



Tasmanian Council of Social Service Inc.

Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings

July 2021



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About TasCOSS

TasCOSS' 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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Summary of recommendations

Recommendation 1: The Tasmanian Government's reporting on progress against the recommendations of the Royal Commission should be made more explicit, with clear descriptions of progress against each of the Commission's recommendations and establishment of publicly available baseline data against which initiatives can be evaluated. Child-and-young-person-friendly versions should be produced for legislation, regulations, progress reports and action plans.¹

Recommendation 2: All Tasmanian Government responses to the Royal Commission's recommendations and other child-safety-focused initiatives, including legislative and regulatory initiatives, strategies, frameworks and plans, should mirror the language and scope of the Royal Commission and of the National Principles and Standards.

Recommendation 3: All Tasmanian government agencies, and all non-government institutions meeting the Royal Commission's definition of institutions required to comply with the National Principles and Standards regardless of funding source(s), should be required to incorporate the Principles and Standards in their policies, procedures and practices, as well as to ensure that the proposed standards are complied with in providing a service.

Recommendation 4: The Tasmanian Government should prioritise the creation of a universally applicable reportable conduct scheme and a properly resourced, fully independent oversight body to enforce the scheme and the Child Safety Standards as well as to perform the additional functions envisaged by the Royal Commission.

Recommendation 5: The Tasmanian Government should produce a clear timeline for key Royal Commission recommendations, and all future legislation and regulation should include clear timelines for compliance for all relevant organisations.

Recommendation 6: The Tasmanian Government should prioritise the development and implementation of measures within the child safety system that respond to and complement the Royal Commission's recommendations.

Recommendation 7: The Tasmanian Government should develop an evidence-based, coordinated, whole-of-community, co-designed, Tasmanian child sexual abuse primary prevention strategy, responding to both adults and children with problematic sexual thoughts and behaviours and their families.

¹ https://create.org.au/wp-content/uploads/2021/03/TAS_2021_Submission_Child-Safe-Organisations-Bill-2020-Final.pdf

Introduction

Thank you for the opportunity to make a submission to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the Commission of Inquiry). The Commission of Inquiry occurs at a time when the Tasmanian Government is progressing its response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). We welcome the Government's acceptance of the majority of the Royal Commission's recommendations in its 2018 report. The Royal Commission 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; the Commission of Inquiry's evaluation of the Tasmanian Government's response to child sexual abuse in institutions and to the Royal Commission's recommendations will be crucial in ensuring that these failures can never recur.

In preparing this submission, TasCOSS has consulted with organisations with frontline and policy expertise in the child safety system and children's welfare. In our submission we will address seven systemic themes that are or will in future impact on the adequacy and appropriateness of the Tasmanian Government's response to allegations and incidents of child sexual abuse in institutional contexts. Those themes are:

1. Challenges in evaluating the Tasmanian Government's response
2. Consistency with national language and scope
3. Consistency of compliance and accountability across government and non-government entities
4. Lack of a reportable conduct scheme with an independent oversight body
5. Lack of timelines
6. Incomplete development and implementation of initiatives within the child safety system
7. Primary prevention

Challenges in evaluating the Tasmanian Government's response

TasCOSS and other stakeholders have found it difficult to gain a clear picture of the Tasmanian Government response to child sexual abuse in institutions particularly in relation to how it reports its responses to the Royal Commission. As noted by other TasCOSS members,² initiatives in the Government's Annual Progress Reports and Action Plan 2021-23 do not always relate to the Royal Commission's specific themes and recommendations, making them hard to track and evaluate. Where initiatives are reported against a specific recommendation, there is often insufficient detail to understand the nature of the response. For example, the 2021 Annual Progress Report section 'Making Institutions Safe' identifies ninety-three Royal Commission recommendations that are relevant to the initiatives reported on, but does not specify which recommendations are actioned by which initiative.

Another difficulty with evaluating the Tasmanian Government's response is that a range of relevant data is not publicly available. For example, the number of children and young people experiencing sexual abuse annually in Tasmania, the number of children and young people using the Strong Families, Safe Kids Advice and Referral Line and the number of children and young people using Child Advocate service to report child sexual abuse in Tasmanian government institutional contexts. This is particularly concerning given that many Tasmanians are not aware of the prevalence of child sexual abuse. This kind

² Submissions to the Commission of Inquiry from Engender Equality and FACT.

of data is required to provide a baseline of the issue in Tasmania and assess this jurisdiction's progress in addressing child sexual abuse.³

Recommendation 1: The Tasmanian Government's reporting on progress against the recommendations of the Royal Commission should be made more explicit, with clear descriptions of progress against each of the Commission's recommendations and establishment of publicly available baseline data against which initiatives can be evaluated. Child-and-young-person-friendly versions should be produced for legislation, regulations, progress reports and action plans.⁴

Consistency with national-level language and scope

In its development of responses to Royal Commission recommendations such as a legislative framework to guide child-safe practice in Tasmanian organisations, the Tasmanian Government did not fully adopt the language and definitions in these recommendations. For example, the Royal Commission set out ten National Child Safe Standards; these have been given effect through the ten National Principles for Child-Safe Organisations (endorsed by the Australian and all state and territory governments in 2019). The Royal Commission also specified at least 12 types institutions that should be required to comply with the principles and standards. The clear intent of the Commission was therefore to provide clarity around what was expected of institutions around the country, and ensure consistency across jurisdictions.

In the Tasmanian Child Safe Organisations Bill (2021), however, the principles were reduced to three and the standards to five, applicable to 'an organisation that provides child-related services' or an (undefined) prescribed body. As noted in a substantial number of submissions on the draft Bill, a range of consequences and problems flow from a failure to adopt language that mirrors the language of the Royal Commission and the National Principles and National Standards for Child Safe Organisations, including:

- Changes in meaning, for instance around 'fit and proper persons' to be working with children.
- Changes in definition of scope, for instance in relation to what constitutes a child-related service.
- Dropping of key points, for instance in relation to equity and diverse needs as a stand-alone principle for child-safe organisations.
- Difficulties in achieving consistency in reporting and determining outcomes and indicators across Australia jurisdictions, making it harder to measure at the national level how states and the nation are performing to uphold the safety of children – a strong concern for TasCOSS members who are national organisations.

³ See for example Royal Commission recommendations 12.1-12.3.

https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf

⁴ https://create.org.au/wp-content/uploads/2021/03/TAS_2021_Submission_Child-Safe-Organisations-Bill-2020-Final.pdf

See the submissions on the draft Bill by the Commissioner for Children and Young People (CCYP)⁵ as well as TasCOSS⁶ for further detail. Notably, young people surveyed by the CREATE Foundation for its submission on the draft Bill also agreed that that discrepancies in language between Tasmanian and national-level documents is confusing and makes them feel less safe.⁷

Recommendation 2: All Tasmanian Government responses to the Royal Commission’s recommendations and other child-safety-focused initiatives, including legislative and regulatory initiatives, strategies, frameworks and plans, should mirror the language and scope of the Royal Commission and of the National Principles and Standards.

Consistency in compliance and accountability across government and non-government entities

Of particular concern to many TasCOSS members is the fact that in its responses so far, the Tasmanian Government has not addressed whether some or all government agencies are required to comply with the National Principles and Standards, and how and by whom that compliance is to be assessed. While the draft Child Safe Organisations Bill required a Government Agency ‘that provides a child-related service’ to prepare an annual report for each financial year on implementation of, and compliance with, the Act, the issue of which government agencies will be required to comply with this reporting obligation is to be left to the Regulations. Concerningly, at the moment government-funded organisations that provide a child-related service may have to report to government agencies that do not themselves comply with child safe principles and standards. Meanwhile, non-government organisations that do not receive Tasmanian Government funding do not face compliance or accountability requirements around the National Principles and Standards. Excusing child-focused organisations such as private dance studios, drama clubs and private tuition services, for example, from such responsibilities fails to deliver on the recommendations of the Royal Commission and continues to expose Tasmanian children to risk.⁸

Recommendation 3: All Tasmanian government agencies, and all non-government institutions meeting the Royal Commission’s definition of institutions required to comply with the National Principles and Standards regardless of funding source(s), should be required to incorporate the Principles and Standards in their policies, procedures and practices, as well as to ensure that the proposed standards are complied with in providing a service.

Lack of a reportable conduct scheme and an independent oversight body

A key recommendation (7.9) of the Royal Commission was the establishment by all states and territories of nationally consistent 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. Recommendation 7.10 spells out the range of measures for which reportable conduct schemes should provide, including obligatory reporting by heads of institutions to an independent oversight body reporting publicly to Parliament (see

⁵ <https://www.childcomm.tas.gov.au/wp-content/uploads/2021-03-01-Submission-Child-Safe-Organisations-Bill-2020-FINAL.pdf>

⁶ <https://tascoss.org.au/child-safe-organisations-bill-2020/>

⁷ https://create.org.au/wp-content/uploads/2021/03/TAS_2021_Submission_Child-Safe-Organisations-Bill-2020-Final.pdf

⁸ FACT, Response to the Draft Child Safe Organisations Bill 2020.

Appendix A for a full list). The Tasmanian Government has accepted both of these recommendations, but progress is listed as ‘For consideration.’

This is not the only context in which the Royal Commission laid out the need for an independent oversight body: Recommendation 6.10 also calls for the establishment in all states and territories of such a body with responsibility for monitoring and enforcing the Child Safe Standards as well as a range of additional functions such as capacity building to assist compliance and collecting, analysing and publishing data on the child safe approach in each jurisdiction (see Appendix A). The Tasmanian Government has also accepted this recommendation in principle, with progress again listed as ‘For consideration.’

TasCOSS is not alone in considering the absence in Tasmania of a reportable conduct scheme applying to all child-related services and of a fully independent body to enforce the scheme and Child Safe Standards -- and the apparent lack to date of any immediate intention to establish these -- to be a key gap in the Tasmanian Government’s response to the Royal Commission’s recommendations.⁹ Stakeholders TasCOSS consulted expressed concern that in the absence of these:

- Different organisations – Tasmanian Government bodies, government-funded non-governmental organisations, non-government-funded non-governmental organisations -- will continue to have different levels and mechanisms of accountability. The Commissioner for Children and Young People, for instance, has noted that the only external oversight of Government agencies currently contemplated is through an annual report to Parliament, apparently based on a self-assessment of compliance, without any indication of what factors or indicators are to be taken into account in determining compliance.¹⁰
- The current model of self-reporting is inadequate to address the conflicts of interest that may arise from the Tasmanian Government acting both to contract and to deliver child-related services.
- It will be difficult to achieve the levels of systemic and cultural change necessary to ensure that children are kept safe from harm in the full range of Tasmanian institutions. Small organisations require greater support to implement the child safe standards and assist in the training of staff and development of policy—one of the functions envisaged by the Royal Commission for an independent body.
- It will be harder to engage in evaluation of ongoing initiatives, given the lack of a central point for data collection and analysis.

A number of TasCOSS members have noted their concerns in this regard have already been raised in their submissions to the draft Child Safe Organisations Bill 2020. To capture the full range of community sector concerns, the Commission of Inquiry should review the submissions to that Bill.

⁹ <https://www.childcomm.tas.gov.au/wp-content/uploads/2021-03-01-Submission-Child-Safe-Organisations-Bill-2020-FINAL.pdf> ; https://create.org.au/wp-content/uploads/2021/03/TAS_2021_Submission_Child-Safe-Organisations-Bill-2020-Final.pdf

¹⁰ <https://www.childcomm.tas.gov.au/wp-content/uploads/2021-03-01-Submission-Child-Safe-Organisations-Bill-2020-FINAL.pdf>

Recommendation 4: The Tasmanian Government should prioritise the creation of a reportable conduct scheme that applies to all child-related services and a properly resourced, fully independent oversight body to enforce the scheme and the Child Safety Standards as well as to perform the additional functions envisaged by the Royal Commission.

Lack of timelines

The Royal Commission's recommendations are far-reaching in their scope, and their full implementation will fall outside any one government's term. Nevertheless, the lack of timelines around key recommendations – for instance, around the creation of a reportable conduct scheme and an independent body to administer it – undercuts community confidence that progress against these important objectives will occur. In the same vein, as noted in the CCYP's submission in relation to the Child-Safe Organisations Bill,¹¹ no timeline currently exists for the compliance of relevant organisations, government or non-government, with National Principles and Standards, and no provision for such a timeline was included in the draft Bill.

Recommendation 5: The Tasmanian Government should produce a clear timeline for key Royal Commission recommendations, and all future legislation and regulation should include clear timelines for compliance for all relevant organisations.

Incomplete development and implementation of initiatives within the child safety system

Prevention of and response to child sexual abuse cannot be addressed in isolation from the broader reform of the child safety system, and the Royal Commission's recommendations specifically around children in care, if implemented, have the potential to make the care system safer for all children.

Actions specifically around children in care that require action include:

- The creation of fully independent oversight of children in care. The location of the Child Advocate position within the Department of Communities is not an adequate substitute for a fully independent position.
- The finalisation of Tasmanian Standards for Children and Young People in Care, which are reportedly in draft but have not yet been released.
- The development of a carer register.
- The accreditation of all out of home care providers.
- The development of a Code of Conduct for staff and volunteers working with children.

Recommendation 6: The Tasmanian Government should prioritise the development and implementation of measures within the child safety system that respond to and complement the Royal Commission's recommendations.

Moving forward: Primary prevention

Child sexual abuse is not limited to institutional contexts. Beyond its focus on the creation of child safe organisations, the Royal Commission also commissioned research into the prevention of child sexual abuse more broadly. The resulting paper highlights the need for:

- Developing a whole-of-community approach to preventing child sexual abuse

¹¹ <https://www.childcomm.tas.gov.au/wp-content/uploads/2021-03-01-Submission-Child-Safe-Organisations-Bill-2020-FINAL.pdf>

- Enhancing the quality, coordination and evaluation of child sexual abuse primary prevention programs to ensure that they are reaching all relevant target audiences and are effective
- Supporting better access to primary prevention education and resources
- Addressing the needs of
 - Adults with problematic sexual thoughts and/or behaviours towards children
 - Family members of adults with problematic sexual thoughts toward children
 - Children and young people with problematic sexual thoughts and behaviours.¹²

Recommendation 7: The Tasmanian Government should develop an evidence-based, coordinated, whole-of-community, co-designed, Tasmanian child sexual abuse primary prevention strategy, responding to both adults and children with problematic sexual thoughts and behaviours and their families.

¹² <https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Help%20seeking%20needs%20and%20gaps%20for%20preventing%20child%20sexual%20abuse%20-%20Prevention.pdf?fontsize=large>, pp. 51-54.

Appendix A: Royal Commission Recommendations

Recommendation 7.10

Reportable conduct schemes should provide for:

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

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.

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



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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.