



Tasmanian Council of Social Service Inc.

Child and Youth Safe Organisations Bill

September 2022



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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 Tasmanians on low incomes or living in vulnerable 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 provide feedback to the Department of Justice ('the Department') in relation to the Child and Youth Safe Organisations Bill 2022 ('the Bill').

The Bill introduces two separate schemes relating to child safety in Tasmania: the Child and Youth Safe Standards, and a Reportable Conduct Scheme. The Government's stated intention in introducing the Bill (and the two separate schemes outlined within) is to 'contribute to the development of child and youth safe organisations in Tasmania, which promote the safety of children and young people from all forms of harm in institutional settings', as well as contributing to the 'prevention of sexual abuse against children and young people in institutional settings' and improving 'investigation of, and responses to, child sexual abuse in institutional settings'.¹

TasCOSS is generally supportive of the Bill and of the introduction of both the Child and Youth Safe Standards and the Reportable Conduct Scheme. We note the introduction of frameworks such as those outlined in the Bill were a key recommendation of the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, and that the need for a similar framework in Tasmania has been highlighted by several key stakeholders throughout the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, including the Commissioner for Children and Young People ('the CCYP').

Our submission will provide a brief reflection in relation to each of the key elements of the Bill: the Child and Youth Safe Standards ('the Standards'); the Reportable Conduct Scheme; the role of the Regulator; and the information sharing provisions.

The Standards

The Standards are set out in Schedule 1 of the Bill:

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 child and youth safe standards is regularly reviewed and improved.

¹ Department of Justice, Tasmanian Government, 'Child and Youth Safe Organisations Bill - Have your say', accessed at <https://www.justice.tas.gov.au/community-consultation/consultations/child-and-youth-safe-organisations-bill>.

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

The Bill also grants broad powers to the Regulator (whose proposed role will be discussed further in this submission) in relation to the Standards, including oversight of the compliance of entities and enforcement.²

TasCOSS supports the introduction of Standards which mirror the National Principles for Child Safe Organisations,³ noting the implementation of nationally consistent standards across Australian jurisdictions was a key recommendation of the Royal Commission. However, we strongly recommend the Government consider adding an additional principle relating to Aboriginal cultural safety, ideally as the first standard (mirroring the Victorian legislation).

We recognise the Government intends for all the Standards to be ‘underpinned by a universal principle embedding Aboriginal Cultural Safety’,⁴ and that the Bill contains a clause confirming this requirement:⁵

(4) In addition to the requirement to comply with the standards under this section, an entity must provide, on and after 1 January 2024, an environment that ensures that the rights of Aboriginal children to cultural safety are respected.

However, TasCOSS believes the intent of this provision may be better supported by the introduction of a specific standard making it clear that organisations are responsible for creating culturally safe environments for Aboriginal children and young people. We believe the inclusion of this principle as a standard, rather than an ‘overarching principle’, demonstrates the importance of cultural safety, and the need for organisations to consider and take steps to promote cultural safety alongside the other obligations imposed by the Standards.

We also understand that further work will be done once the legislation is finalised and passed to create additional materials, guidelines and resources to assist entities and communities to understand the obligations created by the Standards. Including cultural safety as one of the Standards in Schedule 1

² Child and Youth Safe Organisations Bill 2022 (Tas) cl 10.

³ The National Principles for Child Safe Organisations can be found at Australian Human Rights Commission, Child Safe Organisations, ‘National Principles’, accessed at <https://childsafef.org.au/national-principles>:

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.

⁴ Tasmanian Government, Department of Justice, ‘A Child and Youth Safe Organisations Framework for Tasmania: Project overview’ (September 2022), 2.

⁵ Child and Youth Safe Organisations Bill 2022 (Tas), cl 9 (4).

should ensure detailed information and guidance will be provided to assist organisations in monitoring progress and compliance. For example, the website of the Victorian Commission for Children and Young People includes detailed information about the operation of the relevant Standard, including minimum requirements for organisations, example compliance indicators and clear actions to be taken by organisations to fulfil the obligation imposed by the Standard.⁶ TasCOSS believes that including an additional standard relating to cultural safety will guarantee detailed materials are developed and circulated, which will in turn promote understanding of and compliance with the obligation to create culturally safe organisations.

Recommendations:

- An additional Standard should be included in relation to the obligations of entities relating to the cultural safety of Aboriginal children and young people, ideally mirroring the wording used in the Victorian Child Safe Standards:
 - Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued
- The Government should prioritise the development and circulation of additional materials to provide a more detailed framework for how compliance with the Standards is to be progressed, monitored and reported on
 - As the materials need to be designed by the independent entity (and ideally should be co-designed with children and young people), the Government should clarify who will be invested with the powers of the Regulator as soon as possible, and ensure that their office is sufficiently resourced to begin developing and circulating supplementary materials in relation to the Standards as soon as possible

Reportable Conduct Scheme

The Reportable Conduct Scheme will apply to certain entities and/or organisations which have been identified as either having significant responsibilities for children and young people or engaging with children and young people in ways that place them at higher risk of harm. It will allow for people within organisations to report concerns in relation to certain conduct to the Regulator, as well as creating obligations for entities (and organisational leaders) to respond to and report concerns.

TasCOSS strongly agrees with the underlying principle of the Scheme, which is ‘designed to be principle-based and flexible, with a view to changing institutional culture’.⁷ We believe the Scheme should operate in a way that is capacity building rather than punitive, with a focus on improving the safety of organisations and strengthening their relationships with Tasmanian children, young people, their families and communities.

We recommend a slight change to the wording of one of the subclauses in the clause defining ‘reportable conduct’. Currently the Bill includes as reportable conduct ‘emotional or psychological harm of a child’.⁸ We understand this subclause is to be read in conjunction with the definition of emotional and

⁶ Information about the 11 Victorian Standards (including detailed information and guides relating to each standard) can be found on the website of the Commission for Children and Young People at <https://ccyp.vic.gov.au/child-safe-standards/the-11-child-safe-standards/>.

⁷ Tasmanian Government, Department of Justice, ‘A Child and Youth Safe Organisations Framework for Tasmania: Project overview’ (September 2022), 2.

⁸ Child and Youth Safe Organisations Bill 2022 (Tas), cl 5(2)(e).

psychological harm, which refers to ‘significant harm’,⁹ as well as the definition of ‘significant’.¹⁰ However, we note both the Victorian and the NSW schemes both explicitly refer to ‘significant emotional or psychological harm’ as reportable conduct.¹¹ We therefore recommend this subclause is changed to make the threshold clear, and to also ensure consistency between jurisdictions (a recommendation of the Royal Commission). As this subsection may also be subject to broad interpretation, we also encourage the Government to consider the inclusion of a non-inclusive list of behaviours which can be considered indicators of emotional or psychological harm, such as the NSW legislation.¹²

TasCOSS believes much of the effectiveness of the Scheme will depend on its operation in practice. We strongly believe that a capacity-building scheme will not only protect children and young people, but also improve organisations’ ability to work with and support children and young people. However, this will require comprehensive information, support and guidance to be provided to organisations and individuals throughout the implementation of the Scheme, as well as strong referral networks to ensure children, young people and their families are receiving the support they need. Without this support, we are concerned the operation of the Scheme may be punitive in nature and may fail to respond effectively to the needs of Tasmanian children, young people and their families.

We also strongly recommend the Government prioritise the implementation of a comprehensive community information and education campaign, to increase public awareness of the Scheme and of issues relating to child safety more generally. This should include materials developed for and co-designed with children and young people, focused on informing children of the obligations of the institutions and entities they are engaging with in relation to their safety, as well as information about their rights and how to raise concerns if needed.

Recommendations:

- Subclause 5 (2) (e) to be amended to read ‘significant emotional or psychological harm to a child’
- Consideration to be given as to how the Scheme will operate to build the capacity of Tasmanian organisations and entities, as well as the families and carers of Tasmanian children, including the following:
 - Comprehensive information, training and education provided to organisations not only in relation to their obligations under the Scheme, but in relation to existing community supports and/or networks available to assist children and young people
 - Clear information provided to organisations in relation to referral pathways to engage children, young people, their families and/or carers with additional supports if needed
 - Comprehensive community education and information campaign to be developed and delivered prior to the introduction of the Scheme

⁹ The term ‘emotional or psychological harm’ is defined at Child and Youth Safe Organisations Bill 2022 (Tas), cl 5 (1) to mean ‘conduct that is likely to cause significant harm to a child’s wellbeing and development’.

¹⁰ The term ‘significant’ is also defined at Child and Youth Safe Organisations Bill 2022 (Tas), cl 5 (1), in relation to emotional or psychological harm or neglect, to mean that ‘the harm or neglect is more than trivial or insignificant, but need not be deemed serious and need not have a lasting permanent effect’.

¹¹ *Children Legislation Amendment (Reportable Conduct) Act 2017* (Vic) s5(1); *Children’s Guardian Act 2019* (NSW) s20(g).

¹² *Children’s Guardian Act 2019* (NSW) s20(g): *Examples of indicators of significant emotional or psychological harm for paragraph (g)*—

- 1 *displaying behaviour patterns that are out of character*
- 2 *regressive behaviour*
- 3 *anxiety or self-harm*

- This should include information developed for (and ideally co-designed with) children and young people, focused on the obligations of organisations as well as their rights

The Role of the Regulator

The Bill creates the role of the Independent Regulator and invests this role with various functions in relation to the operation of both the Standards and the Scheme. TasCOSS welcomes several elements included in the legislative framework in relation to the role of the Regulator – in particular, stipulating their independence from Government, confirming they must act impartially and in the best interests of children when performing their duties, and conferring broad powers in relation to both the Standards and the Reportable Conduct Scheme. These powers include the oversight of, and enforcement of compliance with, the Standards; educating and providing advice to entities in relation to both the Standards and the Scheme; inspecting premises; requesting information or documentation; and issuing notices to investigate and comply.

It is difficult to comment comprehensively on these provisions, as TasCOSS believes much of the effectiveness of the framework outlined in the Bill will depend on how these provisions work in practice, and on who is ultimately invested with the powers of the Regulator. We echo recommendations made previously to invest the Commissioner for Children and Young People with the powers of the Regulator,¹³ noting in particular the importance of ensuring the independence of the Regulator and their ability to effectively advocate for children and young people. However, we note the extensive responsibilities conferred on the Regulator in provisions of the Bill and urge the Government to ensure that whoever is ultimately designated the responsibility of the role is provided adequate resourcing and support to effectively perform their functions.

Our consultations with stakeholders have raised some concerns about provisions relating to the powers of the Regulator to inspect premises used or occupied by a relevant entity.¹⁴ Clause 13(2)(b) stipulates that the Regulator can only inspect premises after providing the entity with seven days' notice, or with the consent of the head of the entity. Concerns have been raised that this may vastly curtail the independent information gathering powers of the Regulator in relation to the implementation of the Child Safe Standards, which could have a significant impact on the Regulator's ability to verify the practices and policies of entities and whether the Standards have been adopted in tangible, meaningful ways, as well as the Regulator's ability to uncover unsafe behaviours or practices which are inconsistent with the Standards. We note a number of similar concerns were raised in community consultations held around the Bill, with organisations noting the importance of the independent ability to inspect entities, particularly given that entities with limited independent oversight mechanisms are exactly the organisational frameworks in which child abuse is most likely to occur.¹⁵ We therefore recommend the Bill include provisions which permit the Regulator to conduct unscheduled inspections without consent or prior notice in circumstances in which the Regulator is satisfied such a search is justified.

¹³ Commissioner for Children and Young People Tasmania, 'Submission to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings' (29 July 2021), 17.

¹⁴ Child and Youth Safe Organisations Bill 2022 (Tas), cl 13.

¹⁵ For example, see Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report: Volume 6, Making Institutions Safe', 279.

TasCOSS also notes the CCYP has previously supported a ‘co-regulatory’ model, where the Regulator would operate in conjunction with existing regulatory bodies to provide oversight and enforce compliance. CCYP has noted that this 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.’¹⁶ Such a model has been adopted in Victoria, where the Commission for Children and Young People work alongside relevant regulatory bodies (including Victorian government departments and regulatory authorities).

It is unclear from the Bill whether this model is contemplated – there is one clause relating to ‘liaison with entity regulators’.¹⁷

The Regulator must liaise with entity regulators –

(a) to avoid unnecessary duplication in the oversight of the investigation of reportable allegations; and

(b) to share information and provide advice and guidance about the protection of children.

This section, combined with the broad powers conferred on the Regulator in various provisions of the Bill, would in our view permit the co-regulation of entities between the Regulator and existing regulatory bodies. However, we note the CCYP has also highlighted the importance of clear legislative provisions outlining how co-regulation is to work in practice, noting the challenges raised in a review of the Victorian legislation where, ‘[i]n 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... [which] created inefficiency, uncertainty, and delays, and in some cases, reluctance on the part of relevant authorities to take compliance action.’¹⁸ The CCYP has noted that in response to these concerns, new legislation was passed in Victoria to clearly identify the relevant regulator for each sector.¹⁹ If a co-regulation model is to be adopted in Tasmania, TasCOSS strongly recommends the inclusion of similar provisions in the Bill (for example, as an additional schedule).

Recommendations:

- The role of the Regulator should be performed by an entity capable of acting independently and in the best interests of children, consistent with the provisions of the Bill
- The Regulator must be adequately resourced to perform their functions, which are extensive
- The Bill should include provisions which permit the Regulator to conduct unscheduled inspections of premises used or occupied by relevant entities without consent or prior notice, in circumstances in which the Regulator is satisfied such a search is justified
- If a co-regulatory model is to be adopted, there should be clearer provisions stipulating how existing regulation entities will work alongside the Regulator, as well as a list of relevant regulatory bodies for each sector and clear designation of responsibility for monitoring, investigation and compliance mechanisms

¹⁶ Ibid, 21.

¹⁷ Child and Youth Safe Organisations Bill 2022 (Tas), cl 25.

¹⁸ Commissioner for Children and Young People Tasmania, ‘Submission to the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings’ (29 July 2021), 21.

¹⁹ *The Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* (Vic).

Information sharing

The importance of information sharing has been highlighted extensively throughout both the Royal Commission and the Commission of Inquiry.

TasCOSS notes most of the provisions relating to information sharing in the Bill are consistent with the recommendations of the Royal Commission;²⁰ for example, the Regulator is granted extensive powers in relation to information collection, sharing and use, and the Bill also includes provision relating to the sharing of information between key entities, including entity regulators and the police.

We note, however, there is no provision in the Bill relating to the provision of information to a person about whom allegations/reports have been made. We recommend the inclusion of provisions in the Bill which mirror the recommendations from the Royal Commission, which include the need ‘to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm’.

In relation to a potential co-regulation scheme (as outlined above), we also recommend the inclusion of more comprehensive provisions in relation to disclosure, particularly between the Regulator and other relevant entities for the purposes of responding to allegations or progressing any potential investigations. Although the Bill contains provisions conferring broad powers on the Regulator,²¹ we note other jurisdictions have included more explicit provisions relating to information sharing between and/or disclosure to both the external regulation body and the head/s of relevant entities throughout the investigation process.²² If a co-regulation model is to be adopted in Tasmania, we recommend the inclusion of similar provisions (perhaps in clause 32) to make it clear that the information should be disclosed to and shared between the Regulator and any other relevant entity who may be involved in or responsible for the investigation and enforcement process.

²⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, ‘Final Report: Recommendations’, Recommendation 8.7:

In establishing the information exchange scheme, the Australian Government and state and territory governments should develop a minimum of nationally consistent provisions to:

- a. enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children’s safety and wellbeing*
- b. permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts*
- c. require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions*
- d. explicitly prioritise children’s safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts*
- e. provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme*
- f. require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.*

²¹ Child and Youth Safe Organisations Bill 2022 (Tas) cl 32.

²² For example, see *Children’s Guardian Act 2019 (NSW)* s36 in relation to reports prepared by ‘relevant entities’ in relation to investigations and/or determinations, which must be provided to the Children’s Guardian within certain timeframes.

Recommendations:

- The Bill should include a provision/provisions relating to the disclosure of information to persons about whom a notification or report has been made, as well as the ability to respond to allegations.
- If a co-regulation model is to be adopted, the Bill should include more explicit provisions in relation to disclosure to and information sharing between both the Regulator and other relevant entities who may be involved in or responsible for an investigation or enforcement action.

Conclusion

The Child and Youth Safe Organisations Framework is an opportunity to build the capacity of organisations to respond quickly, effectively and appropriately to risks, and will ideally operate to promote the safety and wellbeing of Tasmania's children and young people. We encourage the Government to commit to the recommended changes outlined above; in particular, we note the effective implementation of the Standards and Reportable Conduct Scheme will require further resources and education (both within organisations and the community more broadly), and we therefore urge the Government to prioritise the development of supplementary materials to ensure the Framework can be implemented as quickly as possible.

Recommendations

- An additional Standard should be included in relation to the obligations of entities relating to the cultural safety of Aboriginal children and young people, ideally mirroring the wording used in the Victorian Child Safe Standards:
 - Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued
- The Government should prioritise the development and circulation of additional materials to provide a more detailed framework for how compliance with the Standards is to be progressed, monitored and reported on
 - As the materials need to be designed by the independent entity (and ideally should be co-designed with children and young people), the Government should clarify who will be invested with the powers of the Regulator as soon as possible, and ensure that their office is sufficiently resourced to begin developing and circulating supplementary materials in relation to the Standards as soon as possible
- Subclause 5 (2) (e) to be amended to read 'significant emotional or psychological harm to a child'
- Consideration to be given as to how the Scheme will operate to build the capacity of Tasmanian organisations and entities, as well as the families and carers of Tasmanian children, including the following:

- Comprehensive information, training and education provided to organisations not only in relation to their obligations under the Scheme, but in relation to existing community supports and/or networks available to assist children and young people
- Clear information provided to organisations in relation to referral pathways to engage children, young people, their families and/or carers with additional supports if needed
- Comprehensive community education and information campaign to be developed and delivered prior to the introduction of the Scheme
 - This should include information developed for (and ideally co-designed with) children and young people, focused on the obligations of organisations as well as their rights
- The role of the Regulator should be performed by an entity capable of acting independently and in the best interests of children, consistent with the provisions of the Bill
- The Regulator must be adequately resourced to perform their functions, which are extensive
- The Bill should include provisions which permit the Regulator to conduct unscheduled inspections of premises used or occupied by relevant entities without consent or prior notice, in circumstances in which the Regulator is satisfied such a search is justified
- If a co-regulatory model is to be adopted, there should be clearer provisions stipulating how existing regulation entities will work alongside the Regulator, as well as a list of relevant regulatory bodies for each sector and clear designation of responsibility for monitoring, investigation and compliance mechanisms
- The Bill should include a provision/provisions relating to the disclosure of information to persons about whom a notification or report has been made, as well as the ability to respond to allegations
- If a co-regulation model is to be adopted, the Bill should include more explicit provisions in relation to disclosure to and information sharing between both the Regulator and other relevant entities who may be involved in or responsible for an investigation or enforcement action.