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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 OOHC. In 2020, the Attorney-General confirmed that the Tasmanian Government will consider incorporating independent review of decisions made affecting children in OOHC 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 [REDACTED] or via email to childcomm@childcomm.tas.gov.au.

Yours sincerely

[REDACTED]

Leanne McLean
Commissioner for Children and Young People