

Your Ref:
Our Ref: 846

24 December 2019

The Secretary
Department of Communities Tasmania
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Dear Secretary

Consultation Paper: Developing a program to prevent harmful sexual behaviours for children and young people

Thank you for the opportunity to provide comment on the *Consultation Paper: Developing a program to prevent harmful sexual behaviours for children and young people* (the Consultation Paper).

As the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) found, there can be profound immediate and long-lasting effects for children and young people who are the subject of harmful sexual behaviours - and for those who display such behaviour.

While current data limitations make it difficult to ascertain the prevalence of harmful sexual behaviours among children and young people in Tasmania, the Royal Commission found it is an ongoing problem in institutional and non-institutional settings across Australia. The Royal Commission recommended that all states and territories develop more comprehensive and coordinated policy approaches to preventing, identifying and responding to this behaviour.

This is a complex area of policy which requires a cross-Government and cross-community approach, informed by those with expertise in the delivery of appropriate therapeutic responses to harmful sexual behaviours. I therefore welcome the Tasmanian Government's commitment to developing a robust program across the public health continuum to prevent and more effectively respond to harmful sexual behaviours for children and young people in Tasmania.



Role of the Commissioner for Children and Young People

Under the *Commissioner for Children and Young People Act 2016* ('the CCYP Act'), I have responsibility for advocating for all children and young people in Tasmania generally, and for monitoring and promoting their wellbeing. My functions are set out in section 8 of the CCYP Act.

In performing a function or exercising a power under the CCYP Act, I must do so according to the principle that the wellbeing and best interests of children and young people are paramount, and I must observe any relevant provisions of the United Nations *Convention on the Rights of the Child* ('the CRC').¹

Furthermore, I am to carry out my work according to the principles that:

- a) children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
- b) the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given special regard and serious consideration;
- c) the contributions made by children to the community should be recognised for their value and merit;
- d) the views of children on all matters affecting them should be given serious consideration and taken into account;
- e) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of children and should be supported in carrying out their role.²

Comment

Given the relatively short period provided for comment on the Consultation Paper and noting the complexity of the legal and policy issues that arise, my comments below are not exhaustive. I have structured my response in accordance with the following general topic areas:

- the public health approach to preventing and responding to harmful sexual behaviours;
- improving service systems (including assessment and referral pathways); and
- specialist therapeutic responses to harmful sexual behaviours.

As a preliminary point, I acknowledge the importance of ensuring that we do not use language which inappropriately labels or stigmatises children and young people who may engage in a range of sexual behaviours, not all of which will be inappropriate or harmful.³

¹ *Commissioner for Children and Young People Act 2016* (Tas), s 3(1).

² *Commissioner for Children and Young People Act 2016* (Tas), s 3(2).

³ Commissioner for Children and Young People (WA), *Discussion Paper: Children and young people with harmful sexual behaviours*, Commissioner for Children and Young People – Western Australia, May 2018, 4 – 6



In this submission, I use the umbrella term 'harmful sexual behaviours' to describe any problematic, harmful or sexually abusive behaviours exhibited by children or young people who are less than 18 years of age. While there is no universally accepted terminology to describe harmful sexual behaviours, this overarching term aligns with current evidence and is the language adopted by the Royal Commission.^{4,5} The term recognises that engaging in harmful sexual behaviours may be problematic to a child's or young person's own development and acknowledges 'the seriousness of these behaviours and the significant impact they have on victims, but is not contingent on the age or capacity of a child'.⁶

As the Royal Commission has pointed out, adoption of a nationally consistent definition for harmful sexual behaviours would promote meaningful and accurate communication between specialist practitioners and others working and caring for children and young people who exhibit harmful sexual behaviours.⁷ This is therefore something I would strongly support.

A public health approach to preventing and responding to harmful sexual behaviours

The Royal Commission has recommended the adoption of a *public health approach* as an overarching framework for preventing and responding to harmful sexual behaviours (Recommendation 10.1).

This approach requires a focus on preventing the occurrence of harmful sexual behaviours by firstly, addressing risk factors which may increase the likelihood of it occurring in the first place. Where harmful sexual behaviours do occur, a public health approach also involves timely responses to minimise harm and prevent the likelihood of it recurring or escalating. When expertise and resources are directed towards such prevention and early intervention, it is less likely that a tertiary response involving the statutory child protection or criminal justice systems is required.

As the Consultation Paper notes at page 7:

One non-government organisation is funded by the Tasmanian Government to provide counselling for sexual assault victim-survivors and delivers a therapeutic behavioural change program to children aged up to and including 11 years with CYP-HSB. Currently this service works with young people aged 12 to 17 years on a fee-paying basis. Accessing a specialist private provider, which can be costly and dependent up on availability, is currently the only other option available to children and their families.

The current services are limited to a restricted provision of tertiary intervention, and excludes children displaying violence, or who are subject to criminal investigation.

⁴ 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.

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017.

⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 23.

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 134.



There is an absence of primary and secondary intervention in Tasmania and nationally.

Neither the Consultation Paper nor *Tasmania's Action Plan for Family and Sexual Violence 2019-2022* (the Action Plan) provide details about the levels of funding available for the programs needed to fill these identified service system gaps. I note that Action 9 of the Action Plan commits to 'Deliver a Problem Sexual Behaviours (PSB) and Sexually Abusive Behaviours (SAB) program for children and young people.' While Action 9 has been included under the primary prevention and early intervention priority area of the Action Plan, it is also relevant to the other priority areas i.e. 'response and recovery' and 'strengthening the service system'.⁸ Therefore, to some extent it is difficult to respond to the Consultation Paper given the lack of indication of the resourcing available for the programmatic response that is being explored. Further, it appears to me that there may be a need to augment resourcing currently allocated to the primary prevention and early intervention priority area under the Action Plan.

A public health response to harmful sexual behaviours should, in my view, include a continuum or system of timely evidence-informed strategies and responses including:

- **Primary or universal prevention strategies** to prevent children and young people from engaging in harmful sexual behaviours. It is important to acknowledge the role that can be played by existing primary and universal services - including Child and Family Centres, community-based health services, schools and others. However, to ensure a consistent approach to primary prevention activities, there is a need for:
 - Standardised and consistent education for the whole community, including children and young people, to promote a common understanding of children's sexual development, and of the difference between developmentally appropriate and harmful sexual behaviours.
 - The development of a suite of resources accessible to the whole community (including parents and carers, schools, community-based health services, Child and Family Centres, Neighbourhood Houses and other universal services) on how to respond or seek help where there are concerns about possible harmful sexual behaviours, including communication of clear referral pathways for further information or support.
 - Implementation of child safe policies and procedures in organisations working with children and young people.
 - Consistent and rigorous professional development for educators, health professionals and others who work with children and young people to promote awareness and understanding of risk factors, recognise harmful sexual behaviours, and facilitate connections between children and young people, their families and carers and professional support services.⁹

⁸ *Safe Homes Families Communities: Tasmania's action plan for family and sexual violence 2019-2022*, 8.

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017; Commissioner for Children and Young People (WA), *Discussion Paper: Children and young people with harmful sexual behaviours*, Commissioner for Children and Young People – Western Australia, May 2018



- **Secondary interventions** to support children and young people and families and carers in need of additional assistance, with an emphasis on providing timely support to help prevent emerging behaviours from escalating to a point at which they may cause harm. Interventions may include:
 - Confidential telephone helplines or online supports and information for children and young people with emerging problematic sexual thoughts or behaviours toward other children.¹⁰
 - Individualised supports and education for parents and carers and those who work with children and young people who may have emerging problematic sexual behaviours.¹¹
 - Specialised training for staff working with children and young people in high-risk environments where there are known situational risks for harmful sexual behaviour.¹²

- **Tertiary interventions** for children and young people and their families or carers where harmful sexual behaviours have been identified, and an intensive and tailored response is necessary to respond to the needs of the child or young person and to reduce the risk of future occurrence of harmful sexual behaviours. Interventions may include:
 - Assessment of children and young people who have exhibited harmful sexual behaviours.
 - Tailored therapeutic services for individual children and their parents or carers based on the Royal Commission's best practice principles, which are outlined later in this submission.
 - A child safety or criminal justice response, noting however that these statutory responses will only be necessary for a small proportion of children and young people.

It is clear that 'a strategic and well-implemented multi-agency approach at all levels of the community'¹³ is integral to a public health approach to preventing and responding to harmful sexual behaviours. As the Royal Commission found:

Children with harmful sexual behaviours interact with a range of institutions. These institutions may include child protection services, the police, health and mental health services, disability services, therapeutic treatment services, juvenile justice agencies and specific institutions in which a child has exhibited harmful sexual behaviours. We heard that interaction with multiple institutions is especially likely to be the case for children who have complex needs that cannot be addressed by a single agency. We are of the view that, where appropriate, agencies working to

¹⁰ Commissioner for Children and Young People (WA), *Discussion Paper: Children and young people with harmful sexual behaviours*, Commissioner for Children and Young People – Western Australia, May 2018, 21.

¹¹ Commissioner for Children and Young People (WA), *Discussion Paper: Children and young people with harmful sexual behaviours*, Commissioner for Children and Young People – Western Australia, May 2018, 21.

¹² These environments include youth justice detention, out-of-home care settings, and schools. Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 34 & 146.

¹³ 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, 16.



achieve primary and secondary prevention of and tertiary interventions for harmful sexual behaviours should collaborate with one another.¹⁴

It would, for example, be appropriate for a service which primarily provides therapeutic interventions to be appropriately resourced to provide secondary consultation to other services providing support or a service to children and young people with harmful sexual behaviours.

Improving service systems – assessment and referral pathways

The Royal Commission found that where children receive specialist assessment which identifies therapeutic interventions appropriate to their individual needs, 'harmful sexual behaviours can reduce or cease altogether, and the wellbeing of the child can improve'.¹⁵

Consistent with Recommendation 10.4 of the Royal Commission, it is my view that clear and agreed referral pathways should be available to all children and young people exhibiting harmful sexual behaviours to promote and facilitate their access to specialist assessment and interventions appropriate to their assessed level of need and risk. These referral pathways should be available to children and young people of all ages and regardless of whether they are involved in the statutory child safety or criminal justice systems.

There is however a clear need for the development of an overarching policy framework in which to embed such a service system response. That framework needs to clearly detail which referral pathway and which response will apply in which circumstances. Furthermore, consideration should be given to whether there is a need for legislative reform to underpin and support that policy framework.

For example:

- There is a need to consider whether the *Children, Young Persons and Their Families Act 1997* (CYPTF Act) should be amended to specifically provide for a reporting process¹⁶ and response for children and young people who engage in harmful sexual behaviours. A referral pathway provided via the CYPTF Act may be particularly important where a child's family or carer does not voluntarily seek assistance for their child.
- There is a need to consider whether provisions under the *Youth Justice Act 1997* directed at diverting children and young people from the criminal justice system should be amended to encourage and support children and young people with harmful sexual behaviours to participate in assessment and therapeutic treatment programs.
- For those children and young people displaying harmful sexual behaviours against whom charges have been laid but which are yet to be resolved,

¹⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 138.

¹⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 118.

¹⁶ See for example the *Children, Youth and Families Act 2005* (Vic), s185.



consideration should be given to whether it would be appropriate for a child or young person in these circumstances to be referred for therapeutic treatment and if so, under what conditions and at what stage of the criminal justice process.

- For the small percentage of children and young people who are charged and convicted of an offence arising from harmful sexual behaviours, it may be appropriate to provide a specific sentencing option involving therapeutic treatment.

Improved specialist therapeutic responses to harmful sexual behaviours

The Royal Commission has developed best practice principles to guide the provision of therapeutic interventions for children and young people with sexually harmful behaviours. I endorse the adoption of these best practice principles to guide therapeutic interventions for children and young people with harmful sexual behaviours in Tasmania. As the Royal Commission said:¹⁷

... experts in the field of children with harmful sexual behaviours have suggested a principles-based approach to guide therapeutic interventions. Principles, informed by the best available evidence, provide an agreed framework for best practice. Within this framework different therapeutic models can be selected so therapy can be tailored to the child's specific needs and situation, according to expert assessment. In this way principles act as a benchmark for the quality and effectiveness of interventions.

I note the Royal Commission's best practice principles have been included in the Consultation Paper. For convenience I set them out below:

- A contextual and systemic approach should be used. For interventions to be effective they should take account of a child's whole environment and include family, neighbourhood and community supports.
- Family and carers should be involved. Practitioners should equip the child's family and carers with techniques and strategies so they can play a continuing role in behaviour management and promoting positive change for the child.
- Safety should be established. An overarching safety plan must be agreed on between services, home and school that provides safe and appropriate ways of managing the child's behaviour.
- There should be accountability and responsibility for the harmful sexual behaviours. Therapeutic interventions should assist the child with the harmful sexual behaviours to acknowledge and take responsibility for their behaviours.
- There should be a focus on behaviour change. The aim should be to guide the child towards understanding appropriate and safe ways to behave, through

¹⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017. 192.



education which takes account of the child's entire circumstances, including at home and at school.

- Developmentally and cognitively appropriate interventions should be used. They should be tailored to the child's age and developmental stage and accommodate learning and language difficulties, developmental delays, cognitive impairment and other needs resulting from disability.
- The care provided should be trauma-informed. A trauma-informed approach recognises that many children with harmful sexual behaviours have trauma in their background and therefore have complex needs that require a holistic response.
- Therapeutic services and interventions should be culturally safe. In particular, Aboriginal and Torres Strait Islander children and their families may require culturally tailored approaches. Practitioners should consult with cultural experts to ensure interventions are effective.
- Therapeutic interventions should be accessible to all children with harmful sexual behaviours.¹⁸

Any program that is funded by the Tasmanian Government would need to establish that its assessment tools and therapeutic interventions are evidence-based or at the very least, evidence informed, and are carried out by suitably qualified professionals.

I would support the development of practice standards as one way of ensuring quality and consistency in service delivery to children and young people accessing services due to issues relating to their harmful sexual behaviours. I also recommend that the development of practice standards and the adoption of any common assessment tool(s) is informed by work being undertaken in this regard in other jurisdictions and at a national level.

Furthermore, there is a need to ensure that children and young people living in rural and remote regions of Tasmania can access the services they require, particularly through the provision of an outreach facility. Clearly there is a fundamental need for services provided to Tasmanian Aboriginal children and young people to be provided in a way which is culturally safe.

Other matters

Consistent with Recommendation 10.7 of the Royal Commission:

any government-funded therapeutic interventions should be rigorously evaluated to ensure these interventions deliver positive short-term and long-term outcomes for children with harmful sexual behaviours and their families. Once services have shown that they are consistently delivering interventions that reduce or cease harmful sexual behaviours by children, both generally and for specific populations, further evaluations should be undertaken to test cost-effectiveness and

¹⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 16-17.



implementability in other contexts. The results of these evaluations should be shared with the field to inform and strengthen practice.¹⁹

To the extent the Tasmanian Government develops an overarching program to guide its response to harmful sexual behaviours for children and young people in Tasmania, this should also be the subject of an independent and appropriately resourced contemporaneous process evaluation.

I also draw your attention to the recently published second edition of the *Operational framework for children and young people displaying harmful sexual behaviours* published by the National Society for the Prevention of Cruelty to Children which may be of assistance.²⁰

Conclusion

Thank you for the opportunity to provide feedback in relation to this important area of policy and service delivery.

I am available to discuss my comments in more detail and look forward to providing further input into the development and implementation of Tasmania's response to harmful sexual behaviours.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc: Hon Roger Jaensch MP, Minister for Human Services

¹⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 10, Children with harmful sexual behaviours*, Commonwealth of Australia, 2017, 17-19; Recommendation 10.7.

²⁰ Hackett S, Branigan P and Holmes D, *Operational framework for children and young people displaying harmful sexual behaviours - Second Edition*, National Society for the Prevention of Cruelty to Children: London, 2019.