reportable Conduct Scheme for NSW is administered by the Office of the Children’s Guardian (the Children’s Guardian) (since 1 March 2020). The scheme monitors how certain organisations investigate and report on conduct allegations made against their employees, volunteers or certain contractors who provide services to children. Prior to the 2020 changes, the NSW reportable conduct scheme was administered by the NSW Ombudsman for several years.



1.2 Tasmania's current approach to preventing and responding to child sexual abuse in organisational settings

Tasmania has made limited progress in implementing a child safe legislative framework, with draft legislation (Child Safe Organisations Bill 2020) being released for consultation in late 2020. However, Tasmania does currently host a range of legislative, regulatory, and monitoring features that play a role in preventing or responding to child sexual abuse in organisational settings including:

- **Department of Justice – Registration to Work with Vulnerable People (RWVP)**
The *Registration to Work with Vulnerable People Act 2013* (the RWVP Act) aims to protect children and other vulnerable people from the risk of harm by –
 - preventing certain people from engaging in regulated activities; and
 - requiring people engaged in regulated activities to be registered; and
 - requiring risk assessments to be undertaken –
 - in relation to people wishing to be registered to engage in regulated activities; and
 - in certain circumstances in relation to people who are registered to engage in regulated activities.

Consumer, Building and Occupational Services (CBOS) – a division of the Department of Justice – registers people to work with children in Tasmania. CBOS assesses whether an individual is suitable to work or volunteer with children and provides registration (full or with conditions). Part 7A of the RWVP Act also imposes obligations on reporting bodies to notify the Registrar if they become aware of or suspect on reasonable grounds that a registered person has or may have engaged in reportable behaviour. Reportable behaviour is behaviour that poses a risk of harm to vulnerable persons, whether by reason of neglect, abuse or other conduct (see Registration to Work with Vulnerable People Regulations 2014, reg.5A).

- **Ombudsman Tasmania**
The role of the Ombudsman is to investigate the administrative actions of public authorities to ensure that their actions are lawful, reasonable and fair. Authorities within the jurisdiction of the Ombudsman include government departments, local councils, water and sewerage corporations, prisons, state-owned companies and Government Business Enterprises. The Ombudsman has an own motion investigative power or can commence an investigation following receipt of a complaint.
- **Custodial Inspector**
Tasmania's first Custodial Inspector was appointed in January 2017 and is also the Tasmanian Ombudsman and Health Complaints Commissioner. The *Custodial Inspector Act 2016* provides the Custodial Inspector with jurisdiction over all custodial centres in Tasmania. Tasmania Prison Service facilities, including the remand centre and holding cells at the Hobart Reception Prison and the Launceston Reception Prison, and the Ashley Youth Detention Centre (AYDC) are subject to the oversight of the Custodial Inspector. The focus of the Inspector is on systemic issues relating to the management, control and security of the State's prisons and youth detention centre and the care and welfare of prisoners and detainees. The Custodial Inspector has published Inspection Standards for Youth Custodial Centres in Tasmania and conducts inspections and reviews against these standards.

In late 2020, the Tasmanian Government released a draft Bill proposing amendments to the *Custodial Inspector Act 2016* nominating the Custodial Inspector as Tasmania's National Preventive Mechanism for the purposes of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Consultations closed on 11 December 2020, and to date a Bill is yet to be tabled in the Tasmanian Parliament.



- **Auditor-General**

The Auditor-General and the Tasmanian Audit Office provide independent assurance to the Tasmanian Parliament and community on the performance and accountability of the Tasmanian Public Sector. The *Audit Act 2008* sets out the Auditor-General's functions, mandate and powers.
- **Education Regulation**

The Teacher's Registration Board, the Office of Tasmanian Assessment, Standards and Certification, the Education Registrar and the Non-Government Schools Registration Board all provide critical regulatory oversight and support services to education in Tasmania. They provide this support for all education sectors, including government schools, independent schools, Catholic schools and some components of the vocational education and training sector. In 2020, the Minister for Education established a cross-sector steering committee to provide advice to him on how to strengthen and modernise the governance and regulatory framework for the delivery of education in Tasmania. The Review of Education Regulation Report was released in December 2020 and provided 24 recommendations to the Tasmanian Government. The draft Education Legislation Amendments (Education Regulation) Bill 2021 has just been released for consultation and proposes the legislative changes recommended by the review.
- **Early Childhood Education and Care Regulation**

The Education and Care Unit (in the Department of Education) is the regulatory authority for assessing and monitoring the provision of early childhood education and care against the National Quality Framework.
- **Professional Registration Bodies**

Many professions have professional registration bodies, for example, the Australian Health Practitioner Regulation Agency, the Legal Profession Board Tasmania, and the Teacher's Registration Board.
- **National Disability Insurance Scheme**

National Disability Insurance Scheme (NDIS) registered providers in Tasmania are subject to the NDIS Quality and Safeguards Commission's registration and regulatory system. The NDIS Quality and Safeguards Commission is an independent body that works with providers to improve the quality and safety of NDIS supports and services, investigate and resolve problems, and strengthen the skills and knowledge of providers and participants. The NDIS Practice Standards specify the quality standards to be met by registered NDIS providers to provide supports and services to NDIS participants. Together with the NDIS Code of Conduct, the NDIS Practice Standards build NDIS participants' awareness of the quality of service provision they should expect from registered NDIS providers.
- **Strong Families Safe Kids Advice and Referral Line**

The Strong Families Safe Kids Advice and Referral Line (ARL) is the first point of contact for all concerns or queries around child wellbeing and safety in Tasmania. The ARL provides information and advice about service options and other approaches for responding to the needs of children and families. When a child and their family needs assistance, the service may provide this through referral to another service, or in some circumstances if a child is considered to be at risk, the service may refer the matter to the Child Safety Service for assessment. In Tasmania, mandatory reporting requirements are outlined in Part 3 of the *Children, Young Persons and Their Families Act 1997*, including a list of prescribed persons who are mandatory reporters (s14(1)).



- **Tasmania Police**
The Department of Police, Fire and Emergency Management (DPFEM) provides policing and emergency management services to the Tasmanian community.
- **Commissioner for Children and Young People**
The Commissioner for Children and Young People is an independent statutory officer responsible to the Parliament of Tasmania, established under the *Commissioner for Children and Young People Act 2016*. The general functions of the Commissioner are set out above at page 2. Section 11 of the Act outlines the Commissioner's general powers; section 12 deals specifically with the Commissioner's power to compel the production of information, documents or answers to questions. The Commissioner has a specific function to act as an advocate for individual young people detained under the *Youth Justice Act 1997*. The Commissioner also undertakes systemic monitoring of Tasmania's OOHC system. The Commissioner's OOHC Monitoring Program was established in 2018, following the Tasmanian Government's commitment of funds for the Commissioner to undertake independent, systemic monitoring of the Tasmanian OOHC system.⁴ This monitoring relevantly falls within one or more of the Commissioner's general functions.

It is however important to acknowledge that the Commissioner does not have a complaint handling function and does not have the authority to investigate or review a specific decision made in respect of an individual case or specific circumstances unless requested to do so by the Minister for Children and Youth.⁵ The Commissioner may, however, investigate or otherwise deal with any matter affecting the wellbeing of children generally, when it is raised through a matter relating to a specific child.⁶ As Commissioner, if I become aware of an allegation of child abuse in an institutional setting, one potential response is for me to refer this information to the agencies and authorities best placed to investigate them (for example Tasmania Police and the Department of Communities Tasmania (DCT)). I have no function to monitor or review the way in which a government agency investigates or otherwise deals with a specific allegation to ensure that the matter has been dealt with appropriately.⁷ However, if requested by the Minister for Children and Youth, I must undertake an investigation or review decision making regarding an individual child or specific circumstances (CCYP Act, s9). I note however there is currently no oversight mechanism which sets the overarching expectation or benchmark for how these types of matters should be investigated by agencies.

- **Legislative requirements**
Recent legislative amendments have introduced relevant obligations on individuals and organisations (see the Tasmanian Government Annual Reports implementing the recommendations of the Royal Commission for further detail). Below are some examples of legislative amendments, noting that these examples are not exhaustive.
 - The *Criminal Code and Related Legislation Amendment (Child Abuse) Act 2019* introduced a new offence of failing to report the abuse of a child. The new provision – see s.105A of the *Criminal Code Act 1924* (the Code) – requires all persons who have formed a reasonable belief that an abuse offence has been committed against a child to disclose that information to a police officer as soon as practicable. Unlike the mandatory reporting requirement imposed by s.14 of the *Children, Young Persons and their Families Act 1997*, s.105A applies to everyone, not just to prescribed persons. The new offence applies to information gained by a member of the clergy of any church or religious denomination during a religious confession.

⁴ See also 1.2.1 below.

⁵ CCYP Act, s14(1) and s9.

⁶ CCYP Act, s14(2)(c).

⁷ CCYP Act, s14(1).



- The *Justice Legislation Amendment (Organisational Liability for Child Abuse) Act 2019* (enacted in 2020) amended the *Civil Liability Act 2002* by imposing a statutory non-delegable duty of care on all organisations that exercise care, supervision or authority in respect of a child to take reasonable precautions to prevent an individual associated with their organisation from being able to perpetrate child abuse on a child.⁸ Further, the amendments make organisations vicariously liable for child abuse perpetrated against a child by a person who is an employee of an organisation in certain circumstances.⁹ Neither of these amendments operate retrospectively.¹⁰
- **Funding Arrangements**

In addition to the above, organisations delivering services which receive funding from the Tasmanian and/or Australian Government are often required to comply with relevant standards. For example, funding agreements between organisations providing OOHHC services and the Tasmanian Government require organisations to deliver services in accordance with the *National Standards for Out-of-Home Care*. Similarly, disability employment and advocacy services receiving funding from the Australian Government are required to comply with the National Standards for Disability Services. The Royal Commission did not recommend that funding arrangements be used as the only mechanism to implement and enforce compliance. However, they can be a powerful motivator to change institutional practice.¹¹ The 2019 Review of the Victorian Child Safe Standards (Victorian Review) found similarly that funding relationships may be useful for promoting compliance but should not be seen as the sole regulatory tool and recommended that the *Child Wellbeing and Safety Act 2005* remove the link between funding arrangements and regulatory compliance and enforcement.

The features of the Tasmanian system described above, in my view, represent a disconnected patchwork of systems and processes which, despite their good intent, fail to provide an integrated and systematic approach to keeping children safer from abuse in institutional settings. The flow-on effects of the current system are that navigation by the public and agencies is difficult, there is little to no coordination or communication between regulatory agencies, and there is no central body with responsibility for systemic oversight.

1.2.1 Out-of-home care

In the 2017-2018 State Budget, the Tasmanian Government committed dedicated resources to the Commissioner for Children and Young People to conduct independent systemic monitoring of OOHHC in Tasmania. This commitment arose out of the Government's acceptance of all seven recommendations made by former Commissioner Mark Morrissey in his January 2017 report [Children and Young People in Out-of-Home Care in Tasmania](#). In my first [Monitoring Report](#), released in October 2019, I raised a number of concerns around the lack of independent external oversight of the OOHHC system in Tasmania. These concerns aligned with the recommendations made by the Royal Commission to improve the independent oversight of OOHHC, including:

- Mandatory accreditation scheme for government and non-government providers incorporating child safe standards (Recommendation 12.4);
- Independent body with responsibility for accreditation of OOHHC providers, and responsibility for compliance with standards (Recommendation 12.5); and
- Establishment and oversight of carers registers (Recommendations 8.17 - 8.23).

⁸ *Civil Liability Act 2002*, s49H(2).

⁹ *Civil Liability Act 2002*, s49J(1).

¹⁰ *Civil Liability Act 2002*, s4(7) & (8).

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, *Volume 6, Making institutions child safe*, p 297.



In 2017, in response to recommendations made in former Commissioner Morrissey's report, the then Department of Health and Human Services developed the [Strategic Plan for Out of Home Care in Tasmania 2017-2019](#), which articulated five key strategies that formed the basis of improvements to Tasmania's OOHC system, including full compliance with the *National Standards for Out-of-Home Care*. This plan has not been succeeded by a subsequent strategic plan specific to OOHC. Although I acknowledge there has been work undertaken to progress relevant initiatives,¹² Tasmania still does not have:

- A Quality and Accountability Framework for OOHC that includes Tasmanian Standards for OOHC, ensuring there is a specific standard (or standards) which incorporate(s) the National Principles for Child Safe Organisations;
- Accreditation of OOHC providers against Tasmanian Standards for OOHC by an independent external body;
- A Tribunal vested with jurisdiction that includes decisions made about children's wellbeing in OOHC; or
- A carers' register.

The lack of these mechanisms creates obvious and unacceptable gaps in our system, with the potential to negatively impact on the safety of highly vulnerable children. It is likely that whole-of-government support for and prioritisation of these initiatives within a comprehensive child safe legislative reform process will be necessary to see them come to fruition.

In July 2018, the Tasmanian Government established the Child Advocate for children and young people in OOHC. Based in the DCT, the Child Advocate's role is to provide advocacy services for and on behalf of all children and young people under the custody and/or guardianship of the Secretary of the DCT. In 2021, as part of the *Strong Families Safe Kids Next Steps Action Plan 2021-2023*, the Government also committed to appoint an additional Child Advocate for the north and north-west regions. Following recommendations in my 2019 Monitoring Report, the Child Advocate is now also responsible for delivering a visitors' program for children living in residential care in Tasmania.

The establishment of the Child Advocate for children in care has been a welcome addition to Tasmania's OOHC system. However, other jurisdictions have additional safeguards for children and young people living in OOHC, which were outlined in detail in former Commissioner Morrissey's report. For example, the Queensland (QLD) system is arguably the most extensive insofar as the Office of the Public Guardian (OPG), which is statutorily independent of government, has specific responsibilities to provide help, support and advocacy for individual children and young people in OOHC (which includes foster care, kinship care and residential care). In the OPG, advocates are lawyers, who can ensure that the views of children and young people are heard and taken into account when decisions around their care are being made. Advocates can also support children and young people in court proceedings and to take matters to the QLD Civil and Administrative Tribunal, which has jurisdiction to review certain aspects of a child's OOHC placement experience. This independent advocacy service is offered alongside a community visitors' program, which also provides an additional level of individual advocacy and monitoring of placement quality.

In my view, children and young people in OOHC should have access to an independent review body – such as a Tribunal – should they wish to dispute a decision made around their care. Identification of the types of administrative decisions in the OOHC context that could be reviewable by a tribunal should of course be a matter for discussion and consultation. However, possible examples include decisions about contact with family members, education, living arrangements, or other care arrangements. Tribunals vested with jurisdiction to review matters exist in Queensland, Western

¹² See for example, Department of Communities Tasmania, [Striving for Practice Excellence: Our Strategic Direction 2021-2024](#) and Department of Communities Tasmania, [Feedback Sought on the Development of Tasmanian Out of Home Care Standards and a Carers Register](#)



Australia, Victoria and the ACT. The recent establishment of the Tasmanian Civil and Administrative Tribunal (TasCAT) presents an excellent opportunity to introduce and incorporate a new jurisdiction to enable the independent review of administrative decisions made affecting children in OOHHC. In 2020, the Attorney-General confirmed that the Tasmanian Government will consider incorporating independent review of decisions made affecting children in OOHHC as part of the third stage of TasCAT's establishment in late 2021.

1.2.2 Youth Justice

As was highlighted in the Royal Commission Final Report, there is a high cumulative risk of child sexual abuse (by both adult perpetrators and children exhibiting harmful sexual behaviours) occurring in "total or closed institutions" such as youth detention centres. It is important to note that during my time as Commissioner no child or young person detained at AYDC has directly raised allegations of sexual abuse within that institutional setting with me. However, I have been made aware through other channels of serious and concerning allegations made about the safety of children and young people who have been detained at AYDC. Upon receiving details of any such allegations, I have immediately referred them to the agencies and authorities best placed to investigate them and, where appropriate, enforce the law, including Tasmania Police and the DCT. There is no requirement for agencies to provide me with information on how individual cases proceed once I have reported them. However, where an investigation conducted by an agency recommends systemic changes, as has been the case at AYDC, I can and do monitor the implementation of those recommendations.

As noted by the Royal Commission, the following four factors contribute to the risk of child sexual abuse in 'total or closed institutions':

1. The context gives perpetrators ample opportunity to be alone with children unsupervised;
2. Children are completely under the authority of the adults in the institution and so may have no realistic alternative but to comply with their demands to engage in sexual activities;
3. Children in these institutions have no parents actively involved in their lives to whom they could disclose abuse or seek protection, making them particularly vulnerable to sexual abuse;
4. The closed nature of the institutions isolates them from society's expectations and oversight.¹³

The Royal Commission made a range of recommendations aimed at creating safer physical environments in contemporary youth detention (Recommendations 15.3, 15.4), providing adequate support and training to staff (Recommendation 15.8), improving complaint handling systems (Recommendation 15.9) and providing independent oversight of youth detention (Recommendation 15.10).

I am a strong advocate for the development and implementation of an integrated therapeutic approach to youth justice in Tasmania, including at AYDC. I refer the Commission to my October 2019 letter to the Hon Roger Jaensch, former Minister for Human Services, in which I advocated for an overarching strategic plan governing the implementation of an integrated therapeutic youth justice model in Tasmania: [Letter to Minister Therapeutic Approach to Youth Justice 18 October 2019](#). I acknowledge the ongoing work being undertaken to implement a therapeutic approach at AYDC, including changes to the physical environment and the implementation of the trauma-informed [Practice Framework](#) and Learning and Development Framework for AYDC. I note the implementation of the new Practice Framework will require a sustained commitment to embedding the principles of the framework across the organisation. Further, I believe more work is needed to introduce a therapeutic model across the spectrum of youth justice services.

¹³ P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017.



The current model of independent oversight of children's rights and wellbeing in youth detention in Tasmania is via my individual advocacy function for children and young people detained under the *Youth Justice Act 1997*,¹⁴ the establishment of the Custodial Inspector in 2016, and the complaint handling role of the Ombudsman. Both myself and the Ombudsman have provided child-friendly resources to children and young people in youth justice detention about their rights in detention and how to make a complaint or raise a concern. Complaints around care inside youth detention facilities can be raised by young people through the Secretary of the DCT or through the Ombudsman. I visit AYDC approximately every three weeks and visit every detainee at the centre during each visit. Young people can also contact me at any time by phone and I can assist young people to make a complaint. I note there have been various approaches to resourcing the advocate function in the Commissioner's office since its inception. While the current model is in my view effective, a greater level of advocacy could be provided with additional resourcing, enabling an advocate to also be on site on a weekly basis and advocating for young people in day-to-day decision making.

It is also important to note that children and young people are often held as watch-house detainees in reception prisons (Hobart and Launceston) or a police watch-house in the north-west (before being transferred to the Launceston Reception Prison). In 2019, I provided [advice](#) to the Tasmanian Government outlining a framework to better promote and protect the rights and wellbeing of children and young people in custody in all custodial settings (including reception prisons, police watch-houses and AYDC) by ensuring relevant legislation, policies and procedures relating to personal searches, including strip searches, of children and young people in these settings are in line with well-established human rights standards and principles, and contemporary best practice. In June 2020, I welcomed the Tasmanian Government's acceptance of my recommendations regarding the searches of children and young people in custody in Tasmania. Since then, there have been changes to the Director's Standing Orders for the Tasmanian Prison Service and a new policy and procedure for governing searches at AYDC. To fully implement my recommendations, however, legislative and other reforms are required, which I will continue to monitor and provide input into.

1.3 Commissioner's role in promoting child safe organisations

No independent Tasmanian organisation or entity has been established or is specifically resourced by the Tasmanian Government to provide free advice, training and assistance regarding child safe practice and procedures – a matter which has been raised by myself and former Commissioners. Since coming into the role, I have had discussions with the Department of Justice regarding the additional resourcing that I believe would be required to expand the capacity of my office to provide education, training and advice on child safe organisations. I am aware that former Commissioner Morrissey also held similar discussions with Government, but this office has not been provided with such funding to date. However, Commissioners have played and continue to play an important role in promoting awareness of the importance of child safe organisations and advocating for the establishment of a child safe legislative framework in Tasmania.

In September 2015, former Commissioner Morrissey released a report ([Strengthening Child Safe Organisations](#)) aimed at raising awareness in the Tasmanian community about what constitutes a child safe organisation. The report was informed by forums with senior leaders of government and non-government organisations responsible for services to children and young people, as well as consultations with children and young people on what makes them feel safe or unsafe in organisational settings. The report was complemented by a child and youth-friendly pamphlet, a checklist for parents and carers with advice on child safe organisations, and a video of young people speaking about what makes them feel safe in an organisational setting.

¹⁴ CCYP Act 2016, s8(1)(b).



More recently, I have advocated for the incorporation of the National Principles into standards for OOHC as part of my role conducting independent systemic monitoring of OOHC. I have also provided submissions to various draft Bills seeking to address some recommendations of the Royal Commission regarding child safe organisations, in particular, a [submission](#) on the draft Child Safe Organisations Bill 2020.

On occasions, I have been contacted by people sharing concerns about child-safe practice in organisations. The pathway to respond to those concerns is dependent on the circumstances, noting I have neither an investigative function for individual complaints nor a function to monitor the handling of complaints by others. I am also periodically contacted by organisations seeking education, assistance and advice in the development of their child safe policies and how to deal with situations involving an organisation's employees. My ability to provide such assistance is limited, not only by my current resourcing, but also by the absence of a Tasmanian child safe legislative framework.

1.4 Conclusion

There is no doubt that the Tasmanian Government has taken some welcome additional steps in response to the recommendations made by the Royal Commission to strengthen our systems for protecting children in organisational and institutional settings. As mentioned above, this has included legislative changes (*Criminal Code and Related Legislation Amendment (Child Abuse) Act 2019*; *Justice Legislation Amendment (Organisational Liability for Child Abuse) Act 2019*), and the development of a draft legislative framework for child safe organisations (Child Safe Organisations Bill 2020). Further, the Tasmanian Government has made a commitment to implementing a Reportable Conduct Scheme following the implementation of the legislative child safe framework, as well as a commitment to commencing implementation of Tasmanian Standards for Children and Young People in OOHC, a commitment to developing a nationally consistent Carers Register, and further improvements to the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle across the child safety system.

However, despite these commitments, there has been no broad public consultation on the systemic changes that are required to implement a child safe legislative framework in Tasmania, including consultation on, and commitment to, independent oversight, consistent with the recommendations of the Royal Commission. For example, it was particularly concerning to me that the Government's recent draft Bill to embed a child safe organisational framework in Tasmania did not contain a framework for independent oversight, as was recommended by the Royal Commission. I note the correspondence accompanying the draft Bill refers to the Tasmanian Government's commitment to:

*"Develop options for a child safe legislative framework in Tasmania that supports the intent of the National Principles for Child Safe Organisations and provides a plan for the implementation of the Royal Commission's recommendations relating to Child Safe Standards and a Reportable Conduct Scheme in Tasmania."*¹⁵

In my view, the draft Bill reflects a fundamental misunderstanding of the integral role of independent oversight within a child safe framework for Tasmania.

Part 2. Strengthening our approach to keeping children safe

This Commission of Inquiry creates an enormous opportunity for us to realise and act on our shared responsibility to take all necessary steps to reduce the risk of child sexual abuse occurring and to respond appropriately if it does occur. This will require wholesale change to the way we empower children to have a voice, to how our organisations work to protect children and to how our community embraces and oversees the National Principles. To aid in this process, I have set out below what I believe to be a starting point for a best practice child safe system for Tasmania. I certainly don't

¹⁵ Tasmanian Government, *Protecting our Children: First Year Action Plan 2018-2019*, p 10.



assume that I have all the answers, or that my proposal is finite. My contribution will no doubt be one of many contributing to the work of the Commission. It is important that we get this right, as any changes that we make now will have lasting consequences, not just for today's children, but for future generations of children growing up in Tasmania.

2.1 A co-ordinated and integrated child safe system

To strengthen our approach to keeping children safe from abuse in organisational settings, we need to implement the following interrelated elements:

- Empower children and young people to have a voice in matters that affect them;
- Introduce mandatory child safe standards with independent oversight;
- Establish a nationally consistent reportable conduct scheme;
- Implement a whole of community approach to preventing child sexual abuse; and
- Ensure appropriate information sharing between agencies responsible for children's safety and wellbeing. (see Figure 1)



Figure 1. A co-ordinated and integrated child safe system

2.1.1 Empower children and young people to have a voice in matters that affect them

Listening to children and young people about the matters that affect their lives and genuinely considering what they have to say leads to better and more appropriately informed decision-making. Organisations have a role in educating children and young people about their right to be heard, listened to, and taken seriously, as outlined in Article 12 of the CRC. The CCYP VIC, the NSW Children's Guardian, and the Australian Centre for Child Protection have developed an excellent [guide](#) to support organisations that work with children and young people to empower them and foster their participation to enhance their safety. Empowerment and participation of children and young people is a critical element of creating an organisation that is safe for children and young people and in protecting them against abuse and harm. For example, organisations which foster the empowerment of children and young people are more likely to have inappropriate or unsafe practices or situations reported, have positive and trustworthy relationships between children and young people and adults/peers, and have confident children and young people who know that when they report concerns that their views and wishes will be taken seriously. The Royal Commission found that children and young people want to be involved in identifying and dealing with safety issues in partnership with adults and organisations, and have their views recognised and valued.¹⁶

¹⁶ Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, Volume 6, *Making institutions child safe*, p. 160.



2.1.2 Mandatory child safe standards with independent oversight

Notwithstanding the work undertaken by the Tasmanian Government to date, systemic and cultural factors continue to exist in Tasmania which can contribute to the abuse of children or stymie our ability to respond consistently and appropriately if it does occur. It is my strong view that mandatory child safe standards are necessary to proactively drive systemic and cultural change. In March 2021 I provided a [submission](#) to the Tasmanian Government on the draft Child Safe Organisations Bill 2020. The following comments build and expand on the comments I made on the draft Bill.

The Child Safe Organisations Bill 2020 outlined five proposed child safe standards for Tasmania (see Clause 2 of Schedule 1) which appeared to broadly align with the Child Safe Standards recommended by the Royal Commission and with the National Principles. However, there were differences between them which created confusion and it was not clear to me why the National Principles were not simply replicated in the draft Bill. The proposed standards redrafted and, in some cases, combined elements of individual Royal Commission Child Safe Standards or National Principles, and in other instances were measures of implementation such as the development of a Code of Conduct. The Royal Commission's Standards and the National Principles are intended to be implemented in a way which allows flexibility and recognises the variety of organisational sizes, types and capacities. In addition, the draft Bill also failed to effectively clarify which organisations would be in scope in terms of compliance with the proposed standards. In my opinion, Tasmania should simply adopt the National Principles as Tasmania's Child Safe Standards into its child safe legislation.

There was no clear intention evident in the draft Bill to establish independent oversight of the child safe standards to monitor and enforce compliance with the standards nor to perform other related functions, as envisaged by the Royal Commission. The types of oversight and compliance monitoring described in the draft Bill were, in my view, inadequate to achieve the levels of systemic and cultural change required in Tasmania, including in Tasmanian Government institutions, to put the interests of children first and to keep them safe from harm.

It is my strong view that provision should be made for an independent entity in Tasmania to undertake child safe standards oversight, as well as educative and other functions, as outlined in Royal Commission recommendations 6.10 and 6.11.

The Victorian Review highlighted a range of operational issues in implementing mandatory child safe standards. The Victorian experience provides useful insights into how best to implement an extremely complex and resource-intensive scheme, which will be important for Tasmania to learn from. The following elements of implementing and regulating child safe standards are essential:

- **Education and capacity-building:** Prior to the introduction of standards, there needs to be adequate awareness raising, promotion and support to organisations required to comply. The CCYP VIC undertook extensive awareness raising activities for six months prior to assuming responsibility for administering the standards, including a digital awareness campaign, information sessions, information materials, training partnerships and a dedicated website. The CCYP VIC is also responsible for ongoing education and capacity-building for organisations on the standards. However, the Victorian Review found that resource restrictions limited both the CCYP VIC's and relevant authorities' capacity to raise awareness of, and drive compliance with, the standards. Resourcing for ongoing education, awareness and capacity-building needs to be considered to provide organisations with sector-specific supports and ongoing compliance advice.



- **Risk-informed approach:** Consistent with evidence presented to the Royal Commission, it is essential that the independent oversight body take a risk-informed approach to regulation to ensure decisions on the use of limited resources are made to have the greatest impact on child safety. Risk-based regulation involves targeting compliance and enforcement according to the level of risks to children, and the extent to which the organisation's attitude to compliance exacerbates those risks.¹⁷
- **Clarity regarding oversight functions:** It is important to ensure that organisations required to implement standards have clarity around the functions of the independent oversight body and, if a co-regulatory framework is adopted, the commensurate functions of sector regulators. The Victorian Review found that there were inconsistencies between the functions and the powers of the CCYP VIC compared to sector regulators, and a lack of clarity around who the regulator of a particular organisation should be. Amendments to the *Child Wellbeing and Safety Act 2005*, which passed the Victorian Parliament in June 2021, aim to reduce the confusion, duplication and regulatory burden for organisations by clearly identifying the regulator for each sector and the regulator's functions in relation to the standards.
- **Information sharing** provisions need to be clearly articulated in legislation to ensure the flow of information between regulators and across regulatory schemes to ensure effective coordination and efficiency. In addition, as Australia moves towards a nationally harmonised approach to implementing child safe standards, the ability for entities to share information with interstate counterparts will become increasingly important.
- **Resourcing:** Any child safe scheme needs to be adequately resourced to ensure there is the ability to undertake all the necessary functions; from education, engagement, and capability building to monitoring and enforcement. For example, the CCYP VIC in their submission to the Victorian Review stated that the resources available for administering the standards are limited, which impacts on their ability to undertake enforcement activity. Due to a range of factors, the administration of the Reportable Conduct Scheme has taken precedence, with the CCYP VIC not able to focus as many resources on education and enforcement in relation to the Standards.
- **Enforcement:** It is essential that there are adequate mechanisms for enforcing compliance with the standards, including adequate penalties, at all levels of risk. This includes the tools to deal with low risk, cooperative organisations as well as non-compliance by disinclined organisations, including ways to escalate the response if an organisation continues not to comply. Particular powers could include the ability to enter premises to conduct inspections, notices to produce (with associated penalties upon failure to produce), infringement notices, and publishing details of non-compliant entities. All regulators (in a co-regulatory model) should have the same powers to ensure a consistent approach to enforcing compliance with the standards.

2.1.3 Nationally consistent reportable conduct scheme

Consistent with the recommendations of the Royal Commission, it is essential that a child safe standards framework for Tasmania is accompanied by a reportable conduct scheme. The Royal Commission defines a reportable conduct scheme as “a legislated scheme for the reporting, investigation and independent oversight of a range of complaints or allegations made against employees and volunteers in certain government and non-government agencies, which may include child abuse, child neglect, and child-related misconduct.”¹⁸ Under such a scheme, agencies must

¹⁷ See figure 1, page 8 of NSW Office of the Children's Guardian, [Making organisations safer for children: Regulation of child safe standards in NSW – Consultation Report](#).

¹⁸ Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, *Volume 8, Recordkeeping and information sharing*, p. 35.



report complaints, allegations (and convictions) against their employees and volunteers to an independent oversight body. The oversight body is then authorised to monitor and scrutinise the agency's handling and investigation of the complaint.

The way in which a child safe legislative framework and a reportable conduct scheme operate in organisational contexts has been aptly described by the CCYP VIC in an Information Sheet available on their website. Together, the child safe standards and the reportable conduct scheme are intended to strengthen the capacity of organisations to prevent and respond properly to allegations of child abuse. While they create distinct sets of responsibilities for organisations, they have been designed to complement one another.¹⁹

“An allegation of reportable conduct may reveal information about the effectiveness of the systems used by an organisation to prevent child abuse and respond to allegations of child abuse. This information can be used to improve ... systems and better protect children from child abuse.”

The Tasmanian Government's *Third Annual Progress Report and Action Plan 2021* sets out the Tasmanian Government's response to and progress implementing the Royal Commission recommendations relating to reportable conduct schemes as follows:

Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Response: Accepted

Responsibility: Tasmanian Government – Department of Justice

Progress: For consideration

Recommendation 7.10

Reportable conduct schemes should provide for:

- a. an independent oversight body
- b. obligatory reporting by heads of institutions
- c. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- d. a definition of reportable conduct that includes the historical conduct of a current employee
- e. a definition of employee that covers paid employees, volunteers and contractors
- f. protection for persons who make reports in good faith
- g. oversight body powers and functions that include:
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
 - ii. monitoring the progress of investigations and the handling of complaints by institutions
 - iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
 - iv. power to exempt any class or kind of conduct from being reportable conduct

¹⁹ Commission for Children and Young People (Victoria), [Information sheet 6, Child Safe Standards and Reportable Conduct](#).



- v. capacity building and practice development, through the provision of training, education and guidance to institutions
- vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

Response: Accepted

Responsibility: Tasmanian Government – Department of Justice

Progress: For consideration

It is regrettable that progress to implement a reportable conduct scheme in Tasmania remains “for consideration”. However, there can be no doubt that we are very well placed to learn from the schemes already established or in development in other Australian jurisdictions. In Victoria and NSW, independent statutory entities have responsibility for promoting and providing independent oversight of child safe standards, and for oversight of organisational responses to allegations of child abuse through reportable conduct schemes. In particular, it is clear there are benefits in locating Reportable Conduct Schemes in the same organisation with oversight of Child Safe Organisations.

[New South Wales’ reportable conduct scheme](#) was administered by the NSW Ombudsman’s Office until March 2020 when the *Children’s Guardian Act 2019* transferred responsibility for the scheme to the Children’s Guardian. The Children’s Guardian already had responsibility for promoting child safe standards and working with children checks. The decision to transfer the reportable conduct scheme to the Children’s Guardian was made following the Royal Commission, noting its suggestion that the agency responsible for regulating child safe standards should also have the responsibility for reportable conduct.²⁰ As mentioned above, a Bill is currently before the NSW Parliament to embed the Child Safe Standards as the primary framework guiding child safe practice in organisations in NSW (Children’s Guardian Amendment (Child Safe Scheme) Bill 2021). This Bill also gives regulatory powers to the Children’s Guardian to monitor the implementation of the Child Safe Standards and investigate complaints and concerns.

[Victoria’s reportable conduct scheme](#) has been administered by the CCYP VIC since 2017 following amendments to the *Child Wellbeing and Safety Act 2005*. These amendments reflect the Victorian Government’s response to the Victorian Parliament’s Family and Community Development Committee Inquiry into the Handling of Child Abuse and other Non-Government Organisations. The report of that Inquiry, *Betrayal of Trust*, recommended independent scrutiny of organisations’ systems and processes to prevent and respond to allegations of child abuse. As discussed above, the CCYP VIC also has oversight and regulatory responsibility for the Victorian Child Safe Standards. The CCYP VIC supports organisations to implement and comply with the standards by providing information and training activities throughout Victoria.

I note also that the [ACT’s reportable conduct scheme](#) was introduced in 2017 to improve organisation-related child safety. It does so by providing the ACT Ombudsman with oversight over how certain organisations prevent and respond to allegations of child abuse and child-related misconduct by employees. The ACT has not yet implemented child safe standards although broad public consultation occurred in late 2019 and early 2020, and a [scheme is currently being developed](#).

2.1.4 Whole of community approach to preventing child sexual abuse

Children must be safe no matter where they are. Therefore, to ensure that children are safe within organisations, organisations need to be part of child safe communities. Creating child safe communities is about fostering an environment where child sexual abuse is prevented, and, where

²⁰ New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 August 2019, 15:37 (Gareth Ward, Minister for Families, Communities and Disability Services), <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-106820>



such abuse does occur, it is identified, reported and responded to appropriately. To create child safe communities, children need to be valued and respected, they need to have their rights upheld, and there needs to be an acknowledgement that everyone has a role in keeping children safe. Parents and carers play a valuable role in educating and protecting children, particularly when they reinforce messages from other institutions such as schools and service providers.

The Royal Commission highlighted the misperceptions, attitudes and beliefs that “can enable, encourage or normalise sexually abusive behaviour towards children” in all Australian communities and which may discourage disclosures or help seeking. It concluded that community prevention initiatives should build on strengths in communities to:

- Increase awareness and knowledge about child sexual abuse, both inside and outside of institutional contexts;
- Counter problematic attitudes and practices that increase risks to children; and
- Strengthen the community’s capacity to respond effectively and remove social barriers to seeking help and disclosing abuse.²¹

Tasmania does not currently have a coordinated approach to child safe education and prevention. A key recommendation of the Royal Commission was the design and implementation of a National Strategy to Prevent Child Sexual Abuse. This work is being led by the National Office of Child Safety and will outline a whole-of-community approach to preventing child sexual abuse including through education and awareness raising, improved supports for children who show harmful sexual behaviours and offender prevention interventions, as well as giving victim-survivors access to the right support at the right time. This strategy may be useful in providing guidance for approaches implemented by the states and territories.

Further, in late 2019 I provided [comment](#) on the *Consultation Paper: Developing a Program to preventing HSB for Children and Young People* released by the DCT. I acknowledged in that submission the Royal Commission’s view that it is desirable to adopt a public health approach as an overarching framework for preventing and responding to harmful sexual behaviours (Recommendation 10.1). In my submission, I outlined the elements of a public health approach to harmful sexual behaviours. I noted that “a strategic and well-implemented multi-agency approach at all levels of the community”²² is integral to a public health approach to preventing and responding to harmful sexual behaviours. There is a clear need for the development of an overarching policy framework in which to embed our service system response and consideration should be given as to whether there is a need for legislative reform to underpin and support that policy framework.

2.1.5 Information sharing

The Royal Commission and subsequent jurisdictional reviews and reports²³ have all emphasised the importance of information sharing between institutions responsible for children’s safety and wellbeing as a necessary way to identify, prevent and respond to risks and incidents of child sexual abuse. These reports have also emphasised the importance of ensuring that privacy concerns are not prioritised over the safety and wellbeing of children for the purposes of information sharing. Unfortunately the challenge lies in ensuring that people know when and how to share information and that systems are in place for information sharing to occur.²⁴ Information sharing is necessary to support the implementation of child safe standards, and for the effective performance of functions

²¹ Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, *Volume 6, Making institutions child safe*.

²² Meiksans, J., Bromfield, L., and Ey, L., *A Continuum of Responses for Harmful Sexual Behaviours: An Issues Paper for Commissioner for Children and Young People Western Australia*, Australian Centre for Child Protection - University of South Australia, December 2017, p.16.

²³ Joint Standing Committee on the Commissioner for Children and Young People, [From Words to Actions: Fulfilling the Obligation to be Child Safe](#), and Department of Health and Human Services, [Victorian Review of the Victorian Child Safe Standards, Final report – December 2019](#)

²⁴ Joint Standing Committee on the Commissioner for Children and Young People, [From Words to Actions: Fulfilling the Obligation to be Child Safe](#), p.80.



and powers of any independent body tasked with oversight of child safe standards and reportable conduct.

The Victorian Review found several information sharing challenges which were hindering the implementation of their child safe scheme. For example, the Review found there was no clear provision in the Act allowing relevant authorities to share information with one another, or to allow the CCYP VIC to provide updates about actions taken by CCYP VIC, or other relevant information, to individuals who raised concerns with them about an organisation's non-compliance. The advantage of improving information sharing between regulators and across regulatory schemes is that it has the potential to reduce burden on organisations by enabling a single report to be made to a regulator who can then share that information with other relevant regulators and agencies in a timely way.²⁵

Action 2 of the *Strong Families Safe Kids Next Steps Action Plan 2021-2023* is to undertake a review of the *Children, Young Persons and their Families Act 1997* which includes examining information sharing across government and between non-government services. This will provide an opportunity to examine current information sharing practices and potentially streamline information sharing protocols in legislation.

2.2 Child-centred independent oversight

The Royal Commission made several recommendations regarding the establishment of nationally consistent independent monitoring and oversight of child safe standards, youth detention, OOHC, and reportable conduct.

The Tasmanian Government's *Third Annual Progress Report and Action Plan 2021* sets out the Tasmanian Government's response to and progress implementing the recommendations of the Royal Commission relating to monitoring and enforcing compliance with child safe standards. Of particular relevance are the following recommendations:

Recommendation 6.10

State and territory governments should ensure that:

- a. an independent oversight body in each state and territory is responsible for monitoring and enforcing the Child Safe Standards. Where appropriate, this should be an existing body.
- b. the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory government body, such as a sector regulator.
- c. regulators take a responsive and risk-based approach when monitoring compliance with the Child Safe Standards and, where possible, utilise existing regulatory frameworks to monitor and enforce the Child Safe Standards.

Tasmanian Government Response: Accepted in principle

Responsibility: Tasmanian Government – Department of Justice with support from the Department of Communities Tasmania

Progress: For Consideration

²⁵ Department of Health and Human Services, [Victorian Review of the Victorian Child Safe Standards, Final report – December 2019](#), p. 50.



Recommendation 6.11

Each independent state and territory oversight body should have the following additional functions:

- a. provide advice and information on the Child Safe Standards to institutions and the community
- b. collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety
- c. partner with peak bodies, professional standards bodies and/or sector leaders to work with institutions to enhance the safety of children
- d. provide, promote or support education and training on the Child Safe Standards to build the capacity of institutions to be child safe
- e. coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards.

***Tasmanian Government Response: Accepted in principle
Responsibility: Tasmanian Government – Department of Justice with support from
the Department of Communities Tasmania
Progress: For Consideration***

It is my strong opinion that provision should be made for an independent entity in Tasmania to undertake oversight, educative and other functions, as outlined in Royal Commission recommendations 6.10 and 6.11. For oversight of child safe standards, the Royal Commission noted that “Governments might enhance the roles of existing children’s commissioners or guardians for this purpose.”²⁶ This is a position I fully support, noting however the need for legislative reform accompanied by adequate resourcing to permit this to occur in Tasmania.

Variations exist between jurisdictions depending on the existing independent statutory oversight bodies already in existence in each state or territory. For example, in NSW, where there is an established Advocate for Children and Young People and a Children’s Guardian, the Advocate undertakes systemic advocacy and the Children’s Guardian has taken on oversight of both child safe standards and reportable conduct. In Victoria, the independent oversight of services for children and young people is through the CCYP VIC, which includes the systemic advocacy and regulatory oversight mechanisms distributed across two organisations in NSW (Advocate and Guardian). The CCYP VIC submission to the Victorian Review stated that they:

“see advantages on a daily basis of administering both the Standards and the [Reportable Conduct] Scheme. We are able to take a holistic approach, focusing attention on culture and systems to prevent and respond to child abuse through the Standards, as well as providing oversight to ensure individual allegations of child abuse are properly reported and investigated through the Reportable Conduct Scheme. Our work in relation to the Scheme frequently alerts us to organisations that need to focus further effort on the Child Safe Standards, allowing us a broader preventive mandate with those organisations.”²⁷

As has been done in both NSW and Victoria, the Tasmanian legislative child safe framework should provide that the same independent child-centred oversight entity has responsibility for the administration of both the child safe standards and a reportable conduct scheme.

Independent oversight is fundamental to community confidence in the integrity of our organisations and institutions. It is also vital that independent oversight is supported by a culture within government and non-government organisations alike that recognises and embraces independent oversight as a

²⁶ Royal Commission into Institutional Responses to Child Sexual Abuse. 2017. *Final Report: Volume 6, Making institutions child safe*, p. 16.

²⁷ Commission for Children and Young People (VIC), *Submission to the Department of Health and Human Services; Review of Victoria’s Child Safe Standards*, p.8.



critical contributor to improving children's safety within their organisations (including through improved transparency, accountability, continuous quality improvement and capacity building).

2.2.1 Co-regulation

As acknowledged by the Royal Commission, it is important that the right balance is struck between ensuring child safe standards are implemented effectively and that organisations are not overly burdened by the weight of compliance.²⁸ In Victoria, the *Child Wellbeing and Safety Act 2005* (Vic.) establishes a co-regulatory model of Child Safe Standards by both the CCYP VIC and other relevant bodies (Victorian government departments and authorities that regulate in-scope organisations). The co-regulatory model does appear to be the most pragmatic approach to implementing a child safe legislative framework to reduce burden on organisations and sectors which are already heavily regulated. The independent oversight body would then be responsible to work with sector regulators on compliance with the standards, whilst becoming the sole regulator for organisations that do not have a relevant regulator.

In developing the regulatory framework for child safe standards in Tasmania, it will be important to take note of the achievements and challenges experienced by other jurisdictions in implementing their child safe legislative frameworks. For example, the Victorian Review found that there were substantial challenges arising from the co-regulatory model established by their legislation. In many instances there were multiple regulatory authorities involved, and time was wasted with coordination of compliance activities and deciding which agency would lead the response. This created inefficiency, uncertainty, and delays, and in some cases, reluctance on the part of relevant authorities to take compliance action. The *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* (which passed the Victorian Parliament in June 2021) implements the recommendations of the Review by (amongst other changes) introducing a mechanism that clearly identifies the regulator for each sector that is subject to the standards and articulating regulators' functions in relation to the standards.

The Victorian Review also found that oversight, compliance and enforcement of the Child Safe Standards should be strengthened, and that the necessary statutory powers to monitor and enforce compliance effectively were not always available. For example, the CCYP VIC did not have all of the regulatory compliance and enforcement powers it required, and those that were provided were inhibited by requirements to consult with each relevant authority for an organisation before exercising these powers. The Review concluded that the CCYP VIC should be given additional powers (such as through duly appointed authorised officers) to enable a more responsive, risk-based approach to enforcing standards and that relevant authorities should likewise be given commensurate powers to the CCYP VIC (where they do not already have the equivalent powers). As noted above, legislative amendments to strengthen the regulatory framework for the standards were recently passed by the Victorian Parliament. The amendments provide, among other things, for increased functions and powers for the CCYP VIC and establish and set out the role of sector regulators and integrated sector regulators and the allocation of responsibility for relevant entities.²⁹

2.3 Review of the CCYP Act

Regardless of the child safe legislative framework ultimately adopted for Tasmania, it is the case that the Commissioner for Children and Young People has an important function to protect and promote the safety of Tasmania's children and young people generally. It is therefore essential that the CCYP Act reflects contemporary standards and expectations. In this respect, I note the CCYP Act was developed prior to the Final Report of the Royal Commission.

²⁸ Royal Commission into Institutional Responses to Child Sexual Abuse. 2017. *Final Report: Volume 6, Making institutions child safe*, p.16.

²⁹ <https://www.legislation.vic.gov.au/bills/child-wellbeing-and-safety-child-safe-standards-compliance-and-enforcement-amendment-bill>



It has become apparent to me that there are elements of the CCYP Act requiring immediate review. There are ambiguities surrounding my ability to undertake systemic investigations in certain circumstances, including when and in what circumstances I can access information about individual children and young people. These ambiguities can give rise to issues around the independence of my role and my ability to perform functions and exercise my powers in the manner which I believe was originally envisaged. This is particularly the case, for example, in the exercise of the own motion investigation power in the context of my OOHCM Monitoring Program.

In the Second Reading Speech for the Commissioner for Children and Young People Bill 2015 the then Minister for Human Services, the Hon Jacqui Petrusma MP said:

“As with any legislation, the test will be in the operation of the Bill. It is standard practice to review the effectiveness of any piece of new legislation after a period of time to ascertain whether it is achieving its intention effectively and efficiently. In the case of this Bill, it is proposed that the Act be reviewed within 5 years to ensure that it satisfies the needs and expectations of the Community.”

I note the CCYP Act commenced on 1 July 2016 which indicates that the review which was flagged by the then Minister is now due.

2.4 Monitoring the effectiveness of a strengthened approach to child safe organisations

There is no doubt that implementing a new, integrated and comprehensive system to promote and protect the safety and wellbeing of children in Tasmania will be challenging. It is therefore essential that progress is monitored and reported on regularly to understand the successes and challenges. It is beyond the scope of this submission to provide detailed indicators or measures to monitor the effectiveness of a new Tasmanian child safe system. However, the National Principles include example indicators to measure whether each principle has been upheld, which could be adapted to a Tasmanian set of child safe standards. Indicators could monitor, for example, whether organisations have child safe policies in place, whether children know who to talk to if they are feeling unsafe and know what will happen if they do, whether feedback is given to children and their families about concerns raised, and how complaints are investigated and handled (including the quality and timeliness). In the longer-term, a reduction in child sexual abuse would be the critical measure of success (acknowledging that reports of abuse will likely increase with the adoption of a strengthened approach to child safe organisations in Tasmania).

Work to develop Tasmania’s first Child and Youth Wellbeing Strategy is currently underway. This strategy provides an opportunity to embed measures which demonstrate how Tasmania’s child safe system is improving children’s safety and wellbeing. Outcome-level measures could, for example, be included in the strategy under the child and youth wellbeing domain of “Being Loved and Safe” to monitor the implementation of an improved child safe system.

2.5 Conclusion

Thank you again for the opportunity to contribute to the Commission’s inquiry. If the Commission has any questions about my submission, please do not hesitate to contact me on (03) 61661366 or via email to childcomm@childcomm.tas.gov.au.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

Your Ref:
Our Ref: 870

1 March 2021

Ginna Webster
Secretary
Department of Justice

By email to: legislation.development@justice.tas.gov.au
ginna.webster@justice.tas.gov.au

Dear Secretary

Re: Child Safe Organisations Bill 2020

Introductory comments

Thank you for the opportunity to comment on the Child Safe Organisations Bill 2020 (the draft Bill) and for providing an extension of time within which to lodge this comment, which is not intended to be exhaustive.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) found that strengthened approaches to preventing, identifying, and responding to child sexual abuse and other forms of abuse in organisations will ultimately reduce the risk of child abuse occurring. I am therefore extremely pleased the Tasmanian Government is taking steps to develop a legislative framework to guide child safe practice in Tasmanian organisations.

However, I am disappointed with the draft Bill's proposals for reporting, monitoring and assessing compliance with the proposed Child Safe Standards for reasons outlined in this comment. It is particularly disappointing that the draft Bill does not contain a framework for independent oversight, as was recommended by the Royal Commission.

Further, I acknowledge this is an extremely complex area of policy. I note the correspondence accompanying the draft Bill refers to the Tasmanian Government's commitment to:

Develop options for a child safe legislative framework in Tasmania that supports the intent of the National Principles for Child Safe Organisations and provides a plan for the



implementation of the Royal Commission's recommendations relating to Child Safe Standards and a Reportable Conduct Scheme in Tasmania.¹

The development and implementation of a child safe legislative framework and associated reforms is fundamental to our efforts to promote and protect the safety and wellbeing of all children and young people in Tasmania. It is therefore crucial that we get things right at each step along the way and that we have a clear idea of where we are going. Actions we take now will have long lasting consequences.

In my respectful opinion, comprehensive and informed consultations with all relevant stakeholders, including those engaged in the provision of child-related services, are of critical importance in the development of Tasmania's child safe legislative framework, and indeed any accompanying Reportable Conduct Scheme. Whilst I acknowledge many stakeholders will be providing feedback on the draft Bill, this feedback will be limited in scope due to the nature of the draft Bill. In my respectful opinion, consideration should be given to undertaking further, more comprehensive consultation including a discussion paper and perhaps stakeholder focus groups before finalisation of the draft Bill and progression of a Reportable Conduct Scheme.

Role of the Commissioner

My role as Commissioner for Children and Young People is governed by the *Commissioner for Children and Young People Act 2016* (CCYP Act).

Section 8 of the CCYP Act outlines my functions as follows:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and
- (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

¹ Tasmanian Government, *Protecting our Children: First Year Action Plan 2018-2019*, https://www.justice.tas.gov.au/_data/assets/pdf_file/0006/453264/First-Year-Progress-Report_Royal-Commission-Final-Report.pdf, page 10.



In performing my functions, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child*; and
- give special regard to the needs of children and young people who are disadvantaged or vulnerable.

Legislation to progress recommendations of the Royal Commission relating to the promotion of child safety in institutions and organisations in Tasmania is clearly a matter relevant to my functions as Commissioner.

Context and Background to the Draft Bill

According to correspondence accompanying the invitation to comment on the draft Bill:

On 15 December 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse released its final report. In Volume 6, *Making Institutions Child Safe*, the Royal Commission made a number of recommendations including ten Child Safe Standards that aim to provide a foundation for a consistent and best practice approach to child safety in organisations.

In June 2018, the Council of Australian Governments (COAG) endorsed the National Principles for Child Safe Organisations as the foundation for a nationally consistent approach to creating child safe organisations.

The draft legislation reflects the Government's commitment to introduce a Bill to implement Child Safe Standards in Tasmania.

The draft Bill proposes the following reforms to

- Establish Principles for the Safety and Wellbeing of Children;
- Establish Child Safe Standards;
- Require all organisations engaged in services involving interaction with children to embed the Principles for the Safety and Wellbeing of Children and the Child Safe Standards in policies, practices and procedures;
- Require Tasmanian Government entities to embed the Principles for the Safety and Wellbeing of Children and the Child Safe Standards in funding agreements with non-government organisations;
- Require Tasmanian Government entities to report annually on implementation of, and compliance with, the Principles for the Safety and Wellbeing of Children and the Child Safe Standards; and
- Require Tasmanian Government entities to require funded non-government organisations to report annually on implementation of, and compliance with, the Principles for the Safety and Wellbeing of Children and the Child Safe Standards through their funding agreements.



Comment

1. *The proposed standards*

Recommendation 6.4 of the Royal Commission is as follows:

All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.

In Recommendation 6.8, the Royal Commission recommended that state and territory governments should require all institutions that engage in child related work to meet the Child Safe Standards identified by the Royal Commission in Recommendation 6.5.

Recommendation 6.5 of the Royal Commission outlines the Child Safe Standards as follows:

The Child Safe Standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

At Recommendation 6.6, the Royal Commission outlines core components to guide implementation of the Child Safe Standards.

The Royal Commission's work on child safe institutions was underpinned by the United Nations *Convention on the Rights of the Child* and guided by the child's rights to:

- have their best interests as a primary concern in decisions affecting them
- non-discrimination
- have the responsibilities of parents or carers respected
- participate in decisions affecting them
- be protected from all forms of violence, including all forms of sexual exploitation and sexual abuse, including while in the care of parents, guardians or other carers
- special protection for children with disability.²

² Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6: Making Institutions Child Safe*, page 136.



The National Principles for Child Safe Organisations³ (the National Principles), which were endorsed by the Prime Minister and relevant Ministers from all states and territories in February 2019, give effect to the Royal Commission's Child Safe Standards. The National Principles have a broader scope that incorporates a focus on wellbeing and goes beyond child sexual abuse to cover other forms of potential harm to children and young people.

As outlined in the Foreword to the National Principles:

They provide a nationally consistent approach to embedding child safe cultures within organisations that engage with children, and act as a vehicle to give effect to all Royal Commission recommendations related to child safe standards.

The Preamble to the National Principles provides as follows:

The National Principles collectively show that a child safe organisation is one that creates a culture, adopts strategies and takes action to promote child wellbeing and prevent harm to children and young people. A child safe organisation consciously and systematically:

- creates an environment where children's safety and wellbeing is the centre of thought, values and actions
- places emphasis on genuine engagement with, and valuing of children
- creates conditions that reduce the likelihood of harm to children and young people
- creates conditions that increase the likelihood of identifying any harm
- responds to any concerns, disclosures, allegations or suspicions.

For ease of reference, the National Principles for Child Safe Organisations are set out below:

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture
2. Children and young people are informed about their rights, participate in decisions affecting them, and are taken seriously
3. Families and communities are informed and involved in promoting child safety and wellbeing
4. Equity is upheld and diverse needs respected in policy and practice
5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice
6. Processes for complaints and concerns are child focused
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training
8. Physical and online environments promote safety and wellbeing, while minimising the opportunity for children and young people to be harmed
9. Implementation of the national child safe principles is regularly reviewed and improved

³ https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf



10. Policies and procedures document how the organisation is safe for children and young people.

In proposed section 5, the draft Bill outlines three principles for the safety and wellbeing of children and, in clause 2 of Schedule 1, it outlines five child safe standards (the proposed standards).

Proposed section 6(2) requires an organisation that provides a child related service or a body prescribed under proposed section 7(b) to ensure that the proposed standards are complied with when providing a service.

Proposed section 7 provides as follows:

The following bodies are to incorporate the principles and standards in the policies, procedures and practices of the body:

- (a) an organisation that provides a child-related service;
- (b) a body prescribed for the purposes of this section.

The content of the proposed standards as set out in Schedule 1 appears to broadly align with the Child Safe Standards recommended by the Royal Commission and with the National Principles. However, there are differences between them which creates confusion and it is not clear to me why the National Principles have not simply been replicated in the draft Bill. The following examples assist to illustrate this point:

- a) The proposed standards redraft and, in some cases, combine elements of individual Royal Commission Child Safe Standards or National Principles (see for example proposed standards 1, 2, 3 and proposed paragraph (g) of proposed standard 5). Paragraph (g) of proposed standard 5 appears to reflect Child Safe Standard 8 and National Principle 8 (safety in physical and online environments) and Child Safe Standard 4 and National Principle 4 (upholding equity and diversity).
- b) Proposed standard 5(d) provides that “complaint and dispute processes of the organisation or body empower children to raise complaints and be involved in the dispute resolution process”. This proposed standard appears to be narrower in scope than what was contemplated by the Royal Commission, which emphasised the need for a child focussed complaint handling system (see the core components set out in Recommendation 6.6) and National Principle 6 (Processes to respond to complaints and concerns are child focused).

I also note that proposed standard 5 includes what appear to be measures of implementation which are not easily connected to individual Royal Commission Child Safe Standards or individual National Principles. By way of example, proposed paragraph (e) of proposed standard 5 requires organisations to develop a Code of Conduct - development of such a code is a “core component” of the Royal Commission’s Child Safe Standard 1 and a key action area under National Principle 1 and as such, more a measure of implementation.



As the Royal Commission said:

The standards are designed to be principle based and focused on outcomes, as opposed to setting detailed and prescriptive rules that must be followed, or specific initiatives that should be implemented. This is to enable them to be applied to, and implemented by, institutions in a flexible way, informed by each institution's nature and characteristics. Every institution would need to consider each standard and take time to identify risks that could arise in their context, and find ways to mitigate or manage those risks.⁴

The National Principles are also intended to be implemented in a way which allows flexibility and recognises the variety of organisational sizes, types and capacities. Therefore, noting the core components of each Child Safe Standard outlined by the Royal Commission and also the guidance provided in the National Principles, guidance on specific implementation measures could, in my opinion, be better left to guidelines and advice developed by an independent oversight body of the type envisaged by recommendations 6.10 and 6.11 of the Royal Commission, a matter addressed later in this comment. Having said this, it may be appropriate to include some implementation measures, such as the requirement to develop a Code of Conduct, in the legislation. However, this should be done in such a way that it is clearly a measure of implementation and not a Child Safe Standard. Proposed section 8BA(1) of the *Consultation Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021*⁵ (see page 9 of this comment) provides an example of this.

As previously indicated, in my opinion the proposed standards in the draft Bill should simply outline the National Principles. If this approach was adopted, it would also promote alignment with the obligations of organisations in receipt of funding from the Commonwealth and who might be required to comply with the Commonwealth Child Safe Framework, given this framework specifically adopts the National Principles at Requirement 3.⁶

It is also worth noting that the former National Children's Commissioner within the Australian Human Rights Commission developed resources to support organisations, parents and carers to understand and implement the National Principles.⁷ The availability of these resources to build capacity among organisations and the broader community is, in my opinion, a further reason to incorporate the National Principles into the draft Bill. This is especially so given currently there is no independent body or organisation in Tasmania which is resourced to provide freely available advice, guidance and assistance to organisations, parents and carers on implementation of a child safe organisational framework and culture.

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6: Making Institutions Child Safe*, page 146.

⁵[https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20\(Child%20Safe%20Scheme\)%20Bill%202021.pdf](https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20(Child%20Safe%20Scheme)%20Bill%202021.pdf)

⁶ <https://childsafety.pmc.gov.au/what-we-do/commonwealth-child-safe-framework>

⁷ <https://childsafety.pmc.gov.au/what-we-do/national-principles-child-safe-organisations>



2. *Who is to comply with the proposed standards and principles?*

As previously indicated, proposed section 6(2) requires an organisation that provides a child-related service or a body prescribed under section 7(b) to ensure that the standards are complied with when providing a service.

Proposed section 7 provides:

The following bodies are to incorporate the principles and standards in the policies, procedures and practices of the body:

- (a) an organisation that provides a child-related service;
- (b) a body prescribed for the purposes of this section.

Although the draft Bill imposes the above obligations on organisations providing child-related services or bodies prescribed under proposed section 7, it is not clear from the draft Bill which organisations or bodies will be in scope.

This is because:

- a) “child-related service” is defined to mean “an activity or service that is prescribed by the regulations to be a child-related service”; and
- b) additional bodies may be prescribed.

Although there is no indication in the draft Bill or in the correspondence accompanying it, Recommendation 6.9 of the Royal Commission, which the Tasmanian Government has accepted in principle, provides some guidance as to the types of organisations and bodies that should be required to comply with the principles and standards. That Recommendation is set out in full below:

Legislative requirements to comply with the Child Safe Standards should cover institutions that provide:

- a. accommodation and residential services for children, including overnight excursions or stays
- b. activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- c. childcare or childminding services
- d. child protection services, including out-of-home care
- e. activities or services where clubs and associations have a significant membership of, or involvement by, children
- f. coaching or tuition services for children
- g. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
- h. services for children with disability
- i. education services for children



- j. health services for children
- k. justice and detention services for children, including immigration detention facilities
- l. transport services for children, including school crossing services.

In my respectful opinion, clarification of scope is necessary because of the obligations imposed, as outlined above, and also because provisions in the draft Bill relating to funding agreement requirements (proposed section 8) and reporting obligations of relevant organisations and bodies which have funding agreements with Government Agencies (proposed section 9) will affect relevant organisations and bodies.

As discussed later in this comment, it is also not clear which Government Agencies are in scope.

Consideration should also be given to imposing the obligation to embed the Standards and Principles on a specified person or position within a relevant organisation, including in a Government Agency. By way of example, proposed section 8BA(1) of the *Consultation Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021 (NSW)*⁸ imposes relevant obligations on “the head of a child safe organisation” as follows:

- (1) The head of a child safe organisation must ensure the organisation implements the Child Safe Standards through systems, policies and processes, including the following—
 - (a) a statement of the organisation's commitment to child safety,
 - (b) a child safe policy,
 - (c) a code of conduct applying to—
 - (i) employees,
 - (ii) management, however described,
 - (iii) contractors,
 - (iv) volunteers,
 - (d) a complaint management policy and procedure,
 - (e) a human resources policy,
 - (f) a risk management plan.

The terms “child safe organisation” and “head of a child safe organisation” are defined in proposed section 8AA of the New South Wales Consultation Draft Bill.

3. Oversight of compliance and reporting

The Tasmanian Government's *Third Annual Progress Report and Action Plan 2021* sets out the Tasmanian Government's response to and progress implementing the recommendations of the Royal Commission relating to monitoring and enforcing compliance with child safe standards.

⁸

[https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20\(Child%20Safe%20Scheme\)%20Bill%202021.pdf](https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20(Child%20Safe%20Scheme)%20Bill%202021.pdf)



Of particular relevance are the following:

Recommendation 6.10

State and territory governments should ensure that:

- a. an independent oversight body in each state and territory is responsible for monitoring and enforcing the Child Safe Standards. Where appropriate, this should be an existing body.
- b. the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory government body, such as a sector regulator.
- c. regulators take a responsive and risk-based approach when monitoring compliance with the Child Safe Standards and, where possible, utilise existing regulatory frameworks to monitor and enforce the Child Safe Standards.

Tasmanian Government Response: Accepted in principle

Responsibility: Tasmanian Government – Department of Justice with support from the Department of Communities Tasmania

Progress: For Consideration

Recommendation 6.11

Each independent state and territory oversight body should have the following additional functions:

- a. provide advice and information on the Child Safe Standards to institutions and the community
- b. collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety
- c. partner with peak bodies, professional standards bodies and/or sector leaders to work with institutions to enhance the safety of children
- d. provide, promote or support education and training on the Child Safe Standards to build the capacity of institutions to be child safe
- e. coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards.

Tasmanian Government Response: Accepted in principle

Responsibility: Tasmanian Government – Department of Justice with support from the Department of Communities Tasmania

Progress: For Consideration

It is disappointing that there is nothing in the draft Bill that points to an intention to establish independent oversight through an existing independent entity or body, to monitor and enforce compliance with the standards and perform other related functions, as envisaged by the Royal Commission.



The types of oversight and compliance monitoring described in the draft Bill are, in my view, inadequate to achieve the levels of systemic and cultural change required in Tasmania, including in Tasmanian Government institutions, to put the interests of children first and to keep them safe from harm. More detailed analysis of the issues arising from the oversight and compliance detailed in the draft Bill is below.

Accountability through funding arrangements

Proposed section 8 requires a Minister to whom a Government Agency is responsible or a governing authority of a Government Agency, to ensure:

- i. funding agreements are not entered into with a relevant organisation or body unless that organisation can demonstrate compliance with the principles and standards; and
- ii. funding agreements with relevant organisations and bodies include as a condition of the agreement, compliance with the principles and standards.

Proposed section 9 requires relevant funded organisations or bodies that are not a Government Agency to report each financial year on implementation of and compliance with the principles and standards, and that report is to be provided to the Government Agency with whom the funding agreement is made. Although I support, in principle, measures which encourage co-regulation and accountability through funding agreements, it is difficult to comment on the appropriateness of the arrangement proposed in the draft Bill because:

- i) It is not clear how a relevant organisation or body is to demonstrate compliance with the principles or standards given the draft Bill does not provide any guidance as to the actions required or indicators of compliance for each proposed standard.
- ii) The draft Bill provides no indication that there will be an independent entity charged with oversight and other functions, as envisaged by the Royal Commission recommendations I have set out above. This suggests that a relevant organisation or body's self-assessment of compliance could be sufficient. If, as it appears, it is intended that a Government Agency which funds a relevant organisation or body, is to assess such claims of compliance, how this will be done is also not clear.

I note the draft Bill contains no mechanism or framework for monitoring, reporting and assessing the compliance of relevant non-government organisations and bodies which do not have a funding agreement with a Tasmanian Government Agency.

How are Government Agencies to be made accountable?

It is not clear to me whether some or all Government Agencies (as defined) are required to comply with the principles and standards and how and by whom that compliance is to be assessed.

Proposed section 10 requires a Government Agency "that provides a child-related service" to prepare an annual report for each financial year on implementation of, and compliance with, the Act.



It is not clear which Government Agencies will be required to comply with this reporting obligation. This is because it is to be left to the Regulations to define what a “child-related service” means.

The draft Bill is also not clear on the matters to be included in this annual report.

In my respectful opinion, all Tasmanian Government Agencies should be required to incorporate the principles and standards in their policies, procedures and practices. They should also be required to ensure that the proposed standards are complied with in providing a service. This is especially so given the reporting arrangements proposed for relevant organisations and bodies which have a funding agreement with a Tasmanian Government Agency. In my respectful opinion, relevant funded organisations and bodies required to report to a Government Agency about compliance with the proposed standards, and whose compliance will be assessed by that Government Agency, must have confidence that a Government Agency is itself a child safe organisation. It is not currently clear in the draft Bill how that could be assured.

A related matter is the extent to which Government Agencies, especially those providing child related services or which fund organisations to provide child related services, are to be monitored and assessed for compliance with the principles and standards. As currently drafted, it would appear that the only external oversight contemplated is through the annual report to Parliament (proposed section 10), apparently based on a self-assessment of compliance, without any indication of what factors or indicators are to be taken into account in determining compliance. This is in my opinion an unsatisfactory situation.

Timeline for compliance and the need for capacity building?

It is also not clear from the draft Bill when the compliance of relevant organisations and bodies, including Government Agencies, is to be monitored and assessed, whether through mechanisms contained in the draft Bill or otherwise.

In developing the Regulations, which will describe what activities or services are “child-related” or which bodies are to be prescribed for the purposes of proposed section 7(b), consideration should be given to incorporating a phased approach to monitoring and assessing compliance, as was done in Victoria when its child safe standards were implemented. Given the lack of detail regarding compliance and reporting requirements contained in the draft Bill, how this phased approach would operate is a matter for further consideration. Furthermore, given the draft Bill imposes an obligation on all relevant organisations and bodies to embed child safe organisational practices through the principles and standards, in my opinion there is a need to resource an independent entity to begin capacity building by providing advice, assistance and training to relevant organisations, prescribed bodies and Government Agencies.

This capacity building function should be of an ongoing nature and, in my opinion, is best placed with an independent entity tasked with monitoring and enforcing compliance with the principles and standards, noting Royal Commission Recommendations 6.10 and 6.11. The desirability of resourcing an appropriate entity now to assist with capacity building is particularly evident given proposed sections 8, 9 and 10 of the draft Bill, which are applicable



to relevant organisations and bodies that have funding agreements with Government Agencies. If this resourcing was provided now to an existing Tasmanian independent statutory entity, legislative amendments might be required to ensure that entity can perform this capacity building function.

Independent oversight

As should be apparent from my comments above, it is my strong opinion that provision should be made in the draft Bill for an independent entity in Tasmania to undertake oversight, educative and other functions, as outlined in Royal Commission recommendations 6.10 and 6.11. I note that the Victorian Commission for Children and Young People and the New South Wales Children's Guardian perform educative, oversight and regulatory functions designed to ensure organisations comply with the child safe standards in each of those jurisdictions.

It is worth noting proposed section 11 of the draft Bill which is as follows:

11. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may –
 - (a) authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations; and
 - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

The purpose of this regulation-making power is not clear to me. If this regulation-making power is intended to be relied upon to establish regulatory arrangements, this does not, in my respectful opinion, amount to a commitment to provide for independent oversight as envisaged by the Royal Commission. In any event, I would expect such an important function to be described in primary legislation rather than in Regulations.

4. Reportable conduct scheme

The Tasmanian Government's *Third Annual Progress Report and Action Plan 2021* sets out the Tasmanian Government's response to and progress implementing the Royal Commission recommendations relating to reportable conduct schemes as follows:

Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Response: Accepted

Responsibility: Tasmanian Government – Department of Justice



Progress: For consideration

Recommendation 7.10

Reportable conduct schemes should provide for:

- a. an independent oversight body
- b. obligatory reporting by heads of institutions
- c. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child
- d. a definition of reportable conduct that includes the historical conduct of a current employee
- e. a definition of employee that covers paid employees, volunteers and contractors
- f. protection for persons who make reports in good faith
- g. oversight body powers and functions that include:
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions
 - ii. monitoring the progress of investigations and the handling of complaints by institutions
 - iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware
 - iv. power to exempt any class or kind of conduct from being reportable conduct
 - v. capacity building and practice development, through the provision of training, education and guidance to institutions
 - vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

Response: Accepted

Responsibility: Tasmanian Government – Department of Justice

Progress: For consideration

In my respectful opinion it is essential that the child safe standards framework proposed for Tasmania is accompanied by a reportable conduct scheme. We can learn from how things are being done in New South Wales and Victoria, jurisdictions in which an independent statutory entity has responsibility for promoting, and/or independent oversight of, child safe standards, and for oversight of organisational responses to allegations of child abuse through a reportable conduct scheme.

The way in which a child safe legislative framework and a reportable conduct scheme operate in organisational contexts has been aptly described by the Victorian Commission for Children and Young People in an Information Sheet available on the Commission's website:

Child Safe Standards and the Reportable Conduct Scheme create distinct sets of responsibilities for organisations, but have been designed to complement one another.



Together, Child Safe Standards and the Reportable Conduct Scheme strengthen the capacity of organisations to prevent and respond properly to allegations of child abuse.⁹

Conclusion

I thank you for the opportunity to comment on this important draft Bill. I am available to discuss my comments if that would be of assistance.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

- cc Hon Peter Gutwein, Premier of Tasmania
- cc Hon Elise Archer MP, Attorney-General and Minister for Justice, Minister for the Arts
- cc Hon Roger Jaensch MP, Minister for Human Services, Minister for Aboriginal Affairs, Minister for Housing
- cc Hon Jeremy Rockliff MP, Minister for Education and Training, Minister for Mental Health and Wellbeing, Minister for Disability Services and Community Development
- cc Hon Sarah Courtney MP, Minister for Health, Minister for Women
- cc Hon Michael Ferguson MP, Minister for State Growth
- cc Hon Jane Howlett MP, Minister for Sport and Recreation
- cc Hon Mark Shelton MP, Minister for Local Government, Minister for Police, Fire and Emergency Management

⁹ <https://ccyp.vic.gov.au/child-safety/resources/reportable-conduct-scheme-information-sheets/#TOC-7> see Information Sheet 6 Child Safe Standards and Reportable Conduct Scheme