



Tasmanian Council of Social Service Inc.

Submission on Child Safe Organisations Bill 2020

February 2021



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to low income Tasmanians living in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

Thank you for the opportunity to make a submission on the Child Safe Organisations Bill 2020 ('the Bill'). The Bill is part of the Tasmanian Government's response to the Royal Commission into Institutional Responses to Child Sexual Abuse, which found that many institutions had failed to protect children from abuse, failed to listen to children who tried to disclose abuse and failed to respond adequately when abuse came to light. In response, and consistent with the United Nations Convention on the Rights of the Child, the Royal Commission recommended child safe standards be developed and implemented to ensure that all institutions work in the best interests of children. It also recommended the standards be adopted as part of the National Principles for Child Safe Organisations.¹ As of February 2019, the National Principles have been endorsed by members of the Council of Australian Governments, including the Premier of Tasmania.²

An important element of child safe organisations is the need to create organisational cultures that foster child safety and wellbeing. The National Office for Child Safety, established in 2018 as part of the Australian Government's response to the Royal Commission, describes child safe organisations in this way:

Policies and procedures alone are not enough to keep children safe and well in organisational settings. 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.³

It is clear, then, that the Tasmanian Government's response to the Royal Commission, in addition to its human rights obligations, needs to be fulsome and robust. This has been made all the more crucial and urgent given the revelations of child sexual abuse at government-run institutions. To that end we welcome the Government's acceptance of the majority of the Royal Commission's recommendations in the 2018 report on its response to the Royal Commission and its announcement of the Commission of Inquiry into the response of government agencies to allegations of child sexual abuse.⁴ We have significant concerns with the Bill in its current form, however. In our view it does not establish the framework required for Tasmanians to be assured that the Government is doing all it can to protect children.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, Recommendation 6.5
https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf

² <https://chilsafe.humanrights.gov.au/national-principles/about-national-principles#:~:text=As%20of%20February%202019%2C%20the,state%20and%20territory%20First%20Ministers>

³ <https://chilsafe.humanrights.gov.au/about/what-child-safe-organisation>

⁴ <https://www.justice.tas.gov.au/response-to-final-report>; <https://www.justice.tas.gov.au/inquiry/about-the-commission-of-inquiry>

Key Issues

1. Principles and standards

As noted above, all states and territories have endorsed the National Principles for child safe organisations. However, the Bill does not replicate these principles. Instead, it sets out three broad principles at section 5 and lists the child safe standards in Schedule 1 which broadly align with but do not mirror the 10 national principles. At least one standard is written in a way that is not directly related to child safety or wellbeing:

Standard 5 states ‘An organisation that provides a child-related service or a body prescribed under section 7(b), is to ensure that –

(a) a person engaged by that organisation or body is a fit and proper person to perform the role for which they are engaged.

The way this is written means ‘fit and proper’ relates to the performance of the role rather than explicitly in relation to being able to ensure the safety and wellbeing of children. The national principle it appears to be intended to align with, Principle 5, is far more explicit about what is expected:

People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.⁵

The clear intent of the Royal Commission recommendation of national standards was to provide clarity around what was expected of institutions around the country, and ensure consistency across jurisdictions. The Bill should therefore mirror the principles. NSW provides a good model for mapping the standards against the principles.⁶

In addition, TasCOSS members who are national organisations told us they were concerned that having even slightly different standards in different jurisdictions throws up a range of issues, such as having different standards to report against and determining outcomes and indicators.

Recommendation 1: The principles and standards should mirror the national principles and be nationally consistent.

2. Definition of a child-related service

The Bill does not further define which organisations would fall under its remit, stating only that a ‘child-related service’ ‘means an activity or service that is prescribed by the regulations to be a child-related service.’⁷ The Royal Commission gives the following guidance on this:

⁵ National Principles for Child Safe Organisations, Principle 5.

https://humanrights.gov.au/sites/default/files/National%20Principles%20for%20Child%20Safe%20Organisations.pdf?_ga=2.224576221.634189316.1612835702-564445436.1605574006

⁶ <https://www.kidsguardian.nsw.gov.au/ArticleDocuments/838/ChildSafeStandardsGuide.pdf.aspx?Embed=Y>

⁷ s3

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.⁸

Listing the categories in the Bill would remove uncertainty from organisations that are unsure whether the legislation covers their activities. A further issue concerns which government agencies are required to implement and report on their compliance with the principles and standards. Section 10 states: 'A Government Agency that provides a child-related service is to prepare an annual report for each financial year on the implementation of, and compliance with, this Act.' However, the documentation accompanying the Bill states the Bill will: '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'.

It is the strong view of TasCOSS and many of our members that all government agencies be required to implement and report against the principles and standards. The Tasmanian Government's recent announcement of a Commission of Inquiry into allegations of child sexual abuse at government institutions highlights the urgent need for action across government.

Recommendation 2: The Bill lists the institutions that are covered by legislative requirements and should include all government agencies.

3. Reporting

The Bill provides for government-funded organisations that provide a child-related service to prepare an annual report on the implementation of and compliance with the principles and standards, and submit the report to the government agency that funds them. There are several problems with this. First, it appears to cover only government-funded organisations rather than all organisations that provide a

⁸ *Child Abuse Royal Commission Final Report Recommendations*, p.10
https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf

relevant service. This means some organisations will not have a legal obligation to report on their adoption and implement of the principles and standards. TasCOSS believes this creates an accountability gap that could leave children who engage with those organisations vulnerable to abuse.

Recommendation 3: All organisations providing a relevant service should be covered by the reporting requirements in the Bill

Second, s9 (1) states an organisation that provides a child-related service must prepare an annual report ‘on the implementation of, and compliance with, the principles and standards.’ TasCOSS does not believe that self-assessment of compliance with the principles and standards is adequate. Indeed, the Royal Commission recommends that ‘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.’⁹ In NSW that role is performed by the NSW Office of the Children’s Guardian while in Victoria it’s performed by the Commissioner for Children and Young People.¹⁰ In Tasmania, the Act that establishes the Commissioner for Children and Young People does not permit that office to perform those functions.¹¹ The options are to amend the Act if the Government wished the Commissioner to perform the oversight role, assign the oversight role to another existing body or establish a new entity. Irrespective of which body took on the role, it is crucial that it be properly resourced, genuinely independent and adopt a child-centred approach.

Recommendation 4: The Bill or a separate piece of legislation provides for the establishment of a properly-resourced independent oversight body

The reporting requirement outlined in the Bill also falls far short of the Royal Commission’s recommendation, which was to establish a reportable conduct scheme that obliges heads of institutions to notify an oversight body of any reportable allegation.¹² NSW and Victoria each have a reportable conduct scheme that is operated by the bodies mentioned above which are also responsible for oversight. TasCOSS notes that the documentation accompanying the Bill states that a scheme ‘will be considered in a later tranche of reforms.’ Given the weaknesses in the Bill’s reporting framework discussed above we are not satisfied that, should the Bill become law, instances of child sexual abuse will be identified and reported. We urge the Government either to expand and strengthen the reporting requirements as recommended above or, preferably, amend the Bill so that it provides for the establishment of a reportable conduct scheme as soon as possible.

Recommendation 5: The Bill expand and strengthen the reporting requirements OR provide for the establishment of a reportable conduct scheme

⁹ Recommendation 6.10(a)

¹⁰ <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/training-and-resources/child-safe-standards>;
<https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/our-powers/>

¹¹ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-002>

¹² Recommendations 7.9-7.12

Finally, TasCOSS members who receive Tasmanian Government funding voiced strong concern that the Bill requires them to provide an annual report to the agency that funds them. They did not feel this is appropriate given that those agencies are not required to be child safe organisations and so should not have an oversight function for organisations that are required to be child safe. TasCOSS supports this position, especially in light of the Commission of Inquiry into child sexual abuse at government institutions. Members were also concerned that the Bill does not establish an explicit oversight mechanism for government agencies that provide a child related service. Both issues reinforce the urgent need for an independent oversight body.

Recommendation 6: Government-funded organisations that provide a child-related service should not report to government agencies that do not comply with child safe principles and standards

4. Capacity building

While beyond the scope of the Bill, it is important to note that some particularly smaller organisations will need assistance to comply with the principles and standards. Any regulatory regime should therefore include an educative and capacity-building function in addition to robust enforcement powers. Possible models are provided by the NSW Office of the Children's Guardian and the Victorian Commissioner for Children and Young People, which each provide resources and support for organisations to become child safe.

Recommendation 7: The Tasmanian Government provide capacity-building for relevant organisations to become child safe, either through an existing entity or a new entity

Conclusion

TasCOSS welcomes any measures that will improve the safety and wellbeing of Tasmanian children. We believe, however, that the Bill is inadequate in establishing a framework for child safe organisations. In particular, we believe the Tasmanian Government should amend the Bill so that it provides for:

- An independent oversight body that is properly resourced;
- A reportable conduct scheme; and
- Capacity building to support organisations to comply with the child safe principles and standards.

Recommendations

Recommendation 1: The principles and standards should mirror the national principles and be nationally consistent

Recommendation 2: The Bill lists the institutions that are covered by legislative requirements

Recommendation 3: All organisations providing a relevant service should be covered by the reporting requirements in the Bill

Recommendation 4: The Bill or a separate piece of legislation provides for the establishment of a properly-resourced independent oversight body

Recommendation 5: The Bill expand and strengthen the reporting requirements OR provide for the establishment of a reportable conduct scheme

Recommendation 6: Government-funded organisations that provide a child-related service should not report to government agencies that do not comply with child safe principles and standards

Recommendation 7: The Tasmanian Government provide capacity-building for relevant organisations to become child safe, either through an existing entity or a new entity