

Your Ref:  
Our Ref: 870

1 March 2021

Ginna Webster  
Secretary  
Department of Justice

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Dear Secretary

**Re: Child Safe Organisations Bill 2020**

## **Introductory comments**

Thank you for the opportunity to comment on the Child Safe Organisations Bill 2020 (the draft Bill) and for providing an extension of time within which to lodge this comment, which is not intended to be exhaustive.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) found that strengthened approaches to preventing, identifying, and responding to child sexual abuse and other forms of abuse in organisations will ultimately reduce the risk of child abuse occurring. I am therefore extremely pleased the Tasmanian Government is taking steps to develop a legislative framework to guide child safe practice in Tasmanian organisations.

However, I am disappointed with the draft Bill's proposals for reporting, monitoring and assessing compliance with the proposed Child Safe Standards for reasons outlined in this comment. It is particularly disappointing that the draft Bill does not contain a framework for independent oversight, as was recommended by the Royal Commission.

Further, I acknowledge this is an extremely complex area of policy. I note the correspondence accompanying the draft Bill refers to the Tasmanian Government's commitment to:

Develop options for a child safe legislative framework in Tasmania that supports the intent of the National Principles for Child Safe Organisations and provides a plan for the



implementation of the Royal Commission's recommendations relating to Child Safe Standards and a Reportable Conduct Scheme in Tasmania.<sup>1</sup>

The development and implementation of a child safe legislative framework and associated reforms is fundamental to our efforts to promote and protect the safety and wellbeing of all children and young people in Tasmania. It is therefore crucial that we get things right at each step along the way and that we have a clear idea of where we are going. Actions we take now will have long lasting consequences.

In my respectful opinion, comprehensive and informed consultations with all relevant stakeholders, including those engaged in the provision of child-related services, are of critical importance in the development of Tasmania's child safe legislative framework, and indeed any accompanying Reportable Conduct Scheme. Whilst I acknowledge many stakeholders will be providing feedback on the draft Bill, this feedback will be limited in scope due to the nature of the draft Bill. In my respectful opinion, consideration should be given to undertaking further, more comprehensive consultation including a discussion paper and perhaps stakeholder focus groups before finalisation of the draft Bill and progression of a Reportable Conduct Scheme.

## Role of the Commissioner

My role as Commissioner for Children and Young People is governed by the *Commissioner for Children and Young People Act 2016* (CCYP Act).

Section 8 of the CCYP Act outlines my functions as follows:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and
- (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

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<sup>1</sup> Tasmanian Government, *Protecting our Children: First Year Action Plan 2018-2019*, [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0006/453264/First-Year-Progress-Report\\_Royal-Commission-Final-Report.pdf](https://www.justice.tas.gov.au/_data/assets/pdf_file/0006/453264/First-Year-Progress-Report_Royal-Commission-Final-Report.pdf), page 10.



In performing my functions, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child*; and
- give special regard to the needs of children and young people who are disadvantaged or vulnerable.

Legislation to progress recommendations of the Royal Commission relating to the promotion of child safety in institutions and organisations in Tasmania is clearly a matter relevant to my functions as Commissioner.

## Context and Background to the Draft Bill

According to correspondence accompanying the invitation to comment on the draft Bill:

On 15 December 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse released its final report. In Volume 6, *Making Institutions Child Safe*, the Royal Commission made a number of recommendations including ten Child Safe Standards that aim to provide a foundation for a consistent and best practice approach to child safety in organisations.

In June 2018, the Council of Australian Governments (COAG) endorsed the National Principles for Child Safe Organisations as the foundation for a nationally consistent approach to creating child safe organisations.

The draft legislation reflects the Government's commitment to introduce a Bill to implement Child Safe Standards in Tasmania.

The draft Bill proposes the following reforms to

- Establish Principles for the Safety and Wellbeing of Children;
- Establish Child Safe Standards;
- Require all organisations engaged in services involving interaction with children to embed the Principles for the Safety and Wellbeing of Children and the Child Safe Standards in policies, practices and procedures;
- Require Tasmanian Government entities to embed the Principles for the Safety and Wellbeing of Children and the Child Safe Standards in funding agreements with non-government organisations;
- Require Tasmanian Government entities to report annually on implementation of, and compliance with, the Principles for the Safety and Wellbeing of Children and the Child Safe Standards; and
- Require Tasmanian Government entities to require funded non-government organisations to report annually on implementation of, and compliance with, the Principles for the Safety and Wellbeing of Children and the Child Safe Standards through their funding agreements.



## Comment

### 1. *The proposed standards*

Recommendation 6.4 of the Royal Commission is as follows:

All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.

In Recommendation 6.8, the Royal Commission recommended that state and territory governments should require all institutions that engage in child related work to meet the Child Safe Standards identified by the Royal Commission in Recommendation 6.5.

Recommendation 6.5 of the Royal Commission outlines the Child Safe Standards as follows:

The Child Safe Standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

At Recommendation 6.6, the Royal Commission outlines core components to guide implementation of the Child Safe Standards.

The Royal Commission's work on child safe institutions was underpinned by the United Nations *Convention on the Rights of the Child* and guided by the child's rights to:

- have their best interests as a primary concern in decisions affecting them
- non-discrimination
- have the responsibilities of parents or carers respected
- participate in decisions affecting them
- be protected from all forms of violence, including all forms of sexual exploitation and sexual abuse, including while in the care of parents, guardians or other carers
- special protection for children with disability.<sup>2</sup>

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<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6: Making Institutions Child Safe*, page 136.



The National Principles for Child Safe Organisations<sup>3</sup> (the National Principles), which were endorsed by the Prime Minister and relevant Ministers from all states and territories in February 2019, give effect to the Royal Commission's Child Safe Standards. The National Principles have a broader scope that incorporates a focus on wellbeing and goes beyond child sexual abuse to cover other forms of potential harm to children and young people.

As outlined in the Foreword to the National Principles:

They provide a nationally consistent approach to embedding child safe cultures within organisations that engage with children, and act as a vehicle to give effect to all Royal Commission recommendations related to child safe standards.

The Preamble to the National Principles provides as follows:

The National Principles collectively show that a child safe organisation is one that creates a culture, adopts strategies and takes action to promote child wellbeing and prevent harm to children and young people. A child safe organisation consciously and systematically:

- creates an environment where children's safety and wellbeing is the centre of thought, values and actions
- places emphasis on genuine engagement with, and valuing of children
- creates conditions that reduce the likelihood of harm to children and young people
- creates conditions that increase the likelihood of identifying any harm
- responds to any concerns, disclosures, allegations or suspicions.

For ease of reference, the National Principles for Child Safe Organisations are set out below:

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 for 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

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<sup>3</sup> [https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National\\_Principles\\_for\\_Child\\_Safe\\_Organisations2019.pdf](https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf)



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

In proposed section 5, the draft Bill outlines three principles for the safety and wellbeing of children and, in clause 2 of Schedule 1, it outlines five child safe standards (the proposed standards).

Proposed section 6(2) requires an organisation that provides a child related service or a body prescribed under proposed section 7(b) to ensure that the proposed standards are complied with when providing a service.

Proposed section 7 provides as follows:

The following bodies are to incorporate the principles and standards in the policies, procedures and practices of the body:

- (a) an organisation that provides a child-related service;
- (b) a body prescribed for the purposes of this section.

The content of the proposed standards as set out in Schedule 1 appears to broadly align with the Child Safe Standards recommended by the Royal Commission and with the National Principles. However, there are differences between them which creates confusion and it is not clear to me why the National Principles have not simply been replicated in the draft Bill. The following examples assist to illustrate this point:

- a) The proposed standards redraft and, in some cases, combine elements of individual Royal Commission Child Safe Standards or National Principles (see for example proposed standards 1, 2, 3 and proposed paragraph (g) of proposed standard 5). Paragraph (g) of proposed standard 5 appears to reflect Child Safe Standard 8 and National Principle 8 (safety in physical and online environments) and Child Safe Standard 4 and National Principle 4 (upholding equity and diversity).
- b) Proposed standard 5(d) provides that “complaint and dispute processes of the organisation or body empower children to raise complaints and be involved in the dispute resolution process”. This proposed standard appears to be narrower in scope than what was contemplated by the Royal Commission, which emphasised the need for a child focussed complaint handling system (see the core components set out in Recommendation 6.6) and National Principle 6 (Processes to respond to complaints and concerns are child focused).

I also note that proposed standard 5 includes what appear to be measures of implementation which are not easily connected to individual Royal Commission Child Safe Standards or individual National Principles. By way of example, proposed paragraph (e) of proposed standard 5 requires organisations to develop a Code of Conduct - development of such a code is a “core component” of the Royal Commission’s Child Safe Standard 1 and a key action area under National Principle 1 and as such, more a measure of implementation.



As the Royal Commission said:

The standards are designed to be principle based and focused on outcomes, as opposed to setting detailed and prescriptive rules that must be followed, or specific initiatives that should be implemented. This is to enable them to be applied to, and implemented by, institutions in a flexible way, informed by each institution's nature and characteristics. Every institution would need to consider each standard and take time to identify risks that could arise in their context, and find ways to mitigate or manage those risks.<sup>4</sup>

The National Principles are also intended to be implemented in a way which allows flexibility and recognises the variety of organisational sizes, types and capacities. Therefore, noting the core components of each Child Safe Standard outlined by the Royal Commission and also the guidance provided in the National Principles, guidance on specific implementation measures could, in my opinion, be better left to guidelines and advice developed by an independent oversight body of the type envisaged by recommendations 6.10 and 6.11 of the Royal Commission, a matter addressed later in this comment. Having said this, it may be appropriate to include some implementation measures, such as the requirement to develop a Code of Conduct, in the legislation. However, this should be done in such a way that it is clearly a measure of implementation and not a Child Safe Standard. Proposed section 8BA(1) of the *Consultation Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021*<sup>5</sup> (see page 9 of this comment) provides an example of this.

As previously indicated, in my opinion the proposed standards in the draft Bill should simply outline the National Principles. If this approach was adopted, it would also promote alignment with the obligations of organisations in receipt of funding from the Commonwealth and who might be required to comply with the Commonwealth Child Safe Framework, given this framework specifically adopts the National Principles at Requirement 3.<sup>6</sup>

It is also worth noting that the former National Children's Commissioner within the Australian Human Rights Commission developed resources to support organisations, parents and carers to understand and implement the National Principles.<sup>7</sup> The availability of these resources to build capacity among organisations and the broader community is, in my opinion, a further reason to incorporate the National Principles into the draft Bill. This is especially so given currently there is no independent body or organisation in Tasmania which is resourced to provide freely available advice, guidance and assistance to organisations, parents and carers on implementation of a child safe organisational framework and culture.

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<sup>4</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6: Making Institutions Child Safe*, page 146.

<sup>5</sup>[https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20\(Child%20Safe%20Scheme\)%20Bill%202021.pdf](https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20(Child%20Safe%20Scheme)%20Bill%202021.pdf)

<sup>6</sup> <https://childsafety.pmc.gov.au/what-we-do/commonwealth-child-safe-framework>

<sup>7</sup> <https://childsafety.pmc.gov.au/what-we-do/national-principles-child-safe-organisations>



## 2. *Who is to comply with the proposed standards and principles?*

As previously indicated, proposed section 6(2) requires an organisation that provides a child-related service or a body prescribed under section 7(b) to ensure that the standards are complied with when providing a service.

Proposed section 7 provides:

The following bodies are to incorporate the principles and standards in the policies, procedures and practices of the body:

- (a) an organisation that provides a child-related service;
- (b) a body prescribed for the purposes of this section.

Although the draft Bill imposes the above obligations on organisations providing child-related services or bodies prescribed under proposed section 7, it is not clear from the draft Bill which organisations or bodies will be in scope.

This is because:

- a) “child-related service” is defined to mean “an activity or service that is prescribed by the regulations to be a child-related service”; and
- b) additional bodies may be prescribed.

Although there is no indication in the draft Bill or in the correspondence accompanying it, Recommendation 6.9 of the Royal Commission, which the Tasmanian Government has accepted in principle, provides some guidance as to the types of organisations and bodies that should be required to comply with the principles and standards. That Recommendation is set out in full below:

Legislative requirements to comply with the Child Safe Standards should cover institutions that provide:

- a. accommodation and residential services for children, including overnight excursions or stays
- b. activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
- c. childcare or childminding services
- d. child protection services, including out-of-home care
- e. activities or services where clubs and associations have a significant membership of, or involvement by, children
- f. coaching or tuition services for children
- g. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
- h. services for children with disability
- i. education services for children



- j. health services for children
- k. justice and detention services for children, including immigration detention facilities
- l. transport services for children, including school crossing services.

In my respectful opinion, clarification of scope is necessary because of the obligations imposed, as outlined above, and also because provisions in the draft Bill relating to funding agreement requirements (proposed section 8) and reporting obligations of relevant organisations and bodies which have funding agreements with Government Agencies (proposed section 9) will affect relevant organisations and bodies.

As discussed later in this comment, it is also not clear which Government Agencies are in scope.

Consideration should also be given to imposing the obligation to embed the Standards and Principles on a specified person or position within a relevant organisation, including in a Government Agency. By way of example, proposed section 8BA(1) of the *Consultation Draft of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021 (NSW)*<sup>8</sup> imposes relevant obligations on “the head of a child safe organisation” as follows:

- (1) The head of a child safe organisation must ensure the organisation implements the Child Safe Standards through systems, policies and processes, including the following—
  - (a) a statement of the organisation's commitment to child safety,
  - (b) a child safe policy,
  - (c) a code of conduct applying to—
    - (i) employees,
    - (ii) management, however described,
    - (iii) contractors,
    - (iv) volunteers,
  - (d) a complaint management policy and procedure,
  - (e) a human resources policy,
  - (f) a risk management plan.

The terms “child safe organisation” and “head of a child safe organisation” are defined in proposed section 8AA of the New South Wales Consultation Draft Bill.

### **3. Oversight of compliance and reporting**

The Tasmanian Government's *Third Annual Progress Report and Action Plan 2021* sets out the Tasmanian Government's response to and progress implementing the recommendations of the Royal Commission relating to monitoring and enforcing compliance with child safe standards.

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<sup>8</sup>

[https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20\(Child%20Safe%20Scheme\)%20Bill%202021.pdf](https://www.legislation.nsw.gov.au/file/Children's%20Guardian%20Amendment%20(Child%20Safe%20Scheme)%20Bill%202021.pdf)



Of particular relevance are the following:

#### **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.

***Tasmanian Government Response: Accepted in principle***

***Responsibility: Tasmanian Government – Department of Justice with support from the Department of Communities Tasmania***

***Progress: For Consideration***

#### **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
- 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.

***Tasmanian Government Response: Accepted in principle***

***Responsibility: Tasmanian Government – Department of Justice with support from the Department of Communities Tasmania***

***Progress: For Consideration***

It is disappointing that there is nothing in the draft Bill that points to an intention to establish independent oversight through an existing independent entity or body, to monitor and enforce compliance with the standards and perform other related functions, as envisaged by the Royal Commission.



The types of oversight and compliance monitoring described in the draft Bill are, in my view, inadequate to achieve the levels of systemic and cultural change required in Tasmania, including in Tasmanian Government institutions, to put the interests of children first and to keep them safe from harm. More detailed analysis of the issues arising from the oversight and compliance detailed in the draft Bill is below.

### ***Accountability through funding arrangements***

Proposed section 8 requires a Minister to whom a Government Agency is responsible or a governing authority of a Government Agency, to ensure:

- i. funding agreements are not entered into with a relevant organisation or body unless that organisation can demonstrate compliance with the principles and standards; and
- ii. funding agreements with relevant organisations and bodies include as a condition of the agreement, compliance with the principles and standards.

Proposed section 9 requires relevant funded organisations or bodies that are not a Government Agency to report each financial year on implementation of and compliance with the principles and standards, and that report is to be provided to the Government Agency with whom the funding agreement is made. Although I support, in principle, measures which encourage co-regulation and accountability through funding agreements, it is difficult to comment on the appropriateness of the arrangement proposed in the draft Bill because:

- i) It is not clear how a relevant organisation or body is to demonstrate compliance with the principles or standards given the draft Bill does not provide any guidance as to the actions required or indicators of compliance for each proposed standard.
- ii) The draft Bill provides no indication that there will be an independent entity charged with oversight and other functions, as envisaged by the Royal Commission recommendations I have set out above. This suggests that a relevant organisation or body's self-assessment of compliance could be sufficient. If, as it appears, it is intended that a Government Agency which funds a relevant organisation or body, is to assess such claims of compliance, how this will be done is also not clear.

I note the draft Bill contains no mechanism or framework for monitoring, reporting and assessing the compliance of relevant non-government organisations and bodies which do not have a funding agreement with a Tasmanian Government Agency.

### ***How are Government Agencies to be made accountable?***

It is not clear to me whether some or all Government Agencies (as defined) are required to comply with the principles and standards and how and by whom that compliance is to be assessed.

Proposed section 10 requires 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.



It is not clear which Government Agencies will be required to comply with this reporting obligation. This is because it is to be left to the Regulations to define what a “child-related service” means.

The draft Bill is also not clear on the matters to be included in this annual report.

In my respectful opinion, all Tasmanian Government Agencies should be required to incorporate the principles and standards in their policies, procedures and practices. They should also be required to ensure that the proposed standards are complied with in providing a service. This is especially so given the reporting arrangements proposed for relevant organisations and bodies which have a funding agreement with a Tasmanian Government Agency. In my respectful opinion, relevant funded organisations and bodies required to report to a Government Agency about compliance with the proposed standards, and whose compliance will be assessed by that Government Agency, must have confidence that a Government Agency is itself a child safe organisation. It is not currently clear in the draft Bill how that could be assured.

A related matter is the extent to which Government Agencies, especially those providing child related services or which fund organisations to provide child related services, are to be monitored and assessed for compliance with the principles and standards. As currently drafted, it would appear that the only external oversight contemplated is through the annual report to Parliament (proposed section 10), 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. This is in my opinion an unsatisfactory situation.

### ***Timeline for compliance and the need for capacity building?***

It is also not clear from the draft Bill when the compliance of relevant organisations and bodies, including Government Agencies, is to be monitored and assessed, whether through mechanisms contained in the draft Bill or otherwise.

In developing the Regulations, which will describe what activities or services are “child-related” or which bodies are to be prescribed for the purposes of proposed section 7(b), consideration should be given to incorporating a phased approach to monitoring and assessing compliance, as was done in Victoria when its child safe standards were implemented. Given the lack of detail regarding compliance and reporting requirements contained in the draft Bill, how this phased approach would operate is a matter for further consideration. Furthermore, given the draft Bill imposes an obligation on all relevant organisations and bodies to embed child safe organisational practices through the principles and standards, in my opinion there is a need to resource an independent entity to begin capacity building by providing advice, assistance and training to relevant organisations, prescribed bodies and Government Agencies.

This capacity building function should be of an ongoing nature and, in my opinion, is best placed with an independent entity tasked with monitoring and enforcing compliance with the principles and standards, noting Royal Commission Recommendations 6.10 and 6.11. The desirability of resourcing an appropriate entity now to assist with capacity building is particularly evident given proposed sections 8, 9 and 10 of the draft Bill, which are applicable



to relevant organisations and bodies that have funding agreements with Government Agencies. If this resourcing was provided now to an existing Tasmanian independent statutory entity, legislative amendments might be required to ensure that entity can perform this capacity building function.

### ***Independent oversight***

As should be apparent from my comments above, it is my strong opinion that provision should be made in the draft Bill for an independent entity in Tasmania to undertake oversight, educative and other functions, as outlined in Royal Commission recommendations 6.10 and 6.11. I note that the Victorian Commission for Children and Young People and the New South Wales Children's Guardian perform educative, oversight and regulatory functions designed to ensure organisations comply with the child safe standards in each of those jurisdictions.

It is worth noting proposed section 11 of the draft Bill which is as follows:

#### **11. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may –
  - (a) authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations; and
  - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

The purpose of this regulation-making power is not clear to me. If this regulation-making power is intended to be relied upon to establish regulatory arrangements, this does not, in my respectful opinion, amount to a commitment to provide for independent oversight as envisaged by the Royal Commission. In any event, I would expect such an important function to be described in primary legislation rather than in Regulations.

### ***4. Reportable conduct scheme***

The Tasmanian Government's *Third Annual Progress Report and Action Plan 2021* sets out the Tasmanian Government's response to and progress implementing the Royal Commission recommendations relating to reportable conduct schemes as follows:

#### **Recommendation 7.9**

State and territory governments should establish nationally consistent legislative schemes (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.

***Response: Accepted***

***Responsibility: Tasmanian Government – Department of Justice***



***Progress: For consideration***

**Recommendation 7.10**

Reportable conduct schemes should provide for:

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

***Response: Accepted***

***Responsibility: Tasmanian Government – Department of Justice***

***Progress: For consideration***

In my respectful opinion it is essential that the child safe standards framework proposed for Tasmania is accompanied by a reportable conduct scheme. We can learn from how things are being done in New South Wales and Victoria, jurisdictions in which an independent statutory entity has responsibility for promoting, and/or independent oversight of, child safe standards, and for oversight of organisational responses to allegations of child abuse through a reportable conduct scheme.

The way in which a child safe legislative framework and a reportable conduct scheme operate in organisational contexts has been aptly described by the Victorian Commission for Children and Young People in an Information Sheet available on the Commission's website:

Child Safe Standards and the Reportable Conduct Scheme create distinct sets of responsibilities for organisations, but have been designed to complement one another.



Together, Child Safe Standards and the Reportable Conduct Scheme strengthen the capacity of organisations to prevent and respond properly to allegations of child abuse.<sup>9</sup>

## Conclusion

I thank you for the opportunity to comment on this important draft Bill. I am available to discuss my comments if that would be of assistance.

Yours sincerely

**Leanne McLean**  
Commissioner for Children and Young People

- cc Hon Peter Gutwein, Premier of Tasmania
- cc Hon Elise Archer MP, Attorney-General and Minister for Justice, Minister for the Arts
- cc Hon Roger Jaensch MP, Minister for Human Services, Minister for Aboriginal Affairs, Minister for Housing
- cc Hon Jeremy Rockliff MP, Minister for Education and Training, Minister for Mental Health and Wellbeing, Minister for Disability Services and Community Development
- cc Hon Sarah Courtney MP, Minister for Health, Minister for Women
- cc Hon Michael Ferguson MP, Minister for State Growth
- cc Hon Jane Howlett MP, Minister for Sport and Recreation
- cc Hon Mark Shelton MP, Minister for Local Government, Minister for Police, Fire and Emergency Management

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<sup>9</sup> <https://ccyp.vic.gov.au/child-safety/resources/reportable-conduct-scheme-information-sheets/#TOC-7> see Information Sheet 6 Child Safe Standards and Reportable Conduct Scheme