



Tasmanian Council of Social Service Inc.

Child Safety Reform Implementation Monitor Bill 2024

April 2024



**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 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

The Child Safety Reform Implementation Monitor Bill 2024 ('the Draft Bill') is the legislation introducing an independent monitor to oversee and report on the Tasmanian Government's implementation of the recommendations from 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 recommended the establishment of an independent Child Sexual Abuse Reform Implementation Monitor ('Reform Implementation Monitor') to oversee and report on the Tasmanian Government's progress in implementing the recommendations from the Commission of Inquiry, as well as recommendations from related inquiries, such as the Royal Commission into Institutional Responses to Child Sexual Abuse ('the National Royal Commission'), and the Independent Inquiry into the Department of Education's Responses to Child Sexual Abuse.¹ The need for independent monitoring of the reform process was identified in the Commission of Inquiry's Final Report, *Who was looking after me? Prioritising the safety of Tasmanian children* ('the Final Report'), noting such monitoring was key to "ensure the recommendations of our Commission of Inquiry result in sustained systemic improvements towards preventing child sexual abuse in institutions, improving institutional responses to such abuse and providing the necessary supports for those who have been abused," and that ongoing monitoring is "essential to maintaining momentum for reform, adapting reform efforts to changing circumstances as required and ensuring progress is transparent."²

The relevant recommendation from the Commission of Inquiry is Recommendation 22.1:

- 1.** *The Tasmanian Government should introduce legislation to establish and fund an independent Child Sexual Abuse Reform Implementation Monitor to:*
 - a.** *Monitor and report to Parliament annually on the implementation of:*
 - i.** *The recommendations of this Commission of Inquiry;*
 - ii.** *Any recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse that were accepted by the Tasmanian Government and have not been implemented; and*
 - iii.** *The recommendations of the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse.*
 - b.** *Undertake independent evaluations of the effectiveness of the measures and actions taken in response to the recommendations identified above, especially the impact on the safety and wellbeing of children in government and government funded institutions and victim-survivors of child sexual abuse in institutional contexts.*

¹ Smallbone, S & McCormack, T 2021, *Independent Inquiry into the Department of Education's Responses to Child Sexual Abuse*, Final Report, 7 June.

² *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse*, Final Report, August 2023, p. 78.

2. *Independent evaluations should enable assessment of change over time and involve:*
 - a) *Identifying an evaluation framework and baseline data requirements within the first year of the appointment of the Implementation Monitor;*
 - b) *Commencing collection of data identified in the evaluation framework as soon as possible after the evaluation framework has been developed;*
 - c) *Assessing the change against the evaluation framework at five- and ten-year intervals following the tabling of this report; and*
 - d) *Making independent evaluations publicly available.*

3. *The Tasmanian Government should protect the independence of the Implementation Monitor by:*
 - a) *Appointing the Implementation Monitor for a fixed term that cannot be prematurely terminated except in extraordinary circumstances;*
 - b) *Maintaining the role of the Implementation Monitor until implementation of the recommendations identified above is substantively complete; and*
 - c) *Separately and directly funding the Implementation Monitor, rather than through a line agency.*

4. *The Tasmanian Government, through the Secretaries Board, should be required to report to:*
 - a) *The Implementation Monitor as requested and in the form required by the Implementation Monitor; and*
 - b) *The public on its implementation and reform activity through the Department of Premier and Cabinet's annual report.*

5. *The Implementation Monitor should consult as required with:*
 - a) *The Premier's Youth Advisory Council;*
 - b) *The adult victim-survivors of child sexual abuse advisory group (Recommendation 19.5);*
 - c) *The peak body for the sexual assault service system (Recommendation 21.3); and*
 - d) *The institution-specific advisory groups established within Tasmanian government agencies (Recommendations 9.6, 12.8 and 15.7).³*

We note the Final Report highlighted the importance of three key factors in establishing a Reform Implementation Monitor:

1. The Reform Implementation Monitor must be independent of Government. Evidence given at the Commission of Inquiry highlighted the importance of independence for similar bodies in other jurisdictions, as the role requires a critical analysis of how the Government is progressing its reform agenda.⁴ An independent monitor also enhances public confidence in the reform process and improves both transparency and accountability in relation to Government decision-making.

³ *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse*, Final Report, August 2023, pp. 194-195.

⁴ Statement of Tim Cartwright APM, 22 August 2022; Statement of Jan Shuard PSM, 4 September 2022.

2. The Reform Implementation Monitor must report publicly on its findings and views, to ensure the Tasmanian public can access information about how the recommendations are being implemented.
3. The Reform Implementation Monitor must be capable of engaging with a wide range of stakeholders in exercising its functions — this includes proactively consulting with service providers and community organisations, as well as those with lived experience, to obtain a broad cross-section of views and experiences to inform its work.

TasCOSS supports the full implementation of recommendations from the Commission of Inquiry and the introduction of an independent Reform Implementation Monitor. However, we are concerned some elements of the Draft Bill may impact the ability of the Reform Implementation Monitor to exercise its functions in a way which promotes the three objectives outlined above.

We note the following key issues:

Independence of the Reform Implementation Monitor

The legislation does confirm the independence of the Reform Implementation Monitor, noting they will not be “subject to the general direction or control of any Minister,” and that they have “complete discretion” in relation to the contents of their reports.⁵ However, given the importance of independence to the function of their role, we would recommend the inclusion of a separate clause clearly stating their independence from Government — an example can be found in the legislation establishing the independent Bushfires Royal Commission Implementation Monitor, which includes the following subsection in relation to their independence:

Subject to this Act and other laws of the State, the Implementation Monitor has complete discretion in the performance or exercise of his or her functions, powers or duties.⁶

In addition, the composition of the office of the Reform Implementation Monitor is unclear — for example, whether the Implementation Monitor will have the capacity to engage their own independent staff, or whether their office will be solely staffed by Tasmanian State Service officers or employees as outlined in Clause 9 of the Draft Bill.⁷ TasCOSS recommends the Government consider whether it might be more appropriate to ensure complete independence of the staff working alongside the Reform Implementation Monitor — that is, that they are not Tasmanian State Service officers or employees — to ensure they are able to engage in critical review of government decision-making, policy and legislation.

⁵ Child Safety Reform Implementation Monitor Bill 2024, Clause 8 (1)(a) and (b).

⁶ *Bushfires Royal Commission Implementation Monitor Act 2011*, Clause 11 (1).

⁷ Child Safety Reform Implementation Monitor Bill 2024, Clause 9.

Objectives and Powers

Scope

We strongly believe the objectives of the Reform Implementation Monitor need to be defined more broadly. Although the evidence presented to the Commission of Inquiry was focused on institutional abuse, many of its recommendations have a far broader application and scope — for example, Recommendation 19.1 relates to the development of a strategy and action plan in relation to child sexual abuse, including but not limited to institutional abuse. We therefore believe it is crucial for the Reform Implementation Monitor to be able to engage with a broad range of stakeholders and consider the effectiveness of reforms in relation to the prevention, identification and responses to child sexual abuse across the state. We recommend amending sub-clauses 10(b)(ii) and 10(c)(i)(ii) to remove the words “in institutions operated by, or on behalf of, the State.”⁸

We further believe the Reform Implementation Monitor should have broad scope to monitor the implementation of all recommendations from the National Royal Commission, not only those that were accepted by the Government in its previous response and are yet to be implemented. We believe the implementation of the recommendations from the Commission of Inquiry is likely to involve an ongoing reflection on recommendations and findings from a number of inquiries and investigations, and we do not believe the implementation process should be restricted to what was agreed to or prioritised by the Government in 2018.

We recommend a change in wording to Clause 11(1)(b), as per the following:

To monitor the implementation of any recommendations contained in the Royal Commission into Institutional Responses to Child Sexual Abuse, or any other national or State inquiries determined to be relevant.

Information Gathering

In relation to the information gathering powers of the Reform Implementation Monitor, we are concerned by the exceptions provided in Clause 14. Our understanding of the role of the Reform Implementation Monitor is that they will be overseeing and reviewing Government responses, priorities and actions — we do not understand why the outlined exemptions would therefore be justified. For example, if providing information to the Reform Implementation Monitor may incriminate a person in respect of an offence or a crime, as outlined in the exception in Clause 14(1)(c), and the person incriminated is a current or former Tasmanian State Service employee, then it may be in the public interest for the Reform Implementation Monitor to be able to investigate and respond to these concerns. In the absence of a more comprehensive justification on why these exemptions are justified (and noting there are no similar provisions in the legislation establishing similar bodies in other jurisdictions),⁹ we would strongly recommend the removal of this clause.

⁸ Child Safety Reform Implementation Monitor Bill 2024, Clause 10 (b)(ii) and (c)(i)(ii).

⁹ Family Violence Reform Implementation Monitor Act 2016; Bushfires Royal Commission Implementation Monitor Act 2011.

Entry and Inspection

In relation to the powers of entry and inspection, we note the Draft Bill requires prior written notification to an Agency of the Reform Implementation Monitor's intention to enter a relevant location to observe or request a demonstration/information.¹⁰ We note stakeholders have previously advocated for monitoring and oversight bodies to have the power to make unscheduled visits — for example, in the context of prison monitoring and oversight, the most recent annual report from the Custodial Inspector highlighted the following:

Unannounced visits are an important preventive tool to address risks relating to inhumane treatment. They are also a key tool in ensuring compliance with Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).¹¹

Although the context of the inspections or visits from the Reform Implementation Monitor will be different, TasCOSS believes it is still important for the legislation to allow for unannounced or unscheduled visits, to ensure visits are opportunities to accurately observe the day-to-day functioning of particular agencies or entities.

Reporting Requirements

TasCOSS strongly supports legislative provisions which strengthen reporting requirements, particularly in relation to publicly accessible information. Alongside the reporting requirements outlined in the Draft Bill, we encourage the Government to consider ways of promoting public awareness of, and engagement with, the work of the Reform Implementation Monitor.

Clause 22 indicates there will be a separate website established for the work of the Reform Implementation Monitor.¹² However, we would strongly recommend all reports are also published on a separate, centralised online portal for the Government implementation of the Commission of Inquiry recommendations (this idea is explored further below).

Community Awareness and Education

Alongside our recommendations above, we also note the importance of community education and awareness-raising for the effective functioning of the Reform Implementation Monitor. We believe the Government should look at ways to increase public engagement in the implementation project, both to raise awareness in the community around issues relating to child safety and wellbeing, but also to ensure greater transparency and accountability in relation to the Government's implementation project and reform agenda.

¹⁰ Child Safety Reform Implementation Monitor Bill 2024, Clause 15(2)(a).

¹¹ Office of the Custodial Inspector Tasmania, *Annual Report 2022/23*, p. 6.

¹² Child Safety Reform Implementation Monitor Bill 2024, Clause 22(a).

One way to promote public engagement with this work is the development and maintenance of a centralised online portal where community organisations and individuals can access up-to-date information about the implementation and reform process. The portal could contain the following:

- A document library with copies of relevant research (such as journal articles or research papers), frameworks and recommendations from other inquiries;
- A timeline of proposed reforms and public consultations;
- Streamlined access to community consultation opportunities across Tasmanian Government departments relevant to the Commission of Inquiry; and
- Information about public forums, events and other engagement opportunities.

We recommend the Government consider examples from other jurisdictions — for example, the [Open Government website](#) (from the Australian Capital Territory), or the South Australian [YourSAy website](#).

Consistency with Overarching Principles and Objectives of Reform

In our view, the Reform Implementation Monitor will be most effective if the role is also utilised to ensure Government reform is aligned with the broader objectives and principles of the Government's reform project. Rather than simply creating an entity to engage in a 'box ticking' exercise in monitoring and reporting on reform, TasCOSS strongly supports the implementation of a mechanism by which the Reform Implementation Monitor can continue to assess Government action (or inaction) against the objectives underlying the Commission of Inquiry and the implementation project.

We would recommend the Bill include a list of principles or objectives underpinning the reform project, which could then be used by the Reform Implementation Monitor to assess and report on how Government is performing. The list of principles could operate as a 'statement of compatibility',¹³ ensuring that all policy and legislative change remains consistent with the stated objectives of the reform project.

This list of principles should be developed in consultation with community members and organisations, including victim survivors of child sexual abuse, and the assessments of proposed legislative and other reforms should be publicly available.

¹³ For example, in the ACT, all bills must be accompanied by a [Statements of Compatibility](#), which includes an assessment of how the proposed legislation will be compatible with and/or support various international human rights instruments.

Recommendations

1. The Bill should include a separate provision clearly stating the independence of the Reform Implementation Monitor from Government.
2. The Reform Implementation Monitor should be staffed and resourced in a manner which promotes and maintains independence from Government.
3. The objectives should be broadened to ensure the Reform Implementation Monitor can consider the effectiveness of reforms in the prevention, identification and responses to child sexual abuse across the state, not just institutional abuse.
4. The Reform Implementation Monitor should be able to monitor the implementation of all recommendations from the National Royal Commission.
5. More information should be provided to explain the intention of Clause 14 in relation to proposed exemptions on information to be requested by the Reform Implementation Monitor — in the absence of further information, this clause should be removed.
6. The legislation should allow for the Reform Implementation Monitor to engage in unannounced or unscheduled visits.
7. The Government should develop a separate, specific website for their work implementing the Commission of Inquiry recommendations, with detailed information about timeframes for reform, consultation, reports and other relevant materials (reports from the Reform Implementation Monitor should be available and promoted on this website).
8. The Bill should include a set of principles which will be used by the Reform Implementation Monitor in reviewing and assessing proposed reforms, and these assessments should be publicly available.