



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

Who was looking after me? Prioritising the safety of Tasmanian children

Volume 2: Establishment and context

August 2023

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

Volume 2
Establishment and context

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1 Establishment, scope and conduct

1 Introduction

This Commission of Inquiry was prompted by a groundswell of community concern in 2019–20 over child sexual abuse in Tasmanian Government institutions. It followed media reporting of incidents of abuse and inadequacies in the Government’s response to these incidents. While the Government’s initial response to these concerns characterised these matters as ‘historical’, others in the community and media questioned the extent to which failures to keep Tasmanian children safe were indeed in the past.¹

On 31 July 2019, Tasmania Police searched the home of paediatric nurse James Griffin. The search revealed large quantities of child exploitation material. Later that day, Mr Griffin was stood down as an employee of the Launceston General Hospital. In October 2019, Tasmania Police arrested Mr Griffin and charged him with numerous sexual offences relating to children, before releasing him on bail. Soon afterwards, Mr Griffin took his own life.² These events, and the rumours that circulated about them, caused great concern among the staff of the hospital and the Tasmanian community.

In 2020, the media began reporting allegations of child sexual abuse perpetrated by Tasmanian State Service employees, including teachers and health staff.³ The media also reported an impending class action against the State of Tasmania, led by people who had ‘suffered serious injuries’, including sexual abuse, as children while detained in Ashley Youth Detention Centre.⁴ These reports prompted others to come forward

with information about current and past child sexual abuse in a range of Tasmanian Government institutions. Some accounts expressed that formal avenues to report and seek redress for child sexual abuse were unavailable or ineffective.⁵ One victim-survivor referred to attempts to report abuse that had ‘fallen on deaf ears or [been] swept under the carpet’.⁶

These reports and civil claims raised concerns that child sexual abuse had not been properly addressed in Tasmania after previous inquiries and reviews, and that it was not isolated to a single institution or a small number of people. The Honourable Peter Gutwein, the then Premier of Tasmania, noted ‘significant community concern and public angst quite rightly—over recent matters that have come to light where historically children have not been safe in our Government institutions’.⁷ In particular, government institutions’ responses to reports of child sexual abuse perpetrated by Mr Griffin, and others, were subject to significant media scrutiny, which included a podcast, *The Nurse*. As of May 2022, episodes of *The Nurse* had been downloaded about 1.3 million times.⁸

The Tasmanian Government instigated two independent reviews into child sexual abuse in the education and health systems, and an investigation into the conduct of three employees at Ashley Youth Detention Centre.⁹ However, as acknowledged by the then Premier, it was clear that despite establishing these reviews and other government actions more needed to be done to protect children.¹⁰

On 23 November 2020, Premier Gutwein announced that he intended to recommend to Her Excellency Professor the Honourable Kate Warner AC, the then Governor of Tasmania, that she ‘establish a Commission of Inquiry under the *Commissions of Inquiry Act 1995* (‘Commissions of Inquiry Act’) to investigate the responses of Tasmanian Government Agencies in relation to the management of historical allegations of child sexual abuse’.¹¹ In making this announcement, Premier Gutwein acknowledged that despite the Government’s efforts:

... as the number of allegations coming to light continues to grow, we must take every step necessary to ensure we identify any systemic gaps and put in place measures to fill them.

This situation is nothing short of terrible and we must take further action. I believe one of our greatest responsibilities is to learn from the past, and commit to not repeating its mistakes.¹²

In the announcement, the Premier stated that ‘as more claims for redress are progressed there will be more shocking examples come to light’.¹³ The Premier referred to five current State Service employees who had been suspended from work due to claims of child sexual abuse, one of whom was stood down pending the outcome of criminal proceedings.¹⁴ A media report in February 2021 suggested that another 14 current State Service employees had been stood down since the Premier’s announcement.¹⁵

By February 2023, the number of state servants in child-facing departments suspended by the Government since January 2000 had risen to 92.¹⁶ Some 38 of those state servants were suspended following the announcement of our Commission of Inquiry in November 2020.¹⁷

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings was established by Order of the Governor on 15 March 2021.¹⁸

A year after beginning our Inquiry, a personal element in the Premier's announcement of our Commission of Inquiry became apparent. At a media conference in March 2022, Premier Gutwein stated that he is a victim-survivor of child sexual abuse perpetrated by a teacher.¹⁹ He said: 'I'm the first Premier of this state that has taken the steps to have a Commission of Inquiry. The reason that I've done that is that I have great empathy, because I have walked in their shoes'.²⁰ He further stated: 'I know what the loss of trust feels like; I know what the shame feels like'.²¹

In 2003, Mr Gutwein, a Liberal Member of Parliament, had crossed the floor of Parliament to vote with the Tasmanian Greens in support of establishing a commission of inquiry into child abuse. The then Labor Government and the Liberal opposition opposed the motion. Because he crossed the floor, Mr Gutwein lost the shadow treasury, education and employment portfolios. At the time, he stated: 'If we don't have the courage of our own convictions, how can we expect those people out there that have been abused, that are aware of abuse, to come forward?'.²²

On 8 April 2022, Premier Gutwein resigned as Premier and a Member of Parliament. We commend Mr Gutwein for his bravery in supporting victim-survivors of child sexual abuse and their families, and for sharing his own story of abuse.

2 Establishment and scope

When our Commission of Inquiry was established on 15 March 2021, the Governor appointed the Honourable Marcia Neave AO, Professor Leah Bromfield and the Honourable Robert Benjamin AM SC as members of our Commission of Inquiry, with Commissioner Neave appointed as President. Commissioners Bromfield and Benjamin were born in Tasmania.

The Order of the Governor required and authorised the Commissioners 'to inquire into the Tasmanian Government's responses to allegations and incidents of child sexual abuse in institutional contexts'.²³ The Order specified areas for inquiry that form our Inquiry's terms of reference, which are outlined below.

The Order directed our Commission of Inquiry to make any recommendations arising from our Inquiry that we considered appropriate, including about any policy, legislative, administrative or structural reforms.²⁴

We held an opening hearing in Hobart on 26 October 2021. We were required to report by 31 August 2022, and hearings were planned to restart in early 2022. However, after considering advice from the Tasmanian Government on the potential impact of community transmission of COVID-19 in early 2022, we decided to restart hearings in May 2022. Due to the postponement of hearings, and other factors outside our control, we sought an extension to the original reporting deadline. In February 2022, the Tasmanian Government granted an extension to 1 May 2023.²⁵

In early 2023, our Commission of Inquiry asked for another extension because of the complexity of information provided to us, our commitment to appropriately and thoroughly address all the issues raised with us, and the need to discharge our procedural fairness obligations under the Commissions of Inquiry Act. In April 2023, the Tasmanian Government granted an extension to 31 August 2023.

We delivered our final report, comprising 8 volumes and 191 recommendations, to the Governor of Tasmania on 31 August 2023.

2.1 Terms of reference

The Order of the Governor asked us to inquire into what the Tasmanian Government should do to:

- better protect children against child sexual abuse in institutional contexts in the future
- achieve best practice in the reporting of, and responding to, reports or information about allegations, incidents or risks of child sexual abuse in institutional contexts
- eliminate or reduce problems that currently prevent appropriate responses to child sexual abuse in institutional contexts, including addressing failures in, and barriers to, reporting, investigation and responding to allegations and incidents of abuse
- address or alleviate the impact of past and future child sexual abuse in institutional contexts, including, in particular, in ensuring justice for victim-survivors through processes for referrals for investigation and prosecution and support services.²⁶

As part of our Inquiry, we were also required to consider:

- the experiences of people affected by child sexual abuse in institutional contexts, and provide opportunities for them to share their experiences

- the adequacy and appropriateness of the Tasmanian Government’s responses to allegations and incidents of child sexual abuse in institutional contexts generally, and in particular, by:
 - the Department of Education to allegations of child sexual abuse in government schools
 - the Tasmanian Health Service and the Department of Health to allegations of child sexual abuse, particularly in the matter of James Griffin
 - the Department of Communities to allegations of child sexual abuse at Ashley Youth Detention Centre
- systemic issues, recognising that individual cases may need to be referred to appropriate authorities
- changes to laws, policies, practices and systems that have improved the ability of government institutions to better protect against and respond to child sexual abuse in institutional contexts.²⁷

We did not have to inquire into matters that had been appropriately dealt with by the Royal Commission into Institutional Responses to Child Sexual Abuse (‘National Royal Commission’) or by another inquiry, investigation or court proceeding.²⁸

2.2 Refinement of scope

With our terms of reference in mind, we clarified and refined the scope of inquiry to:

- accommodate key areas of concern in Tasmania
- ensure we prioritised areas that had not been addressed previously.

2.2.1 Child sexual abuse

The Order of the Governor adopted the victim-centred and legally based definition of child sexual abuse that the National Royal Commission used:

- i. Any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the [touching] of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, [touching] of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child’s inhibitions in preparation for sexual activity with the child; and
- ii. Any related matters.²⁹

The National Royal Commission also considered the ‘production, consumption, dissemination and exchange of child sexual exploitation material’ to be child sexual abuse.³⁰ While the Order of the Governor did not refer to child exploitation material in its definition, the definition captures such material.

The definition of child sexual abuse also includes sexual abuse by other children or ‘harmful sexual behaviours’. We use this term to refer to the:

... sexual behaviours displayed by children and young people that fall outside what may be considered developmentally, socially, and culturally expected, may cause harm to themselves or others, and occur either face to face and/or via technology. When these behaviours involve another child or young person, they may include a lack of consent, reciprocity, mutuality, and involve the use of coercion, force, or a misuse of power.³¹

While our examinations focused on child sexual abuse, we recognise that other forms of abuse can contribute to an institutionalised culture that treats violence, bullying and harassment as normal, and that sexual abuse can co-occur with other types of abuse and neglect. Such behaviour can create a risk of child sexual abuse and discourage it from being reported by the child or other people in the institution.³² Therefore, we examined other forms of abuse if there was a link between that abuse and child sexual abuse occurring in institutional contexts.

We consider the definition, nature and impact of child sexual abuse in an institutional context in detail in Chapter 3.

2.2.2 Institutional contexts

The terms of reference directed us to examine child sexual abuse in ‘institutional contexts’. According to the Order of the Governor, child sexual abuse happens in an institutional context if, for example:

- i. it happens on premises of a government or non-government institution, where activities of the institution take place, or in connection with the activities of the institution; or
- ii. it is engaged in by an official of a government or non-government institution in circumstances (including circumstances involving settings not directly controlled by the institution) where ... the institution has, or its activities have, created, facilitated, increased, concealed or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- iii. it happens in any other circumstances where ... a government or non-government institution is, or should be treated as being, responsible for adults having contact with children.³³

For government institutions, we focused on what was then the Department of Education, the Tasmanian Health Service and Department of Health, and the Department of Communities, particularly in relation to Ashley Youth Detention Centre and out of home care. The Order identified public schools, health services and youth detention for particular attention because those institutions provide significant direct services to children. As noted above, there had also been significant media coverage of child sexual abuse in those institutions, and separate inquiries had been announced for each of those institutions. We decided to include a focus on out of home care because the National Royal Commission identified that children in this institutional context are at an increased risk of child sexual abuse.³⁴ Our case studies in Volumes 3–6 examine child sexual abuse occurring in these institutions.

The Order of the Governor defined a non-government institution as one ‘that undertakes, or has undertaken, activities on behalf of the Tasmanian Government to provide services for children’.³⁵ Based on this definition, we focused on non-government institutions that:

- undertake activities on behalf of the Tasmanian Government and provide services for children, or
- are funded by the Tasmanian Government to provide services for children.

We concluded that non-government institutions must meet the following three criteria to be in the scope of our Inquiry:

- The activities undertaken represent an outsourcing of traditional public functions and so there is a contract for services rather than a grant funding arrangement.
- The Tasmanian Government is the principal funder of the organisation or the amount of funding is substantial.
- The public could reasonably assume that the Tasmanian Government is responsible, directly or indirectly, for the services provided.

Applying these criteria, we focused mostly on non-government institutions that are contracted and funded by the Tasmanian Government to provide out of home care services.

We did not examine child sexual abuse in private or community institutions (churches, non-government schools, sporting organisations, local clubs) unless such institutions were solely funded by the Tasmanian Government to provide services for children.³⁶ We did not follow up or inquire into areas such as the involvement that abusers might have had with such institutions. We considered that these associations were outside our terms of reference. We have not conducted a thorough inquiry into allegations of abuse by police officers, ambulance officers or in connection with councils. Given the volume of material raised about the institutions identified in our terms of reference or, in the case of out of home care prioritised by us, we did not have the capacity to fully inquire into

these other government institutions. We took this decision to use the time and resources available to our Inquiry most effectively. The State did not make this suggestion, nor did we request extra time or resources from the State to expand our terms of reference for this purpose.

We heard a small number of significant concerns about child sexual abuse in these other institutional contexts, though not to the same extent as allegations of abuse in the education, health, youth justice and out of home care systems. While we did not investigate these other institutional contexts in detail, many of our recommendations apply to them. We ask the Government to consider these government institutions—and all others that provide services for children—when responding to our recommendations.

2.2.3 Current responses to allegations and incidents

We focused on responses to reports of child sexual abuse since 2000 (even if the act or acts of abuse occurred before 2000). This period reflects current responses to child sexual abuse, including community awareness and policy responses. This focus therefore informs our findings on current and ongoing issues and our recommendations for what needs to change.

As noted in the terms of reference, we did not have to inquire into matters that the National Royal Commission or another inquiry, investigation or court proceeding had dealt with.³⁷ Our Commission of Inquiry complements rather than duplicates the work of the National Royal Commission, which had already closely examined child sexual abuse in institutions prior to 2000, as well as some more recent cases. Consequently, we decided to focus on more contemporary responses to child sexual abuse, in order to consider how effective they are and what has changed since the National Royal Commission concluded. We only examined incidents of child sexual abuse that predated 2000 where they threw light on current issues of concern about preventing, reporting and investigating abuse or official responses to such abuse.³⁸

In focusing on the period since 2000, we directed our resources towards identifying current and continuing systemic issues. Within this scope, we have prioritised those issues and circumstances that continued to be present at the time of our Inquiry. We did so with the view that a purposeful focus on current issues was the best way to protect current and future generations of Tasmanians from the profound and lifelong pain caused by child sexual abuse.

2.2.4 Systemic reform

As directed by the Order of the Governor, we focused on systemic problems in institutional contexts and options for reform. This systemic focus has been significantly informed by the experiences of individuals. The accounts of victim-survivors, their families and advocates enabled us to understand current practices and to develop

appropriate recommendations for reform. We have accepted the truth of the accounts of victim-survivors but acknowledge that, except where we have made findings, these accounts have not been examined by reference to the legal test for criminal responsibility, which requires proof beyond reasonable doubt, or civil liability, which requires proof of the allegation on the balance of probabilities.

Equally, examining specific institutions' responses to child sexual abuse has enabled us to identify patterns of behaviour that have gone unaddressed. In particular, we are concerned that a systemic problem in the Government's response to institutional child sexual abuse is a failure to deal with poor conduct or behaviour, including in relation to the conduct of individuals in responding to reports about the behaviour of others. We have identified poor conduct and failures by institutions and by individuals where the evidence before us supported such a conclusion, with the goal of ensuring that persistent and systemic issues are not perpetuated. Under the Commissions of Inquiry Act, we also have the power to make findings of misconduct.³⁹ We discuss this power further in Section 2.3.4.

We have focused our Inquiry on the institutional response to allegations of child sexual abuse in an institution, rather than investigating whether the abuse occurred. The Order of the Governor recognised that we may need to refer individual cases to appropriate authorities for investigation, including the police. We discuss our referrals in Section 2.3.3.

2.2.5 Organised abuse

Michael Salter, Scientia Associate Professor of Criminology, School of Social Sciences, University of New South Wales, defines organised abuse as 'any case of child sexual abuse in which two or more adult offenders conspire to sexually abuse one or more child'.⁴⁰ We have adopted that definition.

Over the course of our Inquiry, we have heard accounts of, or concerns about, organised abuse. We did not have the capacity to undertake proper forensic investigations into these. We consider that these matters are better investigated by other bodies with dedicated funding and mandates for investigating alleged criminal activities. Accordingly, we did not request extra resources to expand our Inquiry to cover these accounts or concerns.

As set out in Section 2.3.3, we have referred all appropriate information to Tasmania Police and other relevant authorities for their consideration. With the consent of the relevant victim-survivors and families, we confidentially identified where such information might suggest organised abuse.

We have not outlined the details of those accounts or concerns in this report because proper forensic investigations have not been undertaken and any premature disclosure may adversely affect investigations. We have also done this to ensure procedural fairness is not denied to relevant people.

We are not in a position to comment on the accuracy or truth of these accounts or concerns. We trust, however, that Tasmania Police and others will appropriately consider the matters we have referred and any support they require to properly investigate those matters.

2.3 Powers

Commissions of inquiry are rare in Tasmania. There have only been two others since 1990.⁴¹ Unlike other forms of inquiry and review, commissions of inquiry have extraordinary powers, which are similar to royal commissions in other Australian states. These include powers to:

- compel witnesses to give evidence and produce documents⁴²
- apply for a warrant to enter private premises to conduct a search and take documents⁴³
- apply for a warrant to use surveillance or listening devices⁴⁴
- hold public hearings and private sessions, including examining witnesses under oath.⁴⁵

Witnesses do not have the right to refuse to give evidence or produce a document on the grounds that they may incriminate themselves.⁴⁶

In announcing our Commission of Inquiry, the Premier stated that a key reason for recommending its establishment 'is the power of that Inquiry to compel witnesses to provide evidence'.⁴⁷

Unlike many other forms of investigation and review, reports of commissions of inquiry must be tabled in Parliament and are therefore available to the public.⁴⁸

In applying our broad powers, we have conducted a far-reaching examination. We have conducted 37 days of public hearings, held more than 120 sessions with Commissioners, examined more than 160 witnesses, received more than 260 statements and reviewed more than 95,000 documents. More about the conduct of our Commission of Inquiry is set out in Section 3.

2.3.1 Legislative and regulatory amendments

To ensure our Commission of Inquiry was appropriately empowered, several amendments were made to the Commissions of Inquiry Act and associated legislation. In March 2021, Parliament passed the *Justice Miscellaneous (Commissions of Inquiry) Act 2021* to amend various Acts.⁴⁹ Most of the amendments were taken to have started on 1 March 2021.⁵⁰

The amendments:

- clarified the Governor’s power to amend or vary the matters that a commission of inquiry is directed to examine
- provided for a commission of inquiry to conduct private sessions with individuals when appropriate (refer to Section 3.3.2 for more about the nature of these sessions)
- provided extra support for vulnerable witnesses to give evidence, including giving evidence anonymously and using special measures, such as witness intermediaries
- created additional requirements to provide procedural fairness where a witness to a commission of inquiry or another person may be subject to a finding of misconduct or other adverse finding
- clarified a commission of inquiry’s power to use listening and surveillance devices
- empowered a commission of inquiry to inspect documents when privilege is claimed
- enabled a commission of inquiry to share information with law enforcement and other authorities for the purposes of ensuring the safety and protection of children (child safe reporting)
- enabled the Ombudsman to refer matters under the *Public Interest Disclosures Act 2002* to a commission of inquiry
- established exemptions to various confidentiality provisions for people who have been affected by abuse in the child protection and youth justice systems to access their records, to enable them to share that information with a commission of inquiry and to take part in private sessions, as well as the use of that information in civil and criminal proceedings.⁵¹

In addition, the *Commissions of Inquiry Regulations 2021* commenced on 14 July 2021 to support the operation of our Commission of Inquiry. These regulations negated provisions in various Acts that would otherwise have regulated or restricted information collected by, on behalf of, or provided to our Commission of Inquiry, including in the case of State Service employees who wanted to engage with our Inquiry.

We considered many of these new regulations to be necessary so that we could give the public and State Service employees more information about our processes and their relevant rights. Unfortunately, the delay in these regulations commencing due to consultation and authorisation processes required by the State hampered our capacity to provide this information in a timely manner.

2.3.2 Rights and protections of witnesses who provided information

The rights and protections available under the Commissions of Inquiry Act supported those who gave us information, including confidentially and anonymously.

The Act creates several offences in relation to those rights and protections. For example, it is an offence for:

- an employer to prejudice a person's employment or dismiss them because that person has given evidence or produced any document or thing to our Commission of Inquiry (or because of the content of that evidence, document or thing)⁵²
- a person to intentionally prevent, or try to prevent, another person from producing any document or thing to our Commission of Inquiry⁵³
- a person to punish another person or cause them loss, damage or disadvantage because that other person has given evidence or produced any document or thing to our Commission of Inquiry (or because of the content of that evidence, document or thing).⁵⁴

The Commissions of Inquiry Act also limits the way information provided to our Inquiry can be used. The evidence that a person has provided to our Inquiry, such as a witness statement or oral evidence, is not admissible in other legal proceedings, except in very limited circumstances.⁵⁵ A person who appears before our Commission of Inquiry is given the same protections and immunities as a witness who appears before the Supreme Court.⁵⁶ This includes being protected against defamation and negligence actions.

Importantly, however, our Commission of Inquiry is inquiring into certain facts and matters. This does not prevent the State from also inquiring into those facts and matters. If information is available to our Inquiry and the State, both can investigate and, in the case of the State, take action in response to those facts or matters. For example, if it is alleged that a State Service employee has breached the State Service Code of Conduct, the State can still investigate that allegation and take any action it considers appropriate, provided it does not rely solely on evidence before our Inquiry. In this example, the State must already have this information or have obtained it through its own investigations. Also, our Commission of Inquiry can share information with, and refer matters to, the State and appropriate authorities for investigation.

2.3.3 Power to make referrals to appropriate authorities

Commissions of inquiry are not courts. They do not have the power to determine whether someone has committed a crime or is legally liable for their actions. Instead, if a commission of inquiry has any information that may be relevant to a criminal prosecution or disciplinary matter, that information can be referred to the appropriate authorities.⁵⁷ In addition, our Inquiry is legally bound to report certain matters. For example, if we reasonably believe matters constitute an ‘abuse offence’ against a child, we must disclose that information to a police officer as soon as practicable.⁵⁸

During our Commission of Inquiry, we referred more than 100 people to appropriate authorities. Referrals were made to a range of organisations and people, including the:

- Registrar of the Registration to Work with Vulnerable People Scheme
- Australian Health Practitioner Regulation Agency (‘Ahpra’)
- Assistant Commissioner, Tasmania Police
- Secretary, Department for Education, Children and Young People and, before that, the Secretary, Department of Communities and the Secretary, Department of Education
- Secretary, Department of Health
- Secretary, State Growth
- Teachers Registration Board.

In several cases, a referral was unnecessary because those involved were already subject to an investigation, proceedings, disciplinary findings or criminal conviction.

In addition, the Order of the Governor required us to report to the appropriate authorities where we identified a risk or potential risk to the welfare of a child or children generally.⁵⁹ We also had an obligation to take steps to prevent abuse or neglect if we knew, or suspected on reasonable grounds, that a child was suffering, had suffered or is likely to suffer abuse or neglect.⁶⁰ These steps can include reporting our concerns to the Secretary of the Department for Education, Children and Young People or a community-based intake service.⁶¹ During our Commission of Inquiry, we made more than 230 referrals to Tasmanian and other authorities regarding risks or potential risks to the welfare of children.

2.3.4 Power to make a finding of misconduct and an adverse finding

Our Commission of Inquiry has the power to make findings or draw conclusions from evidence we gather. Under section 19 of the Commissions of Inquiry Act, if we intend to make an adverse finding against a person, we must first notify the person in writing, including the details of the adverse finding, and allow the person at least 10 working

days to respond to the findings before our Inquiry's report is finalised.⁶² The rules of procedural fairness apply if our final report makes an adverse finding about that person.⁶³ In Volumes 3–6 we make a number of adverse findings against individuals and the State. Each individual and the State were given written notice of these findings.

Under section 18 of the Commissions of Inquiry Act, we also have the power to make a finding of misconduct against a person.⁶⁴ Misconduct is defined in the Commissions of Inquiry Act as:

... conduct by a person that could reasonably be considered likely to result in a criminal charge, civil liability, disciplinary proceedings, or other legal proceedings, being brought against that person in respect of the conduct.⁶⁵

Before making a finding of misconduct, if we are satisfied that an allegation of misconduct should be made against a person before calling that person to give evidence, we must give the person notice of the allegation of misconduct and provide them with an opportunity to respond to the notice (a 'section 18 notice').⁶⁶ The notice must give the person a reasonable period before they have to give evidence in response to the allegation.⁶⁷ It must outline the allegation and the evidence that supports it.⁶⁸ In response, the person may make oral or written submissions, give evidence to contradict or explain the allegation, cross-examine the person making the allegation, and call witnesses.⁶⁹ The person has a right to be represented by legal counsel.⁷⁰ We issued 30 section 18 notices to 22 people. In Volume 6, we make one finding of misconduct.

During our Inquiry, various interpretations of sections 18 and 19 of the Commissions of Inquiry Act, and the relationship between them, were presented by the State and lawyers acting for individuals. In relation to state servants, some have argued that the interpretations of these provisions have the effect that if our Commission of Inquiry wishes to make an adverse comment about the conduct of a state servant, this may effectively be a finding of misconduct against that person and require the specific process under section 18 to be followed. This argument is based on the fact that the definition of misconduct includes conduct that 'could reasonably be considered likely to result in ... disciplinary proceedings' and conduct by state servants that might attract adverse comment could require consideration of whether there has been a breach of the State Service Principles or Code of Conduct, and hence give rise to a disciplinary proceeding (even if the outcome of such proceeding is uncertain). A similar argument could be made about any person who, by virtue of their profession or employment, might be subject to any form of disciplinary proceeding.

We consider that there should be scope for a commission of inquiry to make adverse comments about state servants without this automatically or necessarily also constituting findings of misconduct. We consider the Commissions of Inquiry Act reflects that there can be both types of findings and that a range of conduct might be criticised without it constituting misconduct.

Our view is that section 18 only applies to the extent that we consider any allegations, or make any findings, of misconduct. We consider that, under section 19 of the Act, we can make adverse findings that are not findings of misconduct. In those circumstances, we consider that it is not necessary to issue a notice under section 18, provided we comply with sections 19(2A) and 19(2B) of the Act.

We have maintained that distinction in the language of our report, where we have only designated one of our findings to be a finding of misconduct. We understand that lawyers would adopt the most beneficial interpretation for their clients and seek to minimise any adverse findings or findings of misconduct, but note that the State also advocated for the interpretation that had the effect of combining adverse comment and misconduct in relation to a person's conduct. We quote at length:

... the findings against individuals in this Inquiry must still be characterised as misconduct findings. The State does not accept any argument that section 18 of the Act must be 'read down' to provide a 'functional interpretation'. This Inquiry is 'out of the ordinary' in that it focuses on workers who are in a highly regulated profession. Unlike many Inquiries which could be constituted under the Act, these are findings made against State Servants. As the Commission is aware, State Servants are subject to the statutory Code of Conduct found within the State Service Act 2000. Any adverse findings will bring the full effect of the Code of Conduct into play against any named individual and accordingly, adverse finding is likely to result in the consideration of disciplinary proceedings against that worker.

... Any finding which may have the result of leading to disciplinary proceedings are findings of misconduct and as such, those workers have all the protections afforded them pursuant to section 18 of the Act.⁷¹

To avoid drawn-out legal argument and dispute, we adapted our procedural fairness processes to align with this interpretation and to avoid making adverse findings against individuals where they may have been considered to be findings of misconduct.

The Commissions of Inquiry Act shares some similarities with legislation in other Australian jurisdictions in relation to royal commissions and commissions of inquiry. Like most of these other jurisdictions, Tasmanian legislation provides that an inquiry is not bound by the rules of evidence (section 20(1)) and must observe the rules of procedural fairness (section 3(b)(i)).⁷² We are not aware, however, of any other Australian jurisdiction imposing the requirements for a finding of misconduct that exist in Tasmania under section 18.⁷³

In our view, the procedural requirements under section 18 for making a finding of misconduct are onerous. In particular, the requirement to provide reasonable notice with a level of specificity about the allegation, and the evidence supporting the allegation, while concurrently running an inquisitorial process within a limited timeframe, presents practical difficulties. Also, providing a person who receives a notice of an allegation of misconduct the option to choose how to respond, which might include requiring

further hearings, also significantly limits the capacity of a commission of inquiry to conduct that inquiry in the manner it considers appropriate, including to appropriately address any trauma-informed considerations in relation to vulnerable people.

While procedural fairness—including a person’s right to know any potential adverse findings against them and to be able to respond to those findings—is a cornerstone of our legal system, it is not clear to us why this right could not be adequately met through the procedural fairness requirements set out in section 19, as relevantly supported by the common law.

These complexities and challenges were discussed even before the Commissions of Inquiry Act was introduced in 1995. A 1993 report from the Law Reform Commission noted that:

[a] balance must be maintained between the rights of individuals and the need for the commission conducting the public inquiry to properly and fully investigate and report upon the issues referred to it.⁷⁴

The Commission of Inquiry into the Death of Joseph Gilewicz in 2000 identified specific difficulties in achieving this balance. Some, but not all, of these concerns were addressed in the *Commissions of Inquiry Amendment Act 2000*.⁷⁵ Despite the amendments, the section of the Act relating to misconduct was still thought by some to be ‘overly complicated’ and inflexible, hampering the ability of commissions to achieve their goals.⁷⁶ A 2003 Tasmania Law Reform Institute report therefore recommended further amendments to the Act.⁷⁷ Once again, some but not all of these concerns were addressed in the Justice Miscellaneous (Commissions of Inquiry) Act, which was said to implement the work of the Tasmania Law Reform Institute and the Australian Law Reform Commission.⁷⁸ Relevantly, this amending Act created separate misconduct (section 18) and adverse (section 19) findings processes, which we find overly complicated and ultimately unnecessary. Indeed, the Australian Law Reform Commission focused on adverse findings (that might include findings of misconduct) and suggested that procedural fairness process matters might be better addressed outside legislation (for example, through policy guidance) to offer greater flexibility.⁷⁹ This amending Act also sought to amend the definition of ‘misconduct’ to address concerns it was too broad. But it ultimately inserted a new definition that, as explained above, is also broad and problematic in practice.

As a matter of principle, we consider it would be better for an inquiry to make any findings it wishes, including adverse findings, subject to complying with procedural fairness. It should be a matter for the inquiry to choose whether a finding is of such seriousness, given the subject matter of the inquiry, that it might be appropriate to describe it as a finding of misconduct. In our view, it is unnecessary for an inquiry to follow any other procedural requirements in relation to such a finding, noting that the seriousness of the matter should also be taken into account in any balance of probabilities deliberations.

Also, forcing an inquiry to adopt extra ‘misconduct’ processes in relation to a broad category of conduct, not all of which may be of equal seriousness, risks unnecessarily increasing the impact on those who receive a notice of such alleged findings. Once again, it would be better for the inquiry to have the flexibility to treat any finding, including an adverse finding, in the way that is most appropriate and fair in the circumstances, rather than being artificially required to treat all adverse comments as ‘misconduct’.

In considering other Australian jurisdictions, it is not clear to us why the Tasmanian legislation requires separate misconduct processes. This position is inconsistent with contemporary inquiry practices. Ultimately, we are concerned the Tasmanian legislation invites arguments and disputes that prevent local inquiries from being as effective and efficient as they might be, and so limits the impact they can have for the benefit of the community.

We have outlined our concerns about section 18 and other provisions under the Tasmanian legislation in Chapter 23.

The findings we make in this report are based on a civil standard of proof. That is, we were satisfied that a matter had been proved on the balance of probabilities, rather than proved to the criminal standard of beyond reasonable doubt. We based our assessment on the following principles, as set out by Justice Dixon in *Briginshaw v Briginshaw*:

... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.⁸⁰

The findings in this report seek to discharge our terms of reference, which ultimately aim to inform systemic reforms. These findings are not, and cannot be, substitutes for criminal prosecutions or civil or disciplinary proceedings. As indicated above, the State can investigate, prosecute or bring other proceedings in relation to the facts and matters that are relevant to this report, including where our Commission of Inquiry has referred matters to the State or appropriate authorities. Under section 21 of the Commissions of Inquiry Act, the State cannot generally use evidence given before our Inquiry directly. However, the rights and protections under the Commissions of Inquiry Act do not prevent the State conducting its own investigations. Indeed, it would defeat the purpose of a commission of inquiry if the State could not take appropriate action in relation to the underlying facts and matters.

3 Conduct

Our Commission of Inquiry’s job was to understand the complexity of institutional responses to child sexual abuse in government funded institutions, and to identify ways to create tangible and lasting change in these institutions. In this section, we outline how we approached our task.

We intend that the work of our Inquiry will protect Tasmanian children and young people from sexual abuse in and in connection with these institutions. We hope it will increase community understanding and improve responses to child sexual abuse and its impacts.

3.1 Who we heard from

To help accomplish our task, we engaged with more than 500 people including:

- Tasmanian children
- victim-survivors—children, young people and adults
- the families, communities and supporters of victim-survivors
- government and institutional representatives
- key service providers and stakeholders
- community members with relevant information
- experts in the field.

We acknowledge the strength and commitment to change demonstrated by many of those who came forward to talk to us about their own experiences or about their attempts to protect children and ensure effective responses to allegations and incidents of child sexual abuse.

3.1.1 Information handling

Much of the evidence we considered was given by victim-survivors and their loved ones and communities. We were particularly careful to treat this evidence respectfully. Accordingly, we put in place a procedure for handling information provided by victim-survivors. This procedure was possible because of recent changes to laws relevant to sexual assault.

The #LetHerSpeak campaign—also known as #LetUsSpeak—was founded in 2018 to ‘abolish sexual assault victim gag-laws in Tasmania, the Northern Territory and, more recently, Victoria’.⁸¹ Advocates described these laws as ‘gag-laws’ because they had the consequence of:

- silencing victim-survivors who wanted to speak out
- removing victim-survivors' control over their experiences and denying personal agency
- maintaining the social stigma around sexual violence
- enabling and protecting offenders
- disempowering victim-survivors
- restricting public education around sexual assault.

After significant public pressure, some laws were changed to allow victim-survivors of sexual abuse to self-disclose or permit third parties to disclose their identity, and for courts to make orders to permit disclosure.⁸²

As a result of the #LetHerSpeak campaign and legal amendments, people who shared information with our Commission of Inquiry could tell us how they wanted their information handled. Before we began receiving information from prospective participants, we explained that we could treat their information as:

- public—information could be viewed, referenced, quoted or published as required by Commissioners and Commission of Inquiry staff, and attributed to the participant
- anonymous—information could be used, but identifying details about the participant were removed and not published or made public
- confidential—information could only be viewed by Commissioners and Commission of Inquiry staff, and not used or published in the report.

We told participants that they could choose their preferred information-handling option and could later change their mind about how their information was handled. We also emailed a diagrammatic fact sheet titled 'How will my information be handled?' to victim-survivors who registered their interest in contributing to our Inquiry. This gave them time to digest and consider this information before taking part.

3.1.2 Support for people sharing information

We were aware that providing information about institutional responses to child sexual abuse is a complex process. It could be experienced as challenging, distressing, validating, triggering or healing, and could invoke other reactions. We therefore wanted to ensure our interactions with people sharing information were trauma-informed. This refers to understanding the impact of trauma on a victim-survivor and interacting in ways that support recovery and reduce the possibility of retraumatisation.⁸³ Chapters 19 and 21 detail why it is important for all services interacting with victim-survivors to provide trauma-informed care.

The core principles of trauma-informed care are safety, trustworthiness, choice, collaboration and empowerment.⁸⁴ We sought to implement these principles from our first contact with victim-survivors. We tried to be open and transparent about the Commission of Inquiry's processes so that our role and limitations were clear. In particular, and to reduce the likelihood of retraumatisation, our sessions with a Commissioner were adjusted according to victim-survivors' choices.⁸⁵ Victim-survivors could bring a support person, meet in whatever setting felt most comfortable (including online) and control what information to share and how it was used.

People who took part in our Inquiry could also access counselling if needed. During and after their engagement with us, they could speak with an independent counsellor or an appropriately trained member of our team. In this way, we provided psychological first aid, risk assessments, safety planning, referrals to services and other means of support.

Aboriginal engagement officers were also available to provide culturally sensitive support to Aboriginal people who wanted their contribution to our Inquiry facilitated by an Aboriginal person.

3.2 Our staff

Many dedicated and hardworking staff made conducting a comprehensive inquiry possible.

We were well supported in our work by staff across four teams:

- Our Community Engagement Team comprised professionals with experience assisting vulnerable people (such as victim-survivors of child sexual abuse). This team worked closely with two Aboriginal engagement officers. The team supported our Inquiry's consultation processes, including sessions with a Commissioner, stakeholder consultations, engagement with Aboriginal communities, site visits and roundtable discussions and briefings. This team also included a media and stakeholder engagement officer, who assisted with community and stakeholder consultations, and liaised with the media to convey information about our activities and communicate with the public.
- Our Policy and Research Team comprised policy officers and an investigator seconded from the Australian Federal Police (the Australian Federal Police paid for this secondment). This team handled research strategies and programs that informed the strategic direction of our Commission of Inquiry. The team developed investigation strategies and programs, informed the hearings and stakeholder consultations and briefings, led the drafting of our final report and ensured we were well informed to make strong recommendations that could be feasibly implemented.

- Our Operations Team established our Commission of Inquiry’s offices and coordinated staff across four states. This team provided logistical support, secured venues for public hearings and other Commission of Inquiry events, made travel arrangements, and ensured that public hearings ran smoothly and efficiently. They also took care of finance, human resources, infrastructure, decommissioning and archiving.
- Our Legal Team included Counsel Assisting, General Counsel and Solicitors Assisting. This team of lawyers provided our Inquiry with legal advice, administered inquiry procedures, sought an extensive amount of material, and conducted proper and effective hearings. The team identified and called appropriate witnesses and questioned them in a way that elicited useful evidence for our consideration. Our Legal Team also helped develop our final report.

Staff of our Commission of Inquiry and the Legal Team are named in Appendix C.

We express our gratitude to the Commission of Inquiry staff and the Legal Team who so ably assisted us to undertake our inquiries, prepare our final report and make recommendations.

3.3 Our forms of inquiry

The information and evidence that have informed the discussions and recommendations in this report have been obtained through multiple forms of inquiry including:

- written submissions
- sessions with a Commissioner
- sessions with our Community Engagement Team
- public and targeted stakeholder consultations
- consultations with Aboriginal communities
- site visits to youth detention and youth justice facilities
- research undertaken by our Legal Team and commissioned researchers
- public hearings
- roundtable discussions and briefings with government and agency representatives.

Because our Commission of Inquiry coincided with the COVID-19 pandemic, some of these forms of inquiry could not go ahead in person as planned. In line with COVID-19–safe protocols and relevant directions under the *Public Health Act 1997* (‘Public Health

Act'), we conducted our Inquiry online using remote-access technology, when necessary and appropriate.⁸⁶ There were some benefits to technology-facilitated access, such as extending access to victim-survivors and experts based interstate and overseas.

Each form of inquiry is described in the following sections. Rather than standing alone, evidence obtained through each method informed our approach to, and discussions held in, other forums.

3.3.1 Written submissions

On 13 May 2021, we published an information paper calling for written submissions that addressed our terms of reference. The paper explained the scope of our Inquiry and that submissions would help inform our 'understanding of the gaps, challenges and problems with the Tasmanian Government's responses to allegations and incidents of child sexual abuse in institutional settings'.⁸⁷ The paper also included a list of guiding questions and details about the submission process.

We welcomed written submissions in any length or format, to be submitted online, by mail or by email. People wanting to submit a hard copy of their written submission could do so with the support of our Operations Team. Those who needed help to write a submission could get support from Tasmania Legal Aid and our Community Engagement Team.

We invited victim-survivors and their supporters to tell us about their experiences and the ways in which the Tasmanian Government's responses to allegations and incidents of child sexual abuse might be improved.⁸⁸

Within a month, we had received 60 written submissions. To enable as many people as possible to contribute, we then simplified the submission process and extended the closing date for submissions from 2 July 2021 to 3 September 2021. Our Commission of Inquiry continued to receive and consider submissions after this time.

By 14 February 2022, we had received 143 submissions from a wide range of people and organisations. Our Legal Team assessed each submission to determine whether the subject matter was within our terms of reference, as well as whether the submission should be treated as public, anonymous or confidential. Some 139 of the 143 submissions were within our terms of reference. Of these, 45 submissions were public, 49 were confidential and 45 were anonymous. Tasmania Legal Aid assisted four people to make submissions.

Our Policy and Research Team reviewed and further analysed the submissions, categorising those making allegations about instances of child sexual abuse and those identifying systemic issues in relation to child sexual abuse.

From 143 submissions, we noted 160 individual allegations of instances of child sexual abuse (excluding one submission that contained hundreds of allegations). We further analysed this material against criteria including whether the allegation concerned an adult abuser or harmful sexual behaviours, and to which relevant case study or thematic area the allegation related. Because submitters were not asked to provide this information, we note that the following quantitative information is an approximation and based on volunteered information available in the submissions.

Of the 160 allegations, 132 related to adult abusers, 14 to harmful sexual behaviours and 14 were unclear.

Among these specific allegations:

- 63 allegations related to child sexual abuse in schools, with many raising concerns about abuse occurring before 2000
- 25 allegations related to Ashley Youth Detention Centre
- 25 allegations related to health services, particularly the offending of Mr Griffin
- 6 allegations related to out of home care.

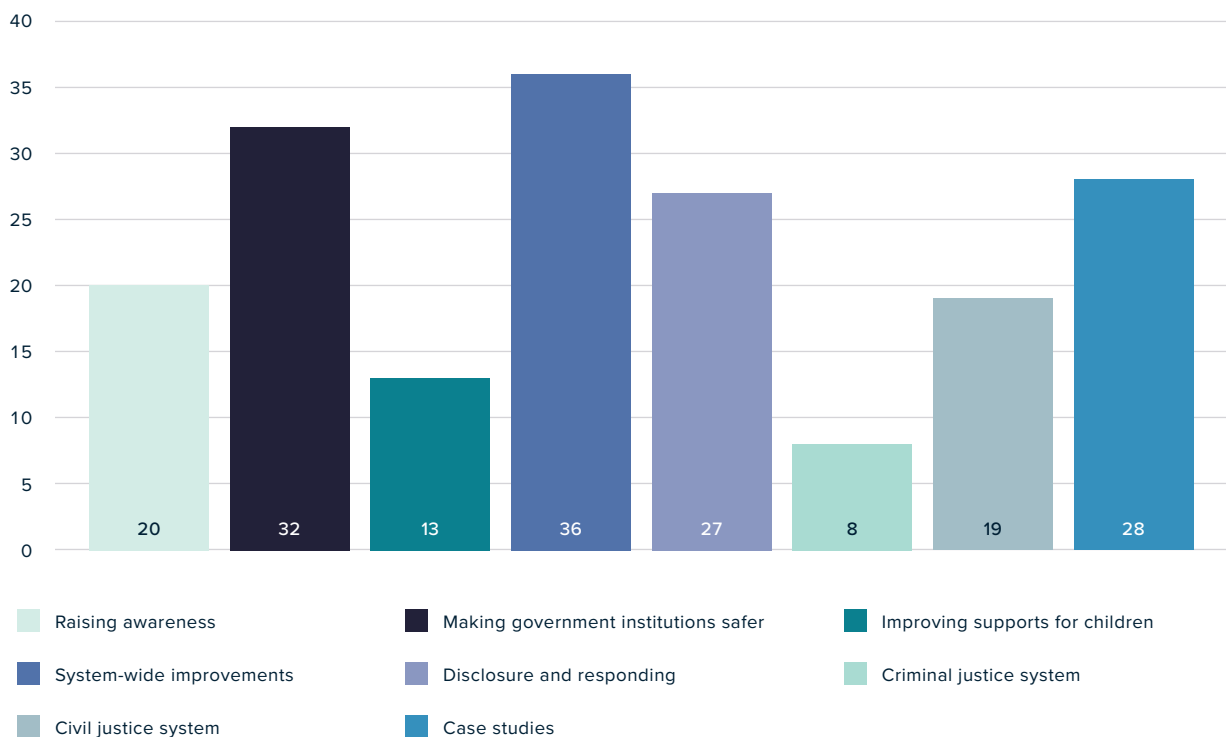
As indicated above, all submissions were coded for systemic issues relevant to child sexual abuse, including the following themes (noting that some submissions addressed more than one theme):

- 20 submissions addressed topics relevant to raising awareness of and preventing child sexual abuse, including calling for prevention and early intervention measures, addressing Tasmanian attitudes to child sexual abuse, and the need for a community-wide response
- 32 submissions addressed topics relevant to making government institutions safer, such as addressing the physical design of buildings, calling for child safe standards, improving screening practices (such as professional registration and registration to work with vulnerable people), training for staff to recognise abuse, and developing codes of professional conduct for staff and a reportable conduct scheme
- 13 submissions addressed topics relevant to improving supports for children, including supporting children with specific backgrounds or experiences (such as being Aboriginal or having disability), how to support adults to understand when children are making disclosures to them, and providing supports, including therapeutic responses, for children displaying or experiencing harmful sexual behaviours

- 36 submissions addressed topics relevant to system-wide improvements, including improving coordination across agencies, strengthening mandatory reporting, improving record keeping, strengthening oversight bodies (such as the Commissioner for Children and Young People, the Ombudsman and the Integrity Commission), and increasing funding
- 27 submissions addressed topics relevant to improving institutions’ identification of and response to disclosures, including barriers to making complaints, concerns about Tasmania’s culture and size, having clear complaints processes, and difficulties with disciplinary processes and internal investigation processes
- 8 submissions addressed topics relevant to improving the criminal justice system, including police responses, criminal offences and procedures, bail and sentencing, and training legal practitioners in matters relevant to child sexual abuse
- 19 submissions addressed topics relevant to civil justice matters, redress and support for victim-survivors, including the National Redress Scheme, the conduct of civil litigation matters and therapeutic supports for victim-survivors, as well as preserving records and providing official apologies
- 28 submissions addressed topics relevant to our four focus institutions—education, youth detention, out of home care and health.

These themes are summarised in Figure 1.1.

Figure 1.1: Systemic themes from submissions to our Commission of Inquiry



From these submissions, we gained a sense of the problems in the Tasmanian Government's response to child sexual abuse, including:

- a lack of a systemic response to child sexual abuse
- fears of reprisals for speaking out about child sexual abuse
- concerns about misconduct and cover-ups
- a lack of human empathy in responses to child sexual abuse
- a lack of priority given to the safety of children
- problems with disciplinary processes.

The firsthand insight and experiences conveyed in the submissions we received, as well as observations made by organisations, deepened our understanding of the nature and breadth of child sexual abuse in government institutions. We appreciate the time people spent considering and writing their submissions. We are particularly grateful to people who provided accounts of their personal experiences, sometimes for the first time.

3.3.2 Sessions with a Commissioner

By 17 July 2023 (from 13 August 2021), 132 people affected by child sexual abuse had shared their experience with a Commissioner in person, online, by video-conference or on the telephone. Sessions with a Commissioner were due to be completed by the end of February 2023 to allow information shared to be included in our final report. In practice, some sessions were held after this date, and Commission staff continued to receive information from people who wished to share it.

Because it can be distressing and exhausting for victim-survivors and their supporters to recount traumatising experiences, each session with a Commissioner was designed to be welcoming and trauma-informed. Many people who attended a session later reported feeling supported during their engagement with our Commission of Inquiry, which we hope reflects the sense of privilege and respect we felt when people trusted us with their experiences. For example, one participant said after their session with a Commissioner: 'Thank you for listening to my story. I think that, in a way, I can have some closure now'.⁸⁹ Another said, 'I'm relieved that I'm being taken seriously, I'm relieved that someone out there aside from me cares this happened and happens ... It's validation. I have validation and that means so much'.⁹⁰ We discovered while undertaking our Inquiry that the very existence of our Inquiry had a positive impact on many victim-survivors. For example, one participant told us:

Thank you for all your work. Thank you for addressing the concerns of survivors, and for looking at a difficult problem with a fresh set of eyes ... Your work has had a major positive impact on my life experience (and others I'm sure) and has been integral to my own healing.⁹¹

Sessions with a Commissioner had a profound impact on the Commissioners and inquiry staff. We consider it a privilege to have spent time with the victim-survivors, their loved ones and supporters, who have shared their stories and experiences of sexual abuse and their attempts to obtain justice, healing and the protection of others. The strength and resilience of the people who spoke to us in these sessions often restored our faith in humanity in the face of confronting conduct by others. These sessions have helped us understand the varied and complex ways in which trauma can profoundly alter the everyday lives of many people in our community. Our task would have been made far more difficult without victim-survivors and their supporters placing their trust in us. We do not take that trust for granted.

Registering for a session

Tasmanians became aware of sessions with a Commissioner in several ways. Many learned about sessions because of their previous engagement with us—by writing a submission, contacting us by telephone or email, or attending a stakeholder consultation. Other paths for engagement included referrals from our Aboriginal engagement officers and the 'Sessions with a Commissioner' page on our website. People interested in attending a session with a Commissioner generally registered their interest by emailing us or calling our 1800 number. People in prison could contact us via our 1800 number, which was placed on prison telephone systems.

When a person called to register for a session, they were connected to a member of our Community Engagement Team, who then became their point of contact for the length of their engagement with us. The Community Engagement Team assessed the eligibility of each person to attend a session based on the nature of the information they wanted to share and the relevance of this information to our Inquiry.

Next, the team talked to people about what to expect during a session and supported them to make an informed choice about how the information they may contribute should be managed. We also outlined our mandatory reporting obligations to participants.

The wellbeing of people attending a session was of paramount importance to us. During the registration process, the Community Engagement Team determined each person's support needs and let them know that we would provide them with access to counselling supports before, during and after their session with a Commissioner. The Aboriginal engagement officers offered culturally sensitive support to Aboriginal participants.

Conducting a session

Commissioners spoke with victim-survivors, their loved ones and supporters, as well as people with information about Tasmanian Government institutions. We heard from a diverse group of people who were located variously in regional and metropolitan areas across Tasmania. We spoke with people in prison and other secure or residential environments, and with people from different age groups, including teenagers. We also spoke to people with an experience of child sexual abuse in a Tasmanian Government institution who now live interstate or overseas.

Many parents and caregivers took part in a session on behalf of their children. Although it was open to children to have their own session with a Commissioner, children most commonly contributed to our Inquiry through the child-centred research project discussed in Section 3.3.8.

Sessions usually ran for one hour. They were conducted in a range of formats and settings depending on the needs of the participant. In-person meetings were held in private meeting rooms. Virtual sessions were conducted (primarily using Microsoft Teams) with participants who spoke from locations in which they felt safe and assured of privacy. Sessions were attended by the participant, a Commissioner and a member of our Community Engagement Team. Participants decided how to use the time available and what they wanted to talk about. Participants could also choose to bring a support person or lawyer. People providing support did so on the understanding that information disclosed and discussed during a session would be used only for the purpose of our Commission of Inquiry and in line with the participant's expressed wishes about confidentiality.

When the session concluded, we arranged counselling support and transport home for participants if requested. Table 1.1 displays the data collected about Commissioner sessions and Table 1.2 shows the primary institution type in which session participants described child sexual abuse occurring.

Table 1.1: Sessions with a Commissioner data

Session, submission and participant-specific data	Total
Number of sessions held	132
Sessions held face to face	78
Sessions held by telephone	3
Sessions held by videoconference	51
Sessions held with people living interstate	15
Sessions held with people living overseas	5
Participant location—northern Tasmania	45
Participant location—North West Tasmania	7
Participant location—southern Tasmania	59
Participant location—eastern Tasmania	1
Age of youngest and oldest participant	17 and 72
Gender diverse participants	3
Female participants	82
Male participants	47
Participants who identified as Aboriginal	16
Participants who wanted their information to be public	45
Participants who wanted their information to be anonymous	71
Participants who wanted their information to be confidential	16
Pathway for participant engagement—written submission	44
Pathway for participant engagement—telephone or email	65
Pathway for participant engagement—referral	16
Pathway for participant engagement—stakeholder consultation	7

Table 1.2: Participant information

Primary institution type	Victim-survivor	Supporter of victim-survivor	Third party with information	Total
Health (excluding in relation to Mr Griffin)	7	3	9	19
Health (in relation to Mr Griffin)	11	5	8	24
Education	22	11	13	46
Out of home care	11	2	5	18
Ashley Youth Detention Centre	6	1	6	13
Other*	4	2	6	12
Total	61	24	47	132

* 'Other' refers to institutions other than those that could be categorised as health, education, out of home care or Ashley Youth Detention Centre.

Key themes

Participants brought a range of issues to our attention during their sessions with a Commissioner. Many spoke of their lived experience in government funded institutions such as schools, hospitals, out of home care facilities and Ashley Youth Detention Centre.

Below are the themes that struck us from personally attending these sessions:

- Child sexual abuse victim-survivors showed extraordinary courage and generosity in their motivation to make systems better and to protect other children.
- Child sexual abuse has significant and lifelong impacts on emotional, physical and spiritual wellbeing, as well as developmental capacity and milestones.
- Victim-survivors showed tremendous strength and resilience; they make positive contributions to their families, their communities and/or through their work while living with the pain and lasting impacts of child sexual abuse.
- Children have often been poorly treated in institutional settings, particularly children with special needs, children already exposed to abuse and trauma and children without family to stand up for them.
- Institutional responses to allegations, complaints and disclosures of child sexual abuse have sometimes been inadequate. Some responses have minimised the abuse, children have not been believed or not offered support, investigations have been non-existent, hurried and/or inefficient, and abusers have been protected and relocated to other workplaces.
- The responses to child sexual abuse in school, health, out of home care and detention settings, and in the justice system, have often not been informed by an understanding of victim-survivor trauma.
- Clear reporting and complaint mechanisms have often been lacking. At times, staff have feared reprisal, bullying or loss of their job and career prospects if they raised concerns about child sexual abuse.
- At times, toxic workplace cultures have meant that identifying risks and problematic behaviours has been discouraged among staff, and shifting responsibility and blame has been common.
- Too often, staff across institutions have not had the knowledge to recognise grooming or understand child safety reporting requirements.

- At times, redress and compensation processes have been difficult, not adapted to the impacts on victim-survivors and not focused enough on therapeutic supports for victim-survivors.
- Victim-survivors and their parents or supporters have frequently struggled to access affordable, timely therapeutic and practical supports to meet their needs.

3.3.3 Sessions with our Community Engagement Team

If a person was interested in sharing their experiences but did not want to write a submission or talk directly with a Commissioner, or their experience fell outside our terms of reference, we gave them the option of speaking one-on-one over the telephone with a member of our Community Engagement Team.

When we received information this way, the Community Engagement Team member first ensured that the caller felt safe, was in an appropriate location, and had privacy. The same protocols that applied to a session with a Commissioner about the use of information were applied in each session with a member of our Community Engagement Team, and were explained to the caller.

During the conversation, the team member took notes and asked clarifying questions when needed. The conversation was not otherwise recorded.

Eighty-three people chose to share information in this way. Although only 49 of these conversations were in the scope of our Inquiry, we believe it was important to extend an opportunity for all interested people to share information and understand our work.

3.3.4 Stakeholder consultations

Between 13 August and 13 December 2021, we held 21 targeted and public stakeholder consultations. We also held several informal discussions with individuals and groups. We spoke to people with experience of government institutions and relevant sectors, including teachers, social workers, police, healthcare professionals, specialist child sexual abuse professionals, people working with children and young people, academic experts, staff from local councils, community leaders, and representatives of Aboriginal communities and culturally and linguistically diverse communities.⁹²

Stakeholder consultations were conducted in metropolitan and regional locations, as well as online. Each consultation ran for about 90 minutes. Consultations with many attendees were guided by an external facilitator, and Commission of Inquiry staff members took notes on the day.

More than 150 people attended these consultations. They provided a wealth of information relevant to our terms of reference and informed other aspects of our Inquiry, such as priority topics for our later public hearings. We thank everyone who attended a consultation for taking the time to share their expertise and insight with us.

Public stakeholder consultations

Of the 21 stakeholder sessions we held, seven were public consultations in Hobart, Launceston, Devonport (two sessions), Burnie, Queenstown and Scamander. Those who wanted to take part registered in advance. Attendance at each session ranged from one person to 41 people (refer to Table 1.3). In total, we heard from more than 100 people during our public consultations.

At each consultation, participants worked in small groups to discuss topics related to current government responses to child sexual abuse. In relation to each topic, participants were asked:

- What works well?
- What is not working well?
- How could the current system be improved?

At the end of each consultation, a Commissioner provided an overview of what we heard.

Table 1.3: Public stakeholder consultations

Date	Location	Number of participants
13 August 2021	Hobart	41
19 August 2021	Launceston	29
23 August 2021	Devonport	13
23 August 2021	Devonport	1
24 August 2021	Burnie	11
27 August 2021	Queenstown	10
31 August 2021	Scamander	4

Information received during public stakeholder consultations was wide-ranging and reflected the lived experiences of participants in dealing with child protection and child safety issues in various institutional settings. Consultations gave us a detailed insight into the struggles that victim-survivors, communities and frontline workers faced, and continue to face, as they try to negotiate systemic gaps and failures.

Importantly, participants in consultations highlighted statewide and regionally-specific issues, giving us a clear and immediate picture of the issues relevant to child sexual abuse in Tasmanian Government institutional settings as a whole.

Key themes

Key themes that emerged from public stakeholder consultations included:

- Many Tasmanians showed persistence and courage in raising issues to protect children.
- There was an absence or failure of mechanisms to respond to known risks and, if there were mechanisms, transparency and/or knowledge about them was lacking.
- There was a fear of reprisal and a sense that those who spoke out (victim-survivor or whistleblower) would be punished.
- There was a lack of care and compassion in responding to victim-survivors.
- Tasmanian institutional responses to prevent and respond to child sexual abuse were absent or out of date and did not incorporate contemporary knowledge.
- There was a failure to understand or consider that child sexual abuse, including grooming, was continuing to take place in Tasmanian Government institutions.

Participants also provided feedback on issues and ideas for improvement—for example, in prevention, reporting and responding, as well as on organisational, systemic and regional issues.

Across all stakeholder consultations, participants were asked about, but most struggled to identify, what was working well.

Targeted stakeholder consultations

We conducted 14 targeted stakeholder consultations in Hobart, Launceston and online (refer to Table 1.4). Attendance ranged from one person to 15 people per consultation. In total, we heard from more than 50 invited participants who regularly dealt with child sexual abuse matters, such as police and judicial officers, service providers, academics and advocates.

These targeted consultations allowed us to focus on a particular theme or issue, often identified through the submissions or the public consultations. Our questions and discussions at these consultations varied according to the stakeholder or stakeholder group we were meeting and the theme we were exploring. Information was provided in a private and closed setting, and although we draw on information provided in these consultations in our report, we have not identified individual participants or identified themes in detail here.

Table 1.4: Targeted stakeholder consultations

Date	Location	Number of participants
19 August 2021	Launceston	4
20 August 2021	Hobart/online	8
25 August 2021	Hobart/online	6
26 August 2021	Hobart	7
1 September 2021	Hobart/online	2
2 September 2021	Hobart	1
2 September 2021	Hobart	4
9 September 2021	Hobart	1
16 September 2021	Hobart	3
15 October 2021	Hobart	1
25 October 2021	Hobart/online	15
29 October 2021	Hobart/online	8
23 November 2021	Hobart/online	2
13 December 2021	Hobart	1

3.3.5 Engagement with Aboriginal communities

One of the continuing impacts of colonisation is that Aboriginal children are over-represented in certain government institutions, including the out of home care system and youth detention (refer to Volumes 4 and 5 for more on these institutions). We worked with two Aboriginal engagement officers to ensure our consultation processes with Aboriginal communities were culturally safe and inclusive, and that Aboriginal perspectives were heard and reflected in our findings.

Tasmanian Aboriginal context

In Australia, the definition of ‘Aboriginal’ has been subject to different classification systems at different times.⁹³ In the current Tasmanian context, the issue of who should be able to identify as Aboriginal is contentious and central to longstanding community divisions, notably between the Tasmanian Aboriginal Centre and other Aboriginal-led organisations.⁹⁴

The Tasmanian Aboriginal Centre was founded in the early 1970s. It is the earliest government funded and highest profile Aboriginal organisation in Tasmania.⁹⁵ However, Aboriginal communities in Tasmania are diverse and represented by numerous organisations.⁹⁶

The Tasmanian Aboriginal Centre previously endorsed state-based eligibility criteria as a prerequisite to accessing services funded for Aboriginal people, namely documented evidence of Aboriginal ancestry. Concerns have since been raised about this criteria because people who could not prove their ancestry through public records were excluded from accessing services.⁹⁷

In 2016, the Tasmanian Government decided to redefine eligibility criteria for accessing Aboriginal-specific services. The Government adopted a definition of Aboriginal that removed the need for documentary evidence of Aboriginal descent. Currently, eligibility for access to Aboriginal services is based on:

- completing an Eligibility Form for Tasmanian Government Aboriginal and Torres Strait Islander Specific Programs and Services⁹⁸
- providing a statement from an Aboriginal organisation, as well as a statutory declaration of self-identification.⁹⁹

The Tasmanian Aboriginal Centre opposed this change because it was concerned that non-Aboriginal people would identify as Aboriginal to access funding earmarked for Aboriginal communities, and therefore ‘put a strain on resources’.¹⁰⁰

We are conscious of the over-representation of Aboriginal children in some government institutions (such as out of home care and youth detention) as a direct and continuing impact of colonisation. We considered it our responsibility to listen and learn from the experiences and expertise of as many Aboriginal people as possible. We therefore sought to engage Aboriginal organisations across Tasmania, including the Tasmanian Aboriginal Centre, to inform our Inquiry. We did not consider it the role or appropriate function of our Commission of Inquiry to determine who is Aboriginal. We therefore accepted the self-identified cultural identity of all people who engaged with us.

Engagement through community consultation

In mid to late 2021, our Community Engagement Team contacted 22 Aboriginal organisations via letter, telephone and/or email to initiate conversations about how communities might wish to engage with our Inquiry.¹⁰¹ Ten of these organisations agreed to pass on information about our Commission of Inquiry to their members.

The Community Engagement Team also met with several prominent Aboriginal community members and organisations for further advice on developing an effective engagement strategy. This process led to engaging two Aboriginal engagement officers, who worked with our Inquiry to organise and facilitate statewide community consultations with Aboriginal people. Various community organisations or regions hosted 10 consultations (refer to Table 1.5). We then prepared a summary of reforms we were considering that were most relevant to Aboriginal communities. This was provided

to community members and organisations that had attended consultations, and they were invited to provide feedback. This process was undertaken in response to advice from Aboriginal community members about how our Commission of Inquiry could engage in meaningful consultation.

Before holding consultations, we organised for all Commission of Inquiry staff to attend cultural awareness training. The Community Engagement Team received more in-depth training so they were better equipped to take part in consultations with Aboriginal communities.

Table 1.5: Consultations with Aboriginal communities

Date	Area of Tasmania	Number of participants
8 April 2022	North West	8
24 May 2022	North West	12
31 May 2022	Northern	6
3 June 2022	Southern	6
18 July 2022	Northern	8
19 July 2022	Northern	8
28 September 2022	North West	12
24 October 2022	Southern	16
21 February 2023	Southern	4
22 February 2023	Southern	5

Other forms of engagement

Aboriginal people also took part in our Inquiry in other ways. Some Aboriginal people contacted us independently or after attending a consultation. Others came to us via our Aboriginal engagement officers.

Sixteen Aboriginal people took part in sessions with a Commissioner. Another five people who identified as Aboriginal gave us information over the telephone or in writing. However, we did not routinely collect demographic data from people we spoke with on the telephone, and it was not always appropriate to ask our standard demographic questions of people participating in sessions with a Commissioner. It is therefore likely that these numbers are conservative.

We received a written statement from the chief executive officer of the Tasmanian Aboriginal Centre, who also gave evidence during a public hearing (refer to Section 3.3.9).¹⁰² We also received a written submission from the Tasmanian Aboriginal Legal Service.¹⁰³

Of the 59 children and young people who took part in our primary research project (refer to Section 3.3.8), 11 identified as Aboriginal and/or Torres Strait Islander.¹⁰⁴

We convey our deepest thanks to the Aboriginal people who contributed their insight to our Inquiry. They have informed our views and the recommendations we make in this report.

Key themes

The information we received from Aboriginal members of the community was wide-ranging. For Aboriginal people, child sexual abuse is inextricably linked to colonisation and its traumatic intergenerational impacts. As with the approach taken by the National Royal Commission, we decided to include information from Aboriginal people that did not fit within our terms of reference but better reflected the whole story that has led to the over-representation of Aboriginal children in child sexual abuse statistics.¹⁰⁵ It was of vital importance that we listened to all that Aboriginal people had to say and reflected their perspectives in our findings and recommendations.

Key themes that emerged from our consultations with Aboriginal people included:

- Prevention and healing
 - There has been a lack of education and prevention programs for Aboriginal communities, specific to child sexual abuse.
 - Significant numbers of Aboriginal children have been abused by members of their own community because of the trauma of colonisation and dispossession. There has been a culture of silence around this and, as a result, these children have been more vulnerable to abuse in institutions, as well as being affected by another layer of trauma.
 - Conversely, there are false assumptions about Aboriginal culture and parenting that inaccurately identify the risk of child sexual abuse.
 - Culture and cultural programs are essential to healing Aboriginal children who have experienced sexual abuse, as well as to strengthening communities and thereby preventing abuse.
- Child Safety Services and Tasmania Police
 - Many Aboriginal families fear that Child Safety Services will remove their children, which has been a barrier to reporting child sexual abuse.
 - There is a lack of trust in police in Aboriginal communities due to experiences of mistreatment, which has also been a barrier to reporting child sexual abuse.
 - Aboriginal children and families have experienced culturally inappropriate and negative treatment from Child Safety Services.
 - Sexual abuse of Aboriginal children in out of home care has been prevalent.

- There is a need for culturally appropriate alternatives to out of home care and child safety interventions, governed by Aboriginal people.
- Ashley Youth Detention Centre
 - Many Aboriginal children have been negatively affected by Ashley Youth Detention Centre—abuse has been prevalent, and there has been minimal cultural care and follow-up support.
 - There is a need for culturally appropriate youth justice alternatives governed by Aboriginal people.
 - There has been insufficient funding and a lack of culturally appropriate support for victim-survivors of child sexual abuse. There is a need for Aboriginal-led programs and safe cultural spaces.
- Other challenges
 - Designing and implementing initiatives tailored to Aboriginal children in government institutions and their families is complex. There has been a lack of support for Aboriginal people working in these institutions.
 - Distributing resources and implementing new programs across Tasmanian Aboriginal communities has been challenging due to divisions between communities.

3.3.6 Site visits to youth detention and youth justice facilities

In 2021 and 2022, we visited four institutions that detain children and young people. Our first site visit was to the only youth detention centre in Tasmania: Ashley Youth Detention Centre at Deloraine. This detention centre was a major focus of our Inquiry. The other site visits were to youth detention and youth justice facilities in other states and territories. We visited these facilities to understand and compare different models of detention.

During site visits (summarised in the following sections), we saw the facilities and workings of each complex, spoke directly with staff and young people, and learned about their model of care and approach to behaviour management. We also observed the institution’s relationship with the community at large.

We discuss Ashley Youth Detention Centre and alternative detention models in detail in Volume 5.

Ashley Youth Detention Centre

On 18 August 2021, President Neave, Commissioner Bromfield and Commissioner Benjamin visited Ashley Youth Detention Centre. They were accompanied by three Commission of Inquiry staff members, as well as representatives of the Solicitor for the

State and the Department of Communities, being the Deputy Secretary and Executive Director for Ashley Youth Detention Centre. These two departmental officials were there to support centre staff. The assistant manager and other centre representatives hosted the visit.

The visit occurred at the insistence of our Commission of Inquiry. Upon arrival, Commissioners were met with consternation about our visit and assurances that there were no issues of concern at Ashley Youth Detention Centre. This was in direct contrast to other youth detention centres in other states, where, despite having no powers, Commissioners were welcomed, visits were low key and staff spoke openly about their strengths and the challenges of operating youth detention facilities. Our experience at Ashley Youth Detention Centre was consistent with the accounts of others who have suggested that the Centre is a closed institution with a culture of cover-up and denial, as further evidenced in Volume 5.

Ashley Youth Detention Centre is Tasmania's sole custodial facility for children between the ages of 10 and 18. At the time of our visit, most children at the Centre were on remand.

On 9 September 2021, the Government announced that Ashley Youth Detention Centre would close within three years.¹⁰⁶

Adelaide Youth Training Centre—Kurlana Tapa

On 14 October 2021, Commissioner Bromfield and a Commission of Inquiry staff member visited Kurlana Tapa, the Adelaide Youth Training Centre at Cavan in South Australia. The general manager of Youth Justice, South Australian Department of Human Services, hosted this visit. COVID-19 restrictions prevented us from entering the units at the centre, but we could visit other buildings as well as the grounds, including the Aboriginal cultural garden. Commissioner Benjamin also visited the centre on 2 June 2022, which was again hosted by the general manager of Youth Justice. With COVID-19 restrictions now eased, Commissioner Benjamin visited the educational facilities, health facilities, sporting and activity centres, and residential buildings.

Adelaide Youth Training Centre is a custodial facility for young people between the ages of 10 and 20. We were told that the numbers of children detained in South Australia had declined over time, but that most of the smaller number of children placed in the centre require intensive and complex supports and case management.

Cobham Youth Justice Centre

On 18 May 2022, Commissioner Benjamin visited the Cobham Youth Justice Centre at Claremont Meadows in New South Wales. The visit was organised with the executive director of Youth Justice New South Wales and was hosted by the acting centre manager at Cobham and the acting director of Custodial Operations, Youth Justice New South Wales.

Cobham Youth Justice Centre detains boys and young men between the ages of 15 and 20, who often present with drug and mental health issues. A significant proportion are from Aboriginal and Pacific Islander communities.

Bimberi Youth Justice Centre

On two occasions in 2022, Commissioners visited the Bimberi Youth Justice Centre in Gungahlin in the Australian Capital Territory. On 20 May, Bimberi's centre manager hosted Commissioner Benjamin. On 10 October, Bimberi's acting executive branch manager hosted President Neave.

Bimberi Youth Justice Centre uses a 'school campus model' and is the first youth justice facility in Australia to comply with human rights legislation.¹⁰⁷ It accommodates up to 40 children and young people between the ages of 12 and 21. Young people receive a health assessment when they arrive. Some have significant and complex mental health issues. Most are at the centre on remand.

3.3.7 Visit to Launceston General Hospital

On 14 March 2023, Commissioner Benjamin and a Commission of Inquiry staff member visited the Launceston General Hospital's child and adolescent and paediatrics wards. Our Commission of Inquiry instigated the visit, which the Department of Health facilitated. Hospital staff welcomed us and provided a comprehensive tour and explanation of the recently completed renovations.

3.3.8 Research

For further context with regard to what victim-survivors and other stakeholders were telling us and to inform priority topics for our public hearings (refer to Section 3.3.9), we undertook considerable research relevant to our terms of reference. This research included commissioned literature reviews and reviews of policy and related documents provided by the State. We also commissioned independent research to learn directly from the experiences of Tasmanian children and young people.

Literature and policy review

Our Legal Team collated more than 95,000 documents produced by agencies and government departments. We obtained this information in numerous ways, including by exercising our power to issue notice to produce documents. The Legal and Policy and Research teams reviewed this material. Table 1.6 lists documents that informed our hearings.

The National Royal Commission undertook extensive research on child sexual abuse in institutional settings and added significantly to the body of academic work on this issue. We reviewed the work of the National Royal Commission to inform our Inquiry.

In addition, after a targeted tender process, we funded the Australian Centre for Child Protection at the University of South Australia to source peer-reviewed articles on the topic of child sexual abuse, published since 2016.¹⁰⁸ The results of this search provided recent academic insight into five key areas:

- supporting children
- disclosure and response
- systems oversight
- making government institutions safe
- justice and support for victim-survivors.¹⁰⁹

Table 1.6: Summary of documents that informed the hearings

Topic	Education	Out of home care	Health	Ashley Youth Detention Centre	Access to justice	The future	Other	Total
Requests for statement or information issued	13	7	51	67	12	0	3	140*
Notices to produce material issued	3	0	13	4	2	0	8	31
Questions on notice	2	3	7	5	1	3	6	27
Orders made	7	6	2	4	1	1	0	21
Material produced	N/A	N/A	N/A	N/A	N/A	N/A	N/A	95,000+ documents

*Because requests for statement or information were issued to people under more than one category, the total value is less than the sum. The total also excludes those requests that did not progress for various reasons.

Commissioned research

In 2021, after a targeted tender process, we commissioned research from Associate Professor Tim Moore and Emeritus Professor Morag McArthur, initially via the Australian Centre for Child Protection, University of South Australia. The research project later moved to the Institute of Child Protection Studies at the Australian Catholic University in line with academic convention when Associate Professor Moore changed institutions. The purpose of this research was to hear directly from Tasmanian children and young people about their experiences and perspectives relevant to their safety in institutions.

The research involved speaking with 59 Tasmanian children and young people between the ages of 10 and 20 who had a variety of experiences with Tasmanian institutions in our areas of interest. In line with our key focus areas, participants were invited to reflect on their experiences in government schools, out of home care, hospitals or in Ashley Youth Detention Centre.

The researchers engaged children and young people in discussions about their experiences and feelings of safety in government institutions, their ability to raise safety concerns, and their awareness of high-risk and harmful adult and peer behaviours.

The report of this research, titled *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations*, was provided to us in October 2022. The key findings of this report included:

- Most children and young people felt safe most of the time in institutions, but those who had experienced youth detention or been in out of home care were more likely to share experiences of violence, abuse and victimisation in institutions.¹¹⁰
- Access to trusted adults was important to make children and young people feel safe, recognising the role they can play in protecting them and advocating for them.¹¹¹
- Children and young people reported feeling safer when they felt respected, valued and cared for, and they appreciated when adults involved them in decision making and listened to their concerns and ideas.¹¹²

The research report concluded that for institutions to be (and to feel) safer for children and young people, they needed to:

- embed child safety as a shared responsibility and ensure children and young people feel empowered and supported to share their safety concerns and engage meaningfully with the adults caring for them¹¹³
- have clear strategies to improve safety that are understood and visible for children and young people, including information about what to do if they are hurt or harmed¹¹⁴
- recognise that the past maltreatment of children and young people will heighten their risk of further abuse, requiring institutions to recognise and understand the impacts of trauma and to work with other agencies to minimise risks to children, and ensure they receive any therapeutic support they may need.¹¹⁵

Our Commission of Inquiry, along with two young people with experiences in Tasmanian Government institutions, launched the research report and an animation of a report summary designed for children and young people in February 2023.

More specific findings from this research (particularly how it relates to our focus institutions) are described throughout this report.

3.3.9 Public hearings

The primary purpose of holding public hearings was to explore ways in which the Department of Education, the Department of Health (particularly Launceston General Hospital), Ashley Youth Detention Centre and the out of home care system have dealt with the risk and occurrences of child sexual abuse in their institutions. We also dedicated a few hearing days to considering system-wide issues such as oversight of institutions, the statewide response to child sexual abuse, state disciplinary processes and the justice response to child sexual abuse.

In hearings that focused on specific institutions, we examined and evaluated the effectiveness of past and current Tasmanian systems, laws, policies and practices relevant to preventing and responding to child sexual abuse in that institutional context. Where appropriate, these hearings were informed by the accounts of victim-survivors or specific case studies that illustrated the themes we had observed. At these hearings, we also discussed how children might be better protected from sexual abuse in that institutional context, and how the Tasmanian Government might better address and alleviate the impact of past and future child sexual abuse.¹¹⁶

We held public hearings over 37 days between October 2021 and September 2022. Hearings took place in three venues: in Hobart at the Mövenpick Hotel and the Tasmanian Civil and Administrative Tribunal, and in Launceston at the Country Club Tasmania. The tribunal kindly provided its facilities free of charge.

Members of the public and the media were generally welcome to attend hearings in person or to watch our livestream. We usually provided public access to records of our proceedings. Daily hearing lists, transcripts, some witness statements and orders were published on our website and were also available in a range of accessible formats on request.

We were committed to being open and transparent, respecting the preferences of victim-survivors, and considering the effect that evidence from these hearings may have on other investigations, legal proceedings and the wider community. At times, our Commission of Inquiry made restricted publication orders to limit the publication of information that may identify victim-survivors, abusers or other people who may have been referred to during the hearings. Our Inquiry made those orders when we were satisfied that the public interest in the reporting on the identities of certain people was outweighed by legal and privacy considerations. We redacted (or did not publish) information in transcripts and witness statements in line with the restricted publication orders. These orders were published on our website and made available outside the hearing room and to media.

We recognised that, in some circumstances, it was important to protect the identity of a witness by allowing them to give their evidence using a pseudonym. In these circumstances, Counsel Assisting read from the witness's statement or their evidence

was not livestreamed. Members of the public could be present to hear that evidence in the hearing room. In addition, we have used pseudonyms to refer to abusers, as required by law, throughout our Inquiry and in this report.¹¹⁷

We also received evidence in a closed hearing where we considered it necessary, including to avoid prejudicing current investigations or proceedings. In that circumstance, only certain people could be present in the hearing room. Transcripts of closed hearings were not published on our website.

We conducted hearings in line with our COVID-19 Vaccination Policy and the Public Health Act. We engaged specialist consultants to provide counselling support to witnesses and attendees.

The hearings process

We identified witnesses for public hearings from our stakeholder consultations, sessions with a Commissioner, public submissions and through other research activities. Individuals and organisations were generally issued with a notice to appear or to prepare a witness statement. Interested parties who wanted to give evidence could apply for leave from their workplace to appear at a public hearing. Witnesses were offered help to prepare for a hearing and counselling support.

Counsel Assisting our Commission of Inquiry, supported by our Legal and Policy and Research teams, led the hearings. Counsel Assisting, in consultation with the Legal and Policy and Research teams, determined the topics of hearings and questioned witnesses, subject to President Neave's direction.

Counsel Assisting's general approach to examining witnesses was informed by the victim-survivors and their families and supporters who had been in contact with our Commission of Inquiry. Counsel Assisting aimed to ensure these voices were heard and that the need for systemic change was considered in light of their experiences.¹¹⁸

Witnesses gave evidence orally or by written statement or both, and did so under oath or affirmation.

People granted leave to appear could also ask for leave, through their legal representative, to examine or cross-examine a witness, at the discretion of the President. Leave to cross-examine a witness was requested and granted once during our hearings.¹¹⁹

The role of Commissioners at public hearings was to listen and learn, and to assess the evidence. This evidence, along with all other evidence that we have received during our Inquiry, has informed our recommendations to the Tasmanian Government.

Hearings schedule

Our first public hearing was held in Hobart on 26 October 2021. Due to the ongoing impact of the COVID-19 pandemic, President Neave attended this hearing remotely. At this hearing, President Neave gave an overview of our Inquiry's progress and next steps. Counsel Assisting summarised the themes and lines of inquiry that had emerged from our work to date.

The next public hearing was held on 2 May 2022. Hearings then continued over the next four months. Each set of hearings had a particular focus, as outlined in Table 1.7.

Table 1.7: Public hearings

Date	Area of focus	Location
26 October 2021	Overview	Hobart
2–6 May 2022	Week 1: Common themes	Hobart
9–13 May 2022	Week 2: Education	Hobart
14–17 June 2022	Week 3: Out of home care	Hobart
27 June–1 July 2022	Week 4: Health	Launceston
4–8 July 2022	Week 5: Health / Criminal justice	Launceston
18–19 August 2022	Week 6: Ashley Youth Detention Centre	Hobart
22–26 August 2022	Week 7: Ashley Youth Detention Centre	Hobart
7 September 2022	Week 8: Ashley Youth Detention Centre	Hobart
8–9 September 2022	Week 8: Health	Hobart
12–13 September 2022	Week 9: Moving forward	Hobart

Who we heard from

We heard from 165 witnesses at public hearings. Most hearings began with evidence from people who had been directly or indirectly affected by child sexual abuse in the institutional settings under review. We heard from victim-survivors and their families and supporters, and from people who have advocated for reform.

We also heard from witnesses who held government and agency roles, including the:

- Secretary of the Department of Premier and Cabinet
- Secretary of the Department of Justice
- Secretary of the Department of Education
- Secretary of the Department of Communities
- Secretary of the Department of Health
- Commissioner of Police

- Director of Public Prosecutions
- Solicitor-General
- Registrar of the Registration to Work with Vulnerable People Scheme
- Registrar of the Teachers Registration Board
- Child Advocate
- Commissioner for Children and Young People
- Ombudsman (who is also the Health Complaints Commissioner and Custodial Inspector)
- Chief Executive Officer of the Integrity Commission.

We also heard from several Deputy Secretaries and managers of government departments, as well as academics, professionals and other experts working in the field of child safety in Tasmania and from other jurisdictions.

Throughout this report, we refer to current Secretaries and staff of relevant government departments by name. These Secretaries are responsible—and therefore accountable—for the Tasmanian Government’s current responses to child sexual abuse in institutions. We have chosen not to name most past Secretaries and departmental staff because our recommendations are based on current systems, policies and practice.

Table 1.8 provides a summary of our public hearings across our areas of focus.

Table 1.8: Summary of hearings

Topic	Education	Out of home care	Health	Ashley Youth Detention Centre	Access to justice	The future	Other	Total
Number of hearing days	5	4	9	8	3	2	6	37 (including opening hearing)
Pages of transcripts	552	503	970	1,054	316	173	137	3,705
Witnesses called	21	27	36	36	13	10	31	165 (some called multiple times)
Witnesses not called but who gave sworn statements	2	5	17	29	0	0	1	51 (some also appeared in other weeks)*
Documents to support Counsel Assisting and parties appearing during hearings	504	529	1,772	1,497	171	72	254	4,779

* Some witnesses gave sworn statements for a hearing topic and then gave oral evidence on a different hearing topic.

What we learned

The public hearings brought much new information to light. They helped us to better understand the systemic and cultural issues relevant to our terms of reference that were unique to Tasmania and had not been addressed by the National Royal Commission. They also allowed us to closely examine the conduct of individuals and institutions in relation to specific reports of child sexual abuse, particularly in education, out of home care, health services and youth detention.

We heard that past and present Tasmanian governments have collectively failed to adequately prioritise the safety of children or the wellbeing of victim-survivors. Prominent among the themes to emerge from the evidence was the need for achievable reform that could be implemented in simple steps.¹²⁰

Public hearings also offered another opportunity for victim-survivors to speak about their experiences, and for the community, including our Commission of Inquiry, to bear witness. We thank victim-survivors for coming forward and sharing their hopes that tangible, meaningful change will result from our work.

We are aware that thousands of people across Tasmania and Australia followed the progress of our hearings, and we thank the community for its interest. We believe there is a greater community awareness of the prevalence and impact of child sexual abuse in government institutions because of our hearings.

3.3.10 Roundtable discussions and briefings

Targeted discussions with senior staff from government agencies and statutory authorities were another source of evidence that informed our Inquiry. These discussions enabled us to better understand aspects of the system and proposals for reform.

On 25 October 2022, we held a roundtable discussion in Hobart with representatives of the Department of Justice, the Director of Public Prosecutions, Tasmania Legal Aid, the Law Society and the University of Tasmania. The topic of this discussion was the Justice Miscellaneous (Royal Commission Amendments) Bill 2022. The Bill introduces legislative amendments in response to the recommendations of the National Royal Commission.¹²¹ The purpose of this discussion was to understand the Tasmanian Government's reform intentions and progress relevant to child sexual abuse.

On 16 November and 5 December 2022, we received briefings from representatives of the Department of Justice on the Bill that became the *Child and Youth Safe Organisations Act 2023*. The Act establishes the Child and Youth Safe Organisations Framework in response to recommendations of the National Royal Commission. The Act also sets out new child safe standards and a reportable conduct scheme.¹²²

On 9 December 2022, President Neave and Commissioner Benjamin held a roundtable discussion in Melbourne with representatives of Victoria Police. The topic of this discussion was child sexual abuse specialisation in police services. The purpose of the discussion was to understand how a police service in another jurisdiction responds to child sexual abuse in government institutions, with a view to comparing this model with the current response of Tasmania Police.

On Thursday 29 June 2023, we met with the co-chairs of the Child Safe Governance Review, Adjunct Professors Karen Crawshaw PSM and Debora Picone AO, to receive an update on the implementation of their recommendations by the Department of Health and Launceston General Hospital. The Child Safe Governance Review was established by the Department of Health in July 2022 in response to evidence that emerged from our public hearings in relation to responses to child sexual abuse at Launceston General Hospital.¹²³

On Tuesday 4 July 2023, we met with Timothy Bullard, Secretary of the Department for Education, Children and Young People. The purpose of this meeting was to discuss ways to improve responses to allegations of child sexual abuse and harmful sexual behaviours within the Department and across the State Service.

On Wednesday 5 July 2023, we held a roundtable discussion with Jenny Gale, Secretary of the Department of Premier and Cabinet and Head of the State Service, along with representatives from the State Service Management Office. The topic of this discussion was ways to reform the State's disciplinary processes, including the *State Service Act 2000*, the State Service Code of Conduct, and Employment Directions.

4 The structure of this report

This report reflects the evidence we received through all our methods of inquiry. We make findings about the conduct of individuals and the systemic problems we identified. We also outline our recommendations for the future, to help prevent child sexual abuse in Tasmanian Government institutions, and to improve responses when it does occur.

Our report has eight volumes:

- Volume 1 provides a summary of our report and our recommendations.
- Volume 2 (this volume) outlines the establishment, scope and conduct of our Inquiry, the international, national and Tasmanian context of our Inquiry, and our understanding of child sexual abuse in an institutional context.

- Volumes 3–6 outline our findings and recommendations for the specific institutional contexts we were directed, or chose, to inquire into, namely schools (Volume 3), out of home care (Volume 4), youth detention (Volume 5) and health services (Volume 6). These volumes differ in their structure, style and approach, which reflects the nature and extent of the evidence we received and the nature of the response of the relevant organisations (and departments) to that evidence.
- Volume 7 provides our findings and recommendations for the criminal and civil justice systems.
- Our final volume, Volume 8, outlines our recommendations for system-wide reforms, including to support the Government to implement our recommendations and to monitor this implementation.

All material referred to in our report is current at 10 February 2023, unless otherwise specified.

5 Conclusion

Since our establishment in March 2021, we have undertaken extensive work to inform our Inquiry into systemic problems in the Tasmanian Government’s response to child sexual abuse in its institutions. We have been informed by submissions, sessions with Commissioners, consultations, engagement with Aboriginal communities, site visits, research, hearings and roundtables, as well as an enormous number of government documents.

Hearing from victim-survivors, their families and supporters has been particularly important to us, and we thank all those who shared their experiences.

All aspects of our Inquiry have informed the views and recommendations in this report. We trust we have done the task justice.

Notes

- 1 Peter Gutwein, 'Premier's Statement – Commission of Inquiry' (Media Release, 23 November 2020) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/progress_on_the_new_burnie_ambulance_station/premiers_statement_-_commission_of_inquiry>; Loretta Lohberger, 'Class Action Prepared Against Tasmanian Government Alleging Abuse at Ashley Youth Detention Centre', *ABC News* (online, 28 July 2020) <<https://www.abc.net.au/news/2020-07-28/class-action-amid-alleged-abuse-at-ashley-youth-detention-centre/12496558>>; 'Episode One: Just Jim', *The Nurse* (Camille Bianchi, Transcript, undated) 73–74.
- 2 Emily Baker, 'What We Know about the Allegations Against Tasmanian Nurse James Griffin', *ABC News* (online, 8 December 2020) <<https://www.abc.net.au/news/2020-12-08/nurse-james-geoffrey-griffin-what-we-know/12953076>>.
- 3 *The Nurse* (Camille Bianchi, 2020) <<https://open.spotify.com/show/2CG58YDV7p8vamvYq7WhgK>>.
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- 31 National Office for Child Safety, ‘Discussion paper from the National Clinical Reference Group – Language and Terminology’ (Discussion Paper, December 2022).
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- 34 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 12, 115.
- 35 For details, refer to the terms of reference at Appendix B. Refer also to Order of the Governor of Tasmania made under the *Commissions of Inquiry Act 1995*, 15 March 2021, 6 (refer to Appendix A).
- 36 Non-government schools were not within scope because they are predominantly funded by the Australian Government.
- 37 Order of the Governor of Tasmania made under the *Commissions of Inquiry Act 1995*, 15 March 2021, 4 (refer to Appendix A).
- 38 If, during our Inquiry, we identify potential contraventions of the law, we have the power to refer these matters to appropriate authorities: *Commissions of Inquiry Act 1995* s 34A.
- 39 *Commissions of Inquiry Act 1995* s 18(1).
- 40 Transcript of Michael Salter, 2 May 2022, 71 [40–42].
- 41 In 1990, a royal commission was established to investigate an attempt to bribe a member of the Tasmanian Parliament to cross the floor of the House of Assembly in Tasmania following the 1989 election. The royal commission, known as the Carter Commission, was established under the *Evidence Act 1910*. In 1995, the *Commissions of Inquiry Act* was passed. In 2000, the Commission of Inquiry into the Death of Joseph Gilewicz was established. It was the first Commission of Inquiry conducted since the *Commissions of Inquiry Act* commenced. Our Commission of Inquiry is the second.
- 42 *Commissions of Inquiry Act 1995* s 22.
- 43 *Commissions of Inquiry Act 1995* s 24.
- 44 *Commissions of Inquiry Act 1995* ss 24A, 24B.
- 45 *Commissions of Inquiry Act 1995* ss 5, 13, 19A, 25.
- 46 *Commissions of Inquiry Act 1995* s 26.
- 47 Peter Gutwein, ‘Premier’s Statement – Commission of Inquiry’ (Media Release, 23 November 2020), <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/progress_on_the_new_burnie_ambulance_station/premiers_statement_-_commission_of_inquiry>.

- 48 *Commissions of Inquiry Act 1995* s 10. Section 10(3) of the Act provides that ‘The Governor may omit a part of the report before it is tabled in Parliament if satisfied that the public interest in the disclosure of the matters set out in that part of the report is significantly outweighed by any other consideration, including public security, privacy of personal or financial affairs or the right of any person to a fair trial’.
- 49 The Act amended the *Commissions of Inquiry Act 1995*, the *Children, Young Persons and their Families Act 1997*, the *Youth Justice Act 1997* and the *Public Interest Disclosures Act 2002*.
- 50 Parts 2 and 6 commenced upon receiving the Royal Assent on 22 April 2021: *Justice Miscellaneous (Commissions of Inquiry) Act 2021* s 2.
- 51 *Justice Miscellaneous (Commissions of Inquiry) Act 2021*.
- 52 *Commissions of Inquiry Act 1995* s 33(3).
- 53 *Commissions of Inquiry Act 1995* s 33(1).
- 54 *Commissions of Inquiry Act 1995* s 33(2).
- 55 *Commissions of Inquiry Act 1995* s 21.
- 56 *Commissions of Inquiry Act 1995* ss 8(5), 19B(2).
- 57 Order of the Governor of Tasmania made under the *Commissions of Inquiry Act 1995*, 15 March 2021 (refer to Appendix A).
- 58 ‘Abuse offences’ include: sexual offences, homicide, grievous bodily harm, assault, various offences endangering life and health, rape, abduction, stalking and bullying. This requirement also applies to attempts to commit these offences: *Criminal Code Act 1924* s 105A(1).
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- 60 *Children, Young Persons and Their Families Act 1997* s 13.
- 61 *Children, Young Persons and Their Families Act 1997* s 13(2).
- 62 *Commissions of Inquiry Act 1995* s 19(2A).
- 63 *Commissions of Inquiry Act 1995* s 19(2B).
- 64 *Commissions of Inquiry Act 1995* s 18.
- 65 *Commissions of Inquiry Act 1995* s 3.
- 66 *Commissions of Inquiry Act 1995* s 18(6).
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- 74 Law Reform Commissioner of Tasmania, *Report on the Procedural Aspects of Royal Commissions and Boards of Inquiry* (Report No. 70, 1993) 24.
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- 90 Text message from Anonymous to Commission of Inquiry staff member, 26 May 2022.
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- 96 Australian Government Office of the Registrar of Indigenous Corporations (Web Page, 30 November 2022) <<https://register.oric.gov.au/PrintCorporationSearch.aspx?state=TAS>>.
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- 102 Statement of Heather Lee Sculthorpe, 15 June 2022.
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- 104 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 30.
- 105 Royal Commission into Institutional Responses to Child Sexual Abuse, *A Brief Guide to the Final Report: Aboriginal and Torres Strait Islander Communities* (Final Report, December 2017).
- 106 Peter Gutwein and Sarah Courtney, ‘Ashley Youth Detention Centre to Close’ (Media Release, 9 September 2021) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/ashley_youth_detention_centre_to_close>.
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- 108 Given Commissioner Bromfield’s role as Professor and Director of the Australian Centre for Child Protection at the University of South Australia, she was not involved in decision making regarding the procurement of research to avoid any conflict of interest. Accordingly, Commissioner Bromfield was not involved in the conduct of the tender or in the results of the tender process. Commissioner Bromfield was also not involved in the preparation of the tender response on behalf of the Australian Centre for Child Protection or its conduct of any research commissioned by our Commission of Inquiry.
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- 110 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 63.
- 111 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 64.
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- 113 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 63–64.
- 114 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 63–64.
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- 122 *Child and Youth Safe Organisations Act 2023*.
- 123 Jeremy Rockliff and Kathrine Morgan-Wicks, 'Child Safe Governance Review of the Launceston General Hospital and Human Resources' (Media Release, 3 July 2022) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/child_safe_governance_review_of_the_launceston_general_hospital_and_human_resources>.

2 The Tasmanian, national and international contexts

1 Introduction

Globally, community awareness and understanding of the scale and impact of child sexual abuse in institutional settings has increased significantly over the past 10 to 20 years. Major national and international inquiries put these issues in the spotlight, describing the experiences of victim-survivors, their families and their advocates.

In Australia, the Royal Commission into Institutional Responses to Child Sexual Abuse ('National Royal Commission') ran from 2013 to 2017. The National Royal Commission raised awareness of the experiences of victim-survivors, whose abuse spanned decades and occurred in multiple government and non-government institutions.

In this chapter, we describe the context in which our Commission of Inquiry was established in Tasmania, nationally and internationally. We briefly outline:

- Australia's international obligations in relation to children and international inquiries into institutional child sexual abuse
- the work of the National Royal Commission and the approaches to implementing its recommendations across Australia
- key national offices, strategies and frameworks relevant to child sexual abuse in institutional contexts
- civil litigation and redress schemes

- reports and inquiries relevant to child sexual abuse in Tasmania over the past 30 years
- key frameworks, strategies and plans that form the current policy context in Tasmania
- the current system for responding to child sexual abuse in Tasmania
- our Commission of Inquiry’s observations about Tasmania’s culture and history in shaping the concerns about child sexual abuse in Government institutions and institutional responses to these concerns.

2 International context

2.1 International obligations and inquiries

Australia has ratified several international treaties, protocols and declarations relevant to safeguarding the rights of children and promoting their best interests. The Tasmanian Government is not a direct party to these international instruments, and their provisions do not automatically apply in Australian domestic law. However, the human rights protections contained in them should underpin any policy response to child sexual abuse in institutional contexts in Australia.

2.1.1 Convention on the Rights of the Child

In 1990, Australia ratified the *Convention on the Rights of the Child*.¹ All children in Australia, including Tasmania, should enjoy the rights contained in the Convention. Its four guiding principles are:

- respect for the best interests of the child as a primary consideration
- the right to survival and development
- the right of all children to express their views freely on all matters affecting them
- the right of all children to enjoy all the rights of the Convention without discrimination of any kind.²

Articles 19 and 34 of the Convention are particularly relevant to child sexual abuse. These provisions collectively provide children with the right to be protected from all forms of violence and harm, including sexual abuse in institutions.

Australia is also a party to the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.³

2.1.2 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Australia is also a party to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.⁴ The United Nations (UN) Committee against Torture monitors parties' compliance with that Convention.

In 2017, the Australian Government ratified the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('OPCAT').⁵ The OPCAT establishes a preventive system of regular visits to 'places of detention' to protect incarcerated people against torture and other cruel, inhuman or degrading treatment or punishment. The Australian Government has indicated this would include youth justice facilities but not residential secure facilities.⁶

Parties to the OPCAT must set up independent national bodies for preventing torture and ill-treatment, which are called national preventive mechanisms.⁷ The OPCAT also established the UN Subcommittee on Prevention to monitor conditions in detention and to advise on OPCAT implementation.⁸

The Australian Government is implementing a nationwide model, with preventive mechanisms nominated for the Commonwealth and each state and territory.⁹ In 2021, the Tasmanian Parliament enacted the *OPCAT Implementation Act 2021* to establish Tasmania's national preventive mechanisms and to enable the UN Subcommittee on Prevention to exercise its mandate in Tasmania. Richard Connock, who exercises additional oversight roles including as the Ombudsman and Custodial Inspector, was announced as the Tasmanian National Preventive Mechanism in February 2022.¹⁰

In its December 2022 concluding observations on Australia's sixth periodic report, the UN Subcommittee noted that the practice of keeping children in solitary confinement at Ashley Youth Detention Centre contravened the Convention and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the 'Nelson Mandela Rules').¹¹ The UN Committee stated in relation to youth justice in Australia generally that it was seriously concerned by:

- the low age of criminal responsibility
- the over-representation of Aboriginal children and children with disabilities in the youth justice system
- reports of abuse, racist remarks and use of restraint
- the high number of children in detention
- the lack of segregation between children and adults in detention
- children's lack of awareness of their rights and how to report abuses.¹²

2.1.3 Other relevant instruments

Australia is a party to the *Convention on the Rights of Persons with Disabilities* and the *International Convention on the Elimination of All Forms of Racial Discrimination*.¹³ Australia also supports the *United Nations Declaration on the Rights of Indigenous Peoples*, although this is a non-binding instrument.¹⁴ These instruments apply to adults and children.¹⁵ There are no specific provisions in these instruments in relation to sexual abuse.¹⁶ However, Australia's ratification of the two Conventions and its support for the Declaration signals the need to consider the specific vulnerabilities of children with disability, children from culturally and linguistically diverse backgrounds and Aboriginal children.

In addition to these instruments, Australia is a party to the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, which entered into force in Australia in August 2003 and provides for international cooperation in recognising child protection measures.¹⁷ Australia is also a party to the *1980 Hague Child Abduction Convention*, which also now applies to Australian domestic family law.¹⁸

2.1.4 International inquiries

Since 1999, there have been extensive inquiries into institutional child sexual abuse conducted in Canada, Ireland, New Zealand, the United Kingdom (with separate inquiries in England and Wales, Northern Ireland, Scotland and Jersey) and the United States.¹⁹ The period under review in these inquiries extends from 1922 to 2018.²⁰

These inquiries reported on common themes of physical, sexual and emotional abuse as well as:

- neglect, fear and other factors that prevented children from reporting
- a reluctance among adults, including employees, to report abuse to authorities
- awareness of abuse and known abusers in communities
- a lack of appropriate procedures to prevent and respond to abuse
- where procedures did exist, poor or inconsistent implementation.

3 National context

3.1 Royal Commission into Institutional Responses to Child Sexual Abuse

In November 2012, the Australian Government announced the National Royal Commission.²¹ During its inquiry, the National Royal Commission published several interim and topic-specific reports, concluding with its final report in December 2017.²² Its findings and recommendations applied to the Commonwealth, state and territory governments, and non-government organisations. As previously noted, our Commission of Inquiry builds on, but does not repeat, the work of the National Royal Commission.

As part of its five-year inquiry, the National Royal Commission examined responses to child sexual abuse in Australian public, private, community and religious institutions. It considered in detail child sexual abuse that occurred in those institutions over many decades and the inadequacy of the responses to this abuse.

The National Royal Commission made 409 recommendations aimed at making institutions safer for children, preventing child sexual abuse, improving identification and responses, and providing redress and better supports for victim-survivors. Those recommendations were informed by submissions from and consultations with members of the Tasmanian community including two Tasmanian case studies and 188 private sessions in Tasmania.²³

The Commonwealth, state and territory governments, together with parts of the non-government sector, are responsible for implementing the recommendations of the National Royal Commission. In their formal responses to the recommendations, each jurisdiction identified which recommendations they were responsible for implementing and those that would be implemented by the Commonwealth Government, other states and territories or non-government institutions. There is considerable variation between the responses of the states and territories in terms of the level of detail and the action taken in response to specific recommendations.²⁴

There is also some variation and uncertainty in the allocation of responsibility for implementation. For example, the Tasmanian Government initially noted that responsibility for recommendations to assess children displaying harmful sexual behaviours and to adequately fund therapeutic responses was ‘to be determined’.²⁵ However, the Tasmanian Government’s 2022 progress report and action plan noted it had engaged the Sexual Assault Support Service to deliver a statewide therapeutic program for children and young people displaying problematic and harmful sexual behaviours, which began in April 2021.²⁶ This engagement implemented a commitment under *Safe Homes, Families and Communities: Tasmania’s Action Plan for Family and Sexual Violence 2019–2022*.²⁷

More importantly, from its progress report in 2020 onwards, the Government began referring to its action plans for family violence as also including ‘sexual violence’ and fulfilling many of the National Royal Commission’s recommendations.²⁸ Our concerns about this approach—combining the response to family violence with institutional child sexual abuse—are discussed in Chapter 19.

The Tasmanian Government established a response unit now referred to as the Child Abuse Royal Commission Response Unit (‘Royal Commission Response Unit’), in the Department of Justice to lead implementation of the National Royal Commission recommendations.²⁹ Among other things, the Royal Commission Response Unit coordinates annual reporting requirements in relation to the Tasmanian Government’s implementation of the recommendations and the Government’s response to relevant National Redress claims.

At the time our Commission of Inquiry began, some National Royal Commission recommendations had been implemented or were in progress, such as reforms to the criminal justice system. However, other key recommendations—such as establishing a reportable conduct scheme and child safe organisations—had not been implemented. As part of our Commission of Inquiry, we considered why there had been little progress and coordination of the Tasmanian Government’s response to some recommendations. In some instances, we found a lack of clarity or sense of ownership or responsibility for implementation. We also noted delays and uneven implementation. For example, consultation on the first draft of the Child and Youth Safe Organisations Bill began in December 2020, three years after the National Royal Commission delivered its final report; however, a final version of the Bill was not introduced to Parliament until November 2022 (refer to Chapter 18 for more about the Child and Youth Safe Standards).³⁰

3.2 Key national offices, strategies and frameworks

Over the past decade, various national reforms have been introduced to better protect children in institutional contexts and to provide redress for victim-survivors. Many of these strategies and activities implement National Royal Commission recommendations. The following section briefly outlines key offices, strategies and frameworks that promote child safety.

3.2.1 Key agencies and offices

At the national level, the following agencies and offices contribute to promoting child safety, particularly in relation to child sexual abuse:

- National Children’s Commissioner—established in 2012, the role sits within the Australian Human Rights Commission.³¹ The National Children’s Commissioner developed the *National Principles for Child Safe Organisations*.

- Commonwealth Government, National Office for Child Safety—established in 2018, the office leads the development and implementation of several national priorities recommended by the National Royal Commission.³² These priorities include the *National Strategy to Prevent and Respond to Child Sexual Abuse*, the *National Principles for Child Safe Organisations* and the *Commonwealth Child Safe Framework*. The office is also responsible for improving information-sharing arrangements to strengthen child safety and wellbeing. It receives annual progress reports from non-government institutions on implementing the National Royal Commission recommendations.
- National Centre for Action on Child Sexual Abuse—currently funded by the Australian Government, the centre is a not-for-profit joint venture between the Blue Knot Foundation, The Healing Foundation and the Australian Childhood Foundation. It was established following the National Royal Commission and aims to ‘increase understanding of child sexual abuse, promote effective ways for protecting children, guide best practice responses and pathways to healing for survivors and reduce the harm it causes’.³³
- The Department of Social Services—the Department has responsibility for *Safe and Supported: the National Framework for Protecting Australia’s Children 2021–23* and the *National Plan to End Violence against Women and Children 2022–32*, and for administering the National Redress Scheme that compensates victim-survivors of child abuse.³⁴

3.2.2 Key strategies and frameworks

The agencies and offices outlined above contributed to various national strategies and frameworks and oversee their implementation. These strategies and frameworks include:

- *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–30*—recommended by the National Royal Commission and overseen by the National Office for Child Safety, the National Strategy was developed by the Australian Government in partnership with state and territory governments. It aims to establish a ‘nationally coordinated and consistent way to prevent and better respond to child sexual abuse in all settings’.³⁵ It is implemented through action plans. The first two action plans run for four years from 2021 to 2024.³⁶
- *Safe and Supported: the National Framework for Protecting Australia’s Children 2021–2031*—developed by the Commonwealth, state and territory governments, together with Aboriginal representatives and the non-government sector, this national framework supports the right of children and young people to grow up ‘safe, connected and supported in their family, community and culture’, with the goal of making significant and sustained progress in reducing the rate of

child abuse and neglect and its intergenerational impacts.³⁷ The framework also embeds the priority reforms in the *National Agreement on Closing the Gap*. It is implemented through two sets of action plans.

- *National Principles for Child Safe Organisations*—the former Council of Australian Governments endorsed the National Principles for Child Safe Organisations in February 2019 to align with and support the child safe standards recommended by the National Royal Commission.³⁸ The National Principles are designed to ‘build capacity and deliver child safety and wellbeing in organisations, families and communities and prevent future harm’.³⁹
- *Commonwealth Child Safe Framework*—developed in 2019 in response to recommendations of the National Royal Commission, the framework ‘sets minimum standards for Commonwealth entities to create and maintain behaviours and practices that are safe for children’.⁴⁰
- *National Plan to End Violence Against Women and Children 2022–2032*—developed and endorsed by Commonwealth, state and territory ministers with responsibility for women’s safety, the plan builds on the previous *National Plan to Reduce Violence Against Women and their Children 2010–2022*. It commits to ending violence against women and children in one generation.⁴¹

4 Tasmanian context

4.1 Past Tasmanian inquiries and reports

Over the past 30 years, numerous inquiries and reports initiated by the Tasmanian Government and independent agencies have reviewed the treatment of children in institutional contexts in Tasmania.

Since 1989, at least 14 Tasmanian reports or inquiries have considered issues relevant to child sexual abuse in institutional settings.⁴² Together, they made almost 600 recommendations for reform. Most of these reports considered system-wide concerns in the context of child protection, while a small number focused on a particular issue such as child sexual abuse. Only two reports, in 1989 and 1998, specifically explored child sexual abuse in institutional settings in detail.⁴³

The various reports and inquiries identified recurring themes including:

- a strong desire from agencies and organisations that work with or care for children to keep children safe
- an overwhelmed child protection system that has struggled for many years, if not decades

- a poor workplace culture in Tasmania’s child safety system
- unclear and incomplete policies, procedures and guidelines for working with children who have been sexually abused
- deficiencies in information documentation, management and sharing, particularly in relation to decision-making processes concerning children at risk of abuse or neglect
- a lack of training and support for those who work with children who are victim-survivors of abuse, including sexual abuse
- a lack of suitable out of home care placements for children who are victim-survivors of sexual abuse or have engaged in harmful sexual behaviours against other children
- a lack of training and support for carers who look after children who are victim-survivors of sexual abuse or who have engaged in harmful sexual behaviours against other children
- a lack of early intervention in cases involving child sexual abuse, as well as poor availability of specific services for children
- the need for legislative reforms to modernise offences relating to child sexual abuse and improve court processes for children who experience sexual abuse
- resistance to calls for a commission of inquiry into child protection and other related areas.

Past reports repeatedly highlight that the systems in place to protect children from abuse and neglect, including child sexual abuse, do not perform as intended. The reports also highlight that recommendations have not always been implemented in a timely manner, are under-resourced, or, when implemented, are not subject to appropriate monitoring and oversight to ensure the intended outcomes are achieved.

In addition to these 14 inquiries and reports, since 2005 there have been at least eight reports concerning the Tasmanian health system, 18 reports concerning out of home care and 12 reports concerning Ashley Youth Detention Centre.⁴⁴ Between them, these reports have made more than 500 recommendations for reform. Most of these reports do not consider the issue of child sexual abuse in detail. However, they concern factors that can influence the culture and safety in these institutional environments, which have the potential to increase the risk of child sexual abuse occurring or not being identified. These factors also shape organisational responses to incidents and allegations of child sexual abuse.

Most recently, the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse, completed in June 2021, made 20 recommendations about changes to governance and leadership, policies and procedures, training and professional development.⁴⁵ The independent review into the health system and investigation of staff at Ashley Youth Detention Centre announced in late 2020 ceased when our Commission of Inquiry started.⁴⁶ Relevant reports and inquiries are discussed in more detail in the chapters on these institutions (refer to Volumes 3–6).

Despite these past reports, which have collectively made more than 1,000 recommendations, the increasing concerns about child sexual abuse in institutional contexts suggest there is a pattern of poor implementation of recommended reforms and a need for stronger intervention to adequately protect children.

4.2 Tasmanian Claims of Abuse in State Care Program

Tasmania's Claims of Abuse in State Care Program was announced in 2003 and was accessible to anyone who had been abused in state care in Tasmania.⁴⁷ It had tri-partisan support and was designed to 'acknowledge the past failures of the Out of Home Care system and to help those who had been abused in State Government care'.⁴⁸ The program offered ex gratia payments of up to \$60,000 to claimants, although this was reduced to \$35,000 in the program's fourth and final round from 2011 to 2013.⁴⁹ Between 2004 and 2013:

- 2,414 claimants applied, of whom 1,848 were assessed as eligible
- \$54.8 million dollars in payments were made.⁵⁰

Although each of the program's four rounds produced reports, the third report was not made publicly available and we were not able to access a copy. In addition, there is no overall analysis of the data showing how many claims of child sexual abuse were made in relation to different types of care. Excluding the 995 claimants from the third round for whom data are not available, 510 people made claims of sexual abuse in state care.⁵¹

Under the scheme, claimants could discuss the effect of the abuse they experienced. They identified a range of physical, psychological and social impacts including:

- ongoing health conditions, mental health issues and trauma
- low sense of self-esteem and self-worth
- difficulties with parenting
- misuse of alcohol and drugs.⁵²

Claimants were also offered counselling sessions and the opportunity to receive legal advice.⁵³

At the conclusion of the Claims of Abuse in State Care Program, the Abuse in State Care Support Service was established to help people who had not applied for redress under the program.⁵⁴ This service is still in operation, although it only offers minimal support. We discuss this scheme in more detail in Volume 5 and Chapter 17.

4.3 Tasmanian policy context

As outlined above, the Tasmanian Government has committed to various national frameworks and strategies and to the National Redress Scheme. It has also enacted civil and criminal justice reforms to implement key National Royal Commission recommendations. Separate to these reforms, the Government has developed state-level frameworks and strategies. This section provides an overview of key frameworks, strategies and plans, which are examined in detail in Chapter 19.

Tasmania has also had a Commissioner for Children and Young People since 2000. The Commissioner's role is considered further in Chapter 18.

To better protect children and respond to incidents of child sexual abuse in institutional contexts, the National Royal Commission recommended that all state and territory governments enact child safe standards and a reportable conduct scheme.⁵⁵ The Tasmanian Government's efforts to enact these standards and scheme are discussed in more detail in Chapter 18.

4.3.1 *Survivors at the Centre*

In November 2022, the Tasmanian Government released its third whole of government plan to prevent and respond to family and sexual violence: *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027*.⁵⁶

Survivors at the Centre, and previous action plans, address family and sexual violence in a single overarching plan. While many of the 38 actions in Survivors at the Centre are relevant to children, particularly in the context of family violence, only two actions specifically concern sexual violence and abuse in relation to children and young people.⁵⁷ A further 10 actions are relevant to sexual assault services, which could include child sexual abuse, depending on how they are implemented.⁵⁸

It is important to differentiate between the Government's response to family violence and its response to sexual violence, including child sexual abuse. Family violence can include familial child sexual abuse, but we are concerned that addressing child sexual abuse in the context of family violence does not adequately address abuse within schools, health care settings, out of home care and youth detention. These concerns are considered further in Chapter 19.

4.3.2 Strong Families—Safe Kids

In 2016, the Department of Health and Human Services released its report, *Redesign of Child Protection Services Tasmania: 'Strong Families—Safe Kids'*.⁵⁹ The report aimed to redesign child protection services to address 'entrenched culture, processes and structures of the current Child Protection Services' identified by the then Minister for Human Services, who further noted in a statement to Parliament that the child protection system 'faces potential collapse if comprehensive reform action is not taken'.⁶⁰ The scope of our Commission of Inquiry does not extend to all aspects of the child protection system, although some of the structures in that system are relevant to institutional child sexual abuse.

In response to the report, the Government, among other things, established the Strong Families, Safe Kids Advice and Referral Line ('Advice and Referral Line') as the first point of contact for anyone with a concern about child wellbeing and safety.⁶¹ Concerns about child sexual abuse, including within institutional settings, are reported to the Advice and Referral Line in the first instance.

In June 2018, the Government also published the *Tasmanian Child and Youth Wellbeing Framework*, which aims to implement a common understanding across services and the community.⁶² As part of this framework, the Government committed to developing a child and youth wellbeing strategy.⁶³ The new strategy, *It Takes a Tasmanian Village: Child and Youth Wellbeing Strategy*, was launched in August 2021.⁶⁴ The strategy includes a priority to support children and young people at risk. Within this priority, it commits to considering 'the development of a Tasmanian approach, including models of multidisciplinary practice, to address child sexual exploitation'.⁶⁵ Other than this commitment, the strategy does not specifically prioritise responses to child sexual abuse.

5 The Tasmanian community, culture and history

Any response to child sexual abuse in Tasmanian Government institutions needs to consider Tasmania's culture and demographics. Tasmania is an island state, with a small, regionally dispersed population. It comprises just over 2 per cent of the Australian population, with about 571,000 residents.⁶⁶ Founded as a penal colony for British convicts in the early 19th century, it has a history of relatively low social and economic mobility, high cultural homogeneity and, until the past decade, limited inward migration.

Tasmania's relatively small size, history and geographic isolation create a sense of separation from the rest of Australia. However, this sense is not unique. There are parallels with other island states and nations that have been subject to similar inquiries into child sexual abuse, such as Ireland and Jersey.⁶⁷ Like those jurisdictions, social connections in the Tasmanian community are frequently close and deep, established over generations.

These connections create a strong sense of community identity and can be a significant source of strength and resilience. However, they can also be a source of harm. For example, the Independent Jersey Care Inquiry heard frequent references to the 'Jersey Way', noting in its report:

On some occasions it was used in a positive way, to describe a strong culture of community and voluntary involvement across the island, and this is something we recognise as a strength of the island ... On most occasions, however, the 'Jersey Way' was used in a pejorative way, to describe a perceived system whereby serious issues are swept under the carpet and people escape being held to account for abuses perpetrated.⁶⁸

Ultimately, the Independent Jersey Care Inquiry concluded that 'an inappropriate regard for the "Jersey Way" is likely to have inhibited the prompt development of policy and legislation concerning children'.⁶⁹

This section provides a brief demographic profile of Tasmania, with a focus on children and discussion of various socioeconomic factors. It then considers elements of Tasmania's culture and history that have deterred victim-survivors, their families and others from reporting child sexual abuse in institutional contexts and have also contributed to poor responses to reports of abuse.

5.1 Demographics

5.1.1 Children in Tasmania: geography, cultural diversity and vulnerability

Children aged 19 or younger (the age brackets measured by the Australian Bureau of Statistics) make up 23.2 per cent of the Tasmanian population.⁷⁰ This is slightly lower than the 25 per cent of the overall Australian population.⁷¹ While this Tasmanian cohort has a broad geographical distribution, most live in the Hobart region (54,904), followed by Launceston and the north-east (33,270), west and North West (25,801) and south-east (8,517).⁷²

Tasmania has been relatively culturally homogeneous. In 2014, only 8.8 per cent of Tasmanian children and youth aged 12 to 24 years had culturally and linguistically diverse ancestry, compared with the national average of 25.1 per cent.⁷³ Cultural diversity is now changing.

Based on Australian Bureau of Statistics data as of 30 June 2021, Tasmania has a high proportion of children who identify as Aboriginal, at 11.4 per cent of children aged 19 years or younger, compared with 6.74 per cent nationally.⁷⁴ The proportion is the second highest in Australia after the Northern Territory.⁷⁵

The proportion of children aged 14 years or younger with disability is higher in Tasmania at 10.2 per cent of the population of children, compared with the national average of 7.7 per cent.⁷⁶

Tasmania has a relatively low number of children in contact with child protection services. In 2019–20, 2,234 Tasmanian children received child protection services.⁷⁷ This figure represents 19.8 per 1,000 children receiving services, compared with a national rate of 31.0 per 1,000 children.⁷⁸ We note that receiving child protection services is defined as one or more of the following occurring: being subject to an investigation of a notification, being on a care and protection order, or being in out of home care.⁷⁹ This definition does not include children assessed by child protection intake who are ‘screened out’. The data for Tasmania further exclude children not under care and protection orders placed with relatives, for whom a financial contribution is made under the Supported Extended Family or Relatives Allowance programs.⁸⁰

The number of children in youth detention in Tasmania is also low. In the 2019–20 financial year, the average daily number of young people in youth detention was 15.4.⁸¹ While the number of children in detention is low, the rate of children in detention is relatively high. In the June quarter of 2020, the rate of children aged 10 to 17 in detention in Tasmania was 2.3 per 10,000 people, whereas South Australia, Victoria and New South Wales had rates of 1.8, 1.9 and 2.0 per 10,000 people respectively. The national average was 2.6 per 10,000 people.⁸²

5.1.2 Socioeconomic profile

Tasmania has a higher proportion of people living in its most socioeconomically disadvantaged areas compared with the national average.⁸³ It is also marked by low sociogeographic mobility. According to Professor Richard Eccleston of the University of Tasmania:

Research suggests that those residing in these socioeconomically disadvantaged areas are less mobile and unlikely to move around the State to seek employment or live in other communities ... It is also common for families living in socioeconomically disadvantaged areas of Tasmania to have lived in the same community for generations. This creates a strong sense of connectedness in those communities which may also contribute to the lack of intrastate movement amongst these populations.⁸⁴

Tasmania's relatively homogenous population has been maintained, until recently, by low inward migration.⁸⁵ However, since 2015, the trend has been reversed, with a net increase in migration from interstate and overseas.⁸⁶

On several key economic metrics, Tasmania performs worse than the national average. For example, Tasmania has the lowest labour market participation rate, the lowest average weekly ordinary time–cash earnings and the highest underemployment rate in the country.⁸⁷

It is generally accepted that, on average, Tasmanians also have poorer literacy rates and educational outcomes than other Australians.⁸⁸ A survey undertaken by the Australian Bureau of Statistics found that the literacy skills of Tasmanians aged 15–74 were consistently below the national average, as were numeracy skills, health literacy skills and problem-solving skills.⁸⁹ Educational outcomes for Tasmanians are similarly below the national average, as shown by poorer results in the National Assessment Program—Literacy and Numeracy.⁹⁰

5.2 Culture

What is it about Tasmania as a community that makes us reluctant to deal with this?⁹¹

During hearings, and through submissions and consultations, we heard about the unique culture and history of Tasmania. Witnesses and participants pointed to the connectedness of local communities as a source of support and resilience. However, many also pointed to a darker aspect of this connection that may deter people from speaking up about abuse, lead them to accept behaviour that should not be tolerated and result in inadequate institutional responses when incidents of abuse are reported. In an article for *The Conversation*, Rodney Croome, a Tasmanian social reform activist, described the contradictions at the centre of Tasmania's culture:

Tasmania is both the abominable Fatal Shore and the felicitous Apple Isle, together at the same time. The fact that such a paradox can exist in the heart of a single people and place is not easy to grasp. But without at least attempting to grapple with Tasmania's contradictions, the island remains impossible to explain.⁹²

When considering the influence of culture, we distinguish between culture in a 'societal' sense and organisational culture. We refer to Tasmanian societal culture as consisting of many intangible aspects of Tasmania's social life including 'shared, socially learned knowledge and patterns of behaviour'.⁹³ We use the term 'organisational culture' to refer to the values, ethics, attitudes, behaviours and traditions that influence the social and psychological environment of an institution or organisation.⁹⁴ However, it is also important to note that, while distinct, there is overlap between 'societal-level cultural influences' and 'organisational culture' because the factors that shape the latter are related to, or are situated within, the former.⁹⁵ This section considers how culture in the societal sense has influenced organisational and institutional responses to child sexual abuse in Tasmania.

As previously outlined, Tasmania is a small island community that for much of its history has been relatively remote and, to an extent, isolated from what many in the community refer to as ‘the mainland’. Compared with more populous states such as Victoria and New South Wales, Tasmania is a more regionalised community, with families frequently living and working in the same area for generations. Up until the past decade, Tasmania has had low rates of inward migration. As stated by Tasmanian historian Professor Cassandra Pybus:

Historically, Tasmania has had less multicultural immigration, and more outward migration, than other jurisdictions. Tasmania was an extremely monocultural place in the early 1980s and into the 21st century. As a result, until quite recently, there have been fewer opportunities for cultural change propelled by external influences.⁹⁶

In consultations, sessions with a Commissioner and submissions, people frequently spoke of ‘everyone knowing everyone’ and of overlapping connections in their personal and professional lives.⁹⁷ This overlap is reflected in recent research that found a higher proportion of recruitment for jobs in Tasmania occurs through personal networks compared with other jurisdictions. As cited by Professor Eccleston, a report by the Tasmanian Policy Exchange found that:

Tasmanian employers rely more heavily on informal networks for recruitment than any other state. Specifically, 32% of recruitment in Tasmania occurs without the job being advertised (the second highest being Northern Territory at 26%) and 38% of recruitment occurs via word of mouth (the second highest being Northern Territory at 24%).⁹⁸

Government institutions are major employers in some local areas, creating a strong connection and economic reliance between the community and local institution. For example, as outlined in Chapter 10, Ashley Youth Detention Centre is a major employer in the area around Deloraine.

5.2.1 Support and resilience: the strengths of close connections

As noted above, we heard of the support and strength many Tasmanians derive from their close community connections. Referring to the socioeconomic measures outlined above, Professor Eccleston stated:

We’ve got many strengths in the community which are not captured in those basic economic metrics, with a strong sense of connectedness, community identity and resilience that really comes from our history and I think the nature of our community.⁹⁹

In a 2013 article for *The Conversation*, demographer Lisa Denny wrote:

Tasmanians are resourceful and innovative people; they have to be, to continually adapt to the challenges presented by the makeup of our population, the diverse terrain and our isolation by virtue of our island status. It is thanks to this resourcefulness that Tasmania exists as it does today ...¹⁰⁰

We also heard that Tasmania’s relatively small size and closely connected communities can make institutions more agile in responding to issues, sharing information and implementing changes to policy and process (or at least they have the potential to do so). For example, in his evidence during the hearings, victim-survivor Samuel Leishman stated:

We talk about Tasmania as being a small jurisdiction and a small island, and it’s isolating and, you know, we don’t have the resources and how difficult all of that is because of that and we have to look at other states and see what they’re doing ... and let’s just do this piecemeal approach down here. I sometimes think, well, why do we look at it like that, why can’t we look at Tasmania as being a small, isolated state and that’s actually our advantage? We are small, we can set the standards and we can be the one that says, this is the benchmark that everyone else has to meet, and we can do that because we’re small and because we’re isolated. There’s no reason why we can’t do things better here than the rest of the country.¹⁰¹

5.2.2 Silencing, reprisals and denial: the harmful impact of close connections

While close personal and professional connections can be a source of strength, they can also lead to silencing and suppression of those who would otherwise speak out about abuse, retribution against those who do and acceptance of behaviour that should be questioned. They may also cause poor institutional responses to formal reports of abuse, extending in some instances to obfuscation and denial. In addition, there is the human tendency to disbelieve that a person one knows and likes could perpetrate child sexual abuse, which has prevented people seeing the obvious or believing those who speak up. *The Nurse* podcast reported one person expressing fear about raising concerns against the Tasmanian Government:

I am so sorry I can’t do this—I feel it would be a target on my back and I have seen too many others who speak out get victimised. I don’t want to spend the rest of my life looking over my shoulder and I’m petrified for the impact this could have on my family. I would never know, if that contract doesn’t get renewed, or that job application doesn’t go through, if it’s because I spoke out against the Tasmanian Government. I would never know if I’ve put my family at risk and that’s the one thing more important than this.¹⁰²

Over the course of our Commission of Inquiry, we heard of instances where fear of reprisal affecting people’s personal and professional lives deterred them from making reports of child sexual abuse through official channels. In her statement, Professor Pybus described the link between Tasmania’s small size and the reluctance to report and respond to abuse:

A potential discloser of child sexual abuse is likely to know someone who is in some way connected with or implicated in the abuse. Everyone up and down the chain from the alleged perpetrator would be concerned about the implications of a report,

and taking action on a report, in terms of negative press, employment prospects and so on. This can create a fear of reprisal and a reluctance to take ... proper disciplinary action at the institutional level.¹⁰³

One victim-survivor submitted she felt ‘totally powerless against the system’ and in making a complaint ‘it certainly crosses my mind, that I am committing career suicide as many will “not believe”, “view me differently”, “treat me as other and a liar”’.¹⁰⁴

Another victim-survivor, Rachel (a pseudonym), described the impact of living in the same small community as her alleged abuser following a public statement that purported to clear the alleged abuser of a breach of the *State Service Act 2000* (‘State Service Act’): ‘I wanted to hide. I ended up leaving that community. I didn’t want to stay there, and even to today I’m so fearful of being in that community’.¹⁰⁵

Participants at community consultations gave similar examples of professional repercussions for people who reported abuse or ‘dobbed’, such as not being given a promotion or being isolated at work. One participant said reminding someone that they owed their position to their connection with another person was a ‘very Tasmanian activity’, stating ‘people were tapped—someone said to me “I own you”—everyone owes their jobs to other people’.¹⁰⁶ These comments align with the Tasmanian Policy Exchange’s research previously outlined about the role of informal networks in recruitment.

Victim-survivors and others also worried they would not be believed if they reported the abuse, noting a tendency to believe and protect adults over children. In evidence to our Commission of Inquiry, journalist Emily Baker stated:

I think in a small place like Tasmania there’s a fear about personal repercussions, professional repercussions, what the broader community might think of them, that they won’t be believed ... that nothing will change.¹⁰⁷

In sessions with a Commissioner, several people referred to the influence of employee unions in protecting members’ interests when allegations of child sexual abuse are made against them, rather than the interests of the child.¹⁰⁸

Others felt their concerns would be dismissed as an overreaction or misinterpretation of behaviours that in other circumstances would be considered grooming or red flags indicating a risk of abuse. As discussed in *The Nurse* podcast, comments on the behaviour of James Griffin in Launceston were dismissed as ‘that’s just Jim’.¹⁰⁹ In evidence, Professor Eccleston commented:

In a very relatively tightly connected community, if you are aware of abuse, misconduct or other illegal activities, perhaps you might be in denial. You know, I know this person’s families, forebears ... so you may be less willing to disclose.¹¹⁰

Because of these pressures, witnesses and others reported feeling a lack of trust in official channels to make complaints. When journalist Camille Bianchi was asked during examination whether she was the first port of call for her sources, she responded: ‘I think I was the last port of call ... the perception was that there was no other outlet’.¹¹¹

In discussing a systemic ‘culture of silence and reprisal’ across the State Service, whistleblower Alysha (a pseudonym) described her experience as a member of staff who raised concerns about the treatment of children at Ashley Youth Detention Centre.¹¹² She felt she had little choice but to go to the media:

I never wanted to ‘blow the whistle’ or engage with the media. I could think of nothing worse then or now. It was out of sheer despair and having exhausted all ‘typical’ and ‘more palatable’ reporting avenues that I felt I needed to, as a matter of public interest and out of feelings of personal and professional obligation to ensure someone responded in an appropriate manner to what I have witnessed at the Centre. After having had a rewarding, successful life prior to the Centre, I deeply resent what I have been put through and the lengths that I have been required to take to be heard regarding these matters ... the media can sometimes be the only effective avenue available to whistle-blowers in Tasmania—which signifies a significant gap in the system. No one should have to feel like they need to choose between public safety and their personal safety.

...

I have witnessed a culture and entrenched belief system that ... protects staff accused of wrongdoing, and persecutes those that promote change, or who report misconduct.¹¹³

Close connections can also drive parochialism, which can create boundaries between communities. We heard about divisions and distinctions that contribute to forming community identity and a sense of loyalty. For example, we heard of the distinction between ‘mainlanders’ and Tasmanians, and between the north and south of Tasmania. Within these boundaries, distinctions continue to multiply to create smaller and smaller divisions.

These distinctions create a sense of protectiveness within a community that can manifest in a reluctance to criticise or be self-reflective or to publicly acknowledge and respond to problems. In commenting on the role of the local media, journalist Ms Baker noted that when working for the newspaper *The Examiner*:

... the sense was, we’re here to champion the north, we’re here to talk up the north, we’ll tell good stories about the north and I do think that’s an important role that a local newspaper plays, you’re part of the community’s identity and you should be of course telling the good stories that come with that. Sometimes there are not good stories though ...¹¹⁴

Journalists also reported being pressured not to report on allegations of abuse because they are ‘private matters’ that should not be aired in public.¹¹⁵ Ms Bianchi referred to ‘a sense of, “this isn’t nice, this isn’t productive, this isn’t helpful”’.¹¹⁶ More seriously, journalists referred to pressures from State Service employees suggesting that their reporting would directly harm children and others.¹¹⁷ Ms Baker stated ‘there have been several occasions when I’ve been told ... that I’m going to cause someone to take their own life, my reporting will lead to that dreadful outcome ... That is often used’.¹¹⁸

This tendency in Tasmanian culture to deny or suppress reports of misconduct affects an institution’s responses to allegations of child sexual abuse. It can lead to an institutional culture of ‘don’t ask, don’t tell’, where people in hierarchies seek to protect themselves and those in senior positions from knowledge that is difficult to handle. In a government context, this ‘don’t ask, don’t tell’ culture may lead public servants to not brief ministers or departmental secretaries on matters of concern. Conversely, ministers and secretaries may benefit from not asking difficult questions.

In consultations, participants spoke of a cultural tendency towards covering up, conflicts of interest and a lack of transparency in responses to allegations of abuse.¹¹⁹ In the context of limited staff availability in Tasmania, one participant spoke of raising concerns about another staff member and being told: ‘Save your breath, we need the person’.¹²⁰ In his statement to our Commission of Inquiry, Professor Eccleston suggested a possible link between poor institutional responses and limited workforce mobility in the State Service:

... longevity of employment within the [State Service] can be a double-edged sword. It results in an older and more stable workforce but is perhaps less dynamic and diverse, and implementing cultural change can be a slower process. Given the broader community dynamics in Tasmania, there is also a risk that obligations to colleagues might trump obligations to uphold high ethical standards in the workplace.¹²¹

Similarly, we heard evidence of requests for information from government agencies being met with delays and refusals. Ms Bianchi described lengthy processes when seeking documents from the Department of Health under the *Right to Information Act 2009*, which involved referral to the Ombudsman for review.¹²² The process to obtain the requested documents took approximately 22 months.¹²³

The Ombudsman’s *Annual Report 2021–22* states that it was concerning that 95 per cent of the external reviews of Right to Information requests conducted in 2021–22 ‘identified issues with the manner in which the public authority had responded to a request for assessed disclosure’.¹²⁴ While some progress had been made compared with previous years, the Ombudsman wrote:

The express object of the [Right to Information] Act is clear in relation to its pro-disclosure focus, seeking to increase government accountability and acknowledging that the public has a right to the information held by public

authorities who are acting on behalf of the people of Tasmania. Too often, sadly, adherence to this object is not evident in practice and a closed, and at times obstructive, approach is taken when responding to requests for assessed disclosure which come before my office.¹²⁵

In 2020, the Ombudsman reported that for the year 2018–19, the rate at which Tasmanian Government institutions refused access to *any* information in response to Right to Information requests (30 per cent) was 7.5 times the rate of Australia’s most open jurisdictions, Victoria and the Northern Territory (4 per cent).¹²⁶

Commenting on institutional responses to claims of child sexual abuse and suppression of information, journalist David Killick suggested that: ‘Keeping bad news—or any news—from reaching the public isn’t some kind of aberration. It is the defining characteristic of this state’s political culture’.¹²⁷

5.2.3 The influence of history

Some people suggest that the fear of speaking out in Tasmania has its roots in Tasmania’s history as a penal colony and the social structures and cultural norms that have been sustained on the island since that time. Mr Killick said:

It is a relic of our convict past, this fear of speaking out. It is a straight line from ‘Don’t upset the overseer’ to ‘Don’t trouble the Minister’.¹²⁸

Professor Pybus said:

The persistence of colonial societal features—a well-entrenched elite, mistrust of authority within portions of the population, and a pervasive sense of shame—provide some explanation for the occurrence of child sexual abuse in Tasmanian institutions being unreported and unaddressed. In this environment, the silencing of disclosures and conversations about sexual abuse has been normalised over many decades.¹²⁹

Of course, other jurisdictions without a colonial past also experience a reluctance to disclose child sexual abuse—as evidenced by the many international inquiries into child sexual abuse. However, Tasmania’s history provides a specific context for this reluctance in relation to our Commission of Inquiry.

Professor Pybus spoke of the division between the descendants of convicts and free settlers, which lasted longer than in other jurisdictions due to low inward migration. She noted that: ‘even into the 20th century, there has been less intermarriage between people of the free settler and convict classes in Tasmania, compared to other states’.¹³⁰ These divisions are linked to the sense already described that ‘everyone knows everyone’, with family connections going back generations.

Professor Pybus connected Tasmania's history of brutal penal institutions, which controlled the convict classes and their children, with more recent abusive institutional environments for children. She asked: 'if you look at a place like Point Puer in the 19th century and a place like the Ashley Boys Home in the 20th century, you'd say, what is the difference between these two places? To what extent is the same licence for abuse going to be operating?'¹³¹

Our Commission of Inquiry's fundamental purpose is to effect genuine cultural change to better prevent and respond to child sexual abuse in institutional contexts. There is some evidence of a cultural shift in this regard. During the hearings, Professor Pybus noted recent changes in the Tasmanian community leading to cultural change. She stated: 'the demographics are changing dramatically and with it is coming a breakdown of the kind of traditional cultural relationships that have kept a sort of code of silence'.¹³² She further commented:

Tasmanian society is now much more cosmopolitan than it was even 15 years ago. It has become an attractive place for others to emigrate. Demographic change in Tasmania has been a key driver of a shift in cultural attitudes. In 2022, I think there is a huge openness in the community, and a greater desire to have difficult conversations and make recompense.¹³³

Both Professor Pybus and Professor Eccleston identified that the Commission of Inquiry itself was playing a role in changing the Tasmanian culture of secrecy and staying silent by:

- allowing a process of 'truth-telling'
- acknowledging and raising awareness about the occurrence of child sexual abuse
- making it clear that child sexual abuse is unacceptable
- providing redress and support for victim-survivors
- establishing ways for addressing such abuse when it occurs.¹³⁴

6 Current response to child sexual abuse in institutional contexts

It was difficult for our Commission of Inquiry to determine the current Tasmanian response to child sexual abuse in institutional contexts. We asked the Tasmanian Government to describe their child sexual abuse system but only received brief descriptions of different efforts by various agencies, without an overarching outline of the system.¹³⁵ The section below is our best attempt at providing an outline of the current Tasmanian response to child sexual abuse in an institutional context, including efforts for identifying, responding to and preventing child sexual abuse, and supports for victim-survivors. The Tasmanian child sexual abuse response system, as with all jurisdictions, crosses multiple agencies. Each element is discussed in more detail in subsequent chapters.

6.1 Prevention

The Tasmania Government is a party to the recently released *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–30*. The National Strategy focuses on preventing child sexual abuse.¹³⁶ The Tasmanian Government has recently announced or implemented some initiatives with a connection to preventing child sexual abuse, including educational programs and resources.¹³⁷

6.2 Individual agencies

Individual agencies within the Tasmanian Government are responsible for preventing, identifying, reporting and responding to child sexual abuse within their organisation. Agencies achieve this by ensuring their organisations are child safe, as recommended by the National Royal Commission and articulated in the National Principles for Child Safe Organisations. This is currently a voluntary process. The National Principles for Child Safe Organisations are:

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.¹³⁸

A legislative framework that includes a plan for implementing the National Principles for Child Safe Organisations has been underway since 2020, with the Child and Youth Safe Organisations Bill 2022 introduced into the Parliament of Tasmania in November 2022 and passed into law on 13 June 2023. Under the *Child and Youth Safe Organisations Act 2023* ('Child and Youth Safe Organisations Act'), government departments that provide services specifically for children (such as schools) or provide facilities specifically for use by children who are under their supervision (such as out of home care or youth detention) must comply with a set of 10 Child and Youth Safe Standards.¹³⁹

Among other important standards, Standard 6 of the Child and Youth Safe Organisations Act provides that organisations must have child-focused processes to respond to complaints of child sexual abuse. In the National Principles for Child Safe Organisations, this includes processes for making notifications to relevant bodies and disciplinary processes.¹⁴⁰ Staff or organisations may have mandatory or voluntary reporting obligations in relation to child sexual abuse under the *Children, Young Persons and Their Families Act 1997* ('Children, Young Persons and Their Families Act') (to Child Safety Services), the *Criminal Code Act 1924* ('Criminal Code Act') (to police), the Registration to Work with Vulnerable People Scheme, the National Disability Insurance Scheme (to the scheme's Quality and Safeguards Commission) and professional registration frameworks (such as to the regulatory bodies for teachers or health practitioners).¹⁴¹

Tasmanian Government organisations' disciplinary processes in response to staff alleged to have committed child sexual abuse or related conduct are governed by the *State Service Employment Framework*. This framework is shaped by:

- the State Service Act, which outlines the rights and responsibilities of state servants and Heads of Agencies (that is, secretaries of departments)
- the State Service Code of Conduct contained within section 9 of the State Service Act, which outlines the expected conduct of public servants
- Employment Directions issued by the minister administering the State Service Act, which outline how Heads of Agencies can respond when they are concerned about the conduct or performance of state servants.¹⁴²

6.3 Agencies responding to abuse

6.3.1 Child Safety Service

Section 13 of the Children, Young Persons and Their Families Act states that an adult who knows, or believes or suspects on reasonable grounds, that a child is suffering, or is likely to suffer, abuse or neglect, has a responsibility to take steps to prevent it from occurring.¹⁴³ One step an adult may take is to inform Child Safety Services of their knowledge, belief or suspicion.¹⁴⁴ In addition, under section 14 of the Act, members of certain professions are mandatory reporters. If, in carrying out official duties or during their work (paid or voluntary), a mandatory reporter believes or suspects on reasonable grounds, or knows, that a child has been or is being abused or neglected, they must inform Child Safety Services.¹⁴⁵

The role of Child Safety Services is to protect children and young people who are at risk of abuse or neglect, including sexual abuse.¹⁴⁶ The Advice and Referral Line is the first point of contact for anyone with concerns about the safety or wellbeing of a child.¹⁴⁷ Staff at the Advice and Referral Line assess reports and may refer callers to appropriate services or determine to take no further action.¹⁴⁸

When a matter warrants a child safety assessment and response, the case is transferred to Child Safety Services.¹⁴⁹ If a child is at immediate risk of harm, staff will attend as soon as practicable and take responsibility for the care and protection of the child.¹⁵⁰ Where a child has been or is at risk of being sexually abused, or has displayed harmful sexual behaviours, child safety staff are guided by an internal procedure outlining the steps involved in receiving notifications, conducting an assessment, contacting police, arranging a medical examination and completing follow-up actions and referrals.¹⁵¹

In some cases, a child who has experienced institutional child sexual abuse may have a protective parent and not need a child safety response, or the reported risk may be about a potential risk to unidentified children. Factors such as these may affect whether a response from Child Safety Services is required in a particular case. It may instead be referred to police.

The Department for Education, Children and Young People (formerly the Department of Communities) has an obligation under the *Registration to Work with Vulnerable People Act 2013* ('Registration to Work with Vulnerable People Act') to notify the Registrar if it becomes aware of, or suspects on reasonable grounds, that a person registered under the Act has engaged in 'reportable behaviour', which includes child sexual abuse and related conduct.¹⁵²

Staff within the Department also have an obligation to report abuse to police as soon as practicable under section 105A of the Criminal Code Act.¹⁵³

6.3.2 Police

A victim-survivor of child sexual abuse or their caregiver can report their abuse to police, as can others. In addition, under section 105A of the Criminal Code Act, it is an offence not to report a sexual offence against a child.

The Tasmania Police Victims Unit manages sexual assault, and the Serious and Organised Crime division manages child exploitation material. Police analyse reports and information about child sexual abuse to determine whether any offences have been committed.¹⁵⁴ Police have several reporting obligations to other agencies concerning child sexual abuse, including to Child Safety Services and the Registrar of the Registration to Work with Vulnerable People Scheme.¹⁵⁵ Under information-sharing frameworks, child sexual abuse may be investigated as part of a joint response by police and Child Safety Services. Tasmania Police is the lead agency in matters involving an alleged offence, and Child Safety Services are the lead agency in ongoing care and protection matters.¹⁵⁶

6.3.3 Registration to Work with Vulnerable People Act

Under the Registration to Work with Vulnerable People Scheme, people carrying out certain activities must be registered to work with children, including people who work in schools, youth justice, out of home care and child health services.¹⁵⁷ The Scheme is one tool to protect children from people who may pose a risk to their safety.

There are specific obligations to report ‘reportable behaviour’ (behaviour that poses a risk of harm to vulnerable people, whether by reason of neglect, abuse or other conduct) by a person who is registered under the Registration to Work with Vulnerable People Act.¹⁵⁸ The Registrar may conduct an additional risk assessment on a registered person if there is new, relevant information about them.¹⁵⁹ This risk assessment may include requiring additional information from a registered person.¹⁶⁰ The Registrar may disclose information about the result of a risk assessment, registration and related information to another registration or licensing body.¹⁶¹ Where a person has received a negative risk assessment or had their registration suspended or cancelled, this information may also be disclosed to ‘prescribed entities’ (currently government agencies and police) if the Registrar considers it appropriate to protect vulnerable people from harm.¹⁶²

6.3.4 Professional registration bodies

Some professions, such as teachers and many health professionals, need to be registered to work in their professional roles. These registration schemes require a certain standard of conduct from those registered. This is to protect the safety of the community and the reputation of the profession.

In Tasmania, the Teachers Registration Board undertakes ongoing vetting processes to ensure people employed as teachers are of ‘good character and fit to teach’.¹⁶³ *The Teachers Registration Act 2000* requires an employer to notify the Teachers Registration Board if it takes any disciplinary action or dismisses a teacher due to ‘unacceptable behaviour’ (behaviour that does not satisfy a standard of behaviour generally expected of a teacher, is otherwise disgraceful and improper, or shows the person is unfit to be a teacher).¹⁶⁴ Employers must also notify the Teachers Registration Board where the person has resigned or retired in circumstances that may have allowed the employer to consider any behaviour of the person to be unacceptable.¹⁶⁵ Registered teachers must also notify the Teachers Registration Board, in certain circumstances, when they are charged with a prescribed offence, as well as when they are found guilty of committing such an offence.¹⁶⁶ Following an inquiry into matters of concern, the Teachers Registration Board can suspend or cancel a teacher’s registration.¹⁶⁷

In the health sector, the Australian Health Practitioner Regulation Agency (‘Ahpra’) performs a similar role in ensuring that ‘only health practitioners with the skills and qualifications to provide competent and ethical care are registered to practise’.¹⁶⁸ Ahpra is the national organisation responsible for implementing the National Registration and Accreditation Scheme in Australia.¹⁶⁹ It works with National Health Practitioner Boards across 15 health professions, from doctors and nurses to dentists and physiotherapists, and has its functions set out in the *Health Practitioner Regulation National Law Act 2009* (Qld).¹⁷⁰

Registered health practitioners and employers must report ‘notifiable conduct’, which includes engaging in sexual misconduct in connection with the practice of the practitioner’s profession.¹⁷¹ Following consideration of a notification, a National Board may form the reasonable belief that a health practitioner has engaged in professional misconduct and refer a matter to the relevant state or territory tribunal for determination.¹⁷² In Tasmania, this is the Tasmanian Civil and Administrative Tribunal. The Tribunal may impose conditions or disciplinary actions, including cancellation of registration.¹⁷³

6.4 Oversight bodies

The Tasmanian Commissioner for Children and Young People notes there is ‘currently no oversight mechanism which sets the overarching expectation or benchmark’ for how government agencies should investigate child sexual abuse.¹⁷⁴ Several Tasmanian institutions or roles provide oversight mechanisms that may respond to complaints about child sexual abuse or about other institutions’ responses to such complaints. These include the:

- Commissioner for Children and Young People
- Ombudsman

- Integrity Commission
- Auditor-General
- Health Complaints Commissioner
- Custodial Inspector
- Child Advocate.

The institution-specific volumes in this report discuss oversight bodies that relate to particular institutional contexts or groups of children. These bodies include the Child Advocate, the Custodial Inspector and the Health Complaints Commissioner (refer to Volumes 4, 5 and 6 respectively). There are also national bodies that may provide a degree of oversight, such as the National Disability Insurance Scheme’s Quality and Safeguards Commission and the Australian Commission on Safety and Quality in Health Care.

6.4.1 Commissioner for Children and Young People

The Commissioner for Children and Young People is an independent statutory officer established under the *Commissioner for Children and Young People Act 2016* (‘Commissioner for Children and Young People Act’). The Commissioner must act independently and impartially in the public interest when exercising functions and powers under the Act.¹⁷⁵

While not charged with the primary response to reports of abuse, the Commissioner is regularly contacted by community members who have concerns about the wellbeing of children and young people.¹⁷⁶ When this occurs, the Commissioner’s office provides information about referral options and, in some cases, may share concerns with a ‘relevant authority’ where this is lawful and appropriate.¹⁷⁷

Under the Commissioner for Children and Young People Act, the Commissioner has various powers, including the ability to investigate and make recommendations in relation to systems, policies and practices of organisations (both government and non-government) that provide services affecting children and young people.¹⁷⁸ However, the Commissioner does not have the authority to investigate or review ‘a specific decision made in respect of an individual case or specific circumstances’ unless requested by the relevant minister.¹⁷⁹

The Commissioner has specific oversight of some institutions where children are particularly vulnerable to sexual abuse, specifically out of home care and youth detention. The independent Out-of-Home Care Monitoring Program was established in 2018.¹⁸⁰ The program focuses on systemic issues in institutional and administrative

practices, as separate from complaint handling and individual advocacy.¹⁸¹ It monitors out of home care service provision, visits out of home care providers, has discussions with advocacy organisations, peak bodies and key stakeholders, and engages with children and young people in out of home care.¹⁸²

The Commissioner also undertakes independent oversight of children's rights and wellbeing in youth detention, together with the Ombudsman and Custodial Inspector.¹⁸³ The Commissioner has a statutory function to act as an advocate for a young person in youth detention under the *Youth Justice Act 1997* ('Youth Justice Act').¹⁸⁴ This includes assessing the physical and emotional wellbeing of the young person.¹⁸⁵

The Commissioner's broader functions further contribute to the overall governmental response to child sexual abuse. For example, the Commissioner helps develop legislation and policy, including ensuring the State satisfies its national and international obligations in respect of children and young people generally.¹⁸⁶

6.4.2 Ombudsman

The Ombudsman is an independent statutory officer appointed by the Governor under the *Ombudsman Act 1978* ('Ombudsman Act'). The Ombudsman investigates the administrative actions of public authorities to ensure they are lawful, reasonable and fair.¹⁸⁷

The Ombudsman may receive complaints from people with concerns about the administrative actions of public authorities if complaints cannot be resolved directly with the authority.¹⁸⁸ This may include complaints about how child sexual abuse allegations and incidents are handled in institutional contexts.

Most complaints are resolved by way of preliminary inquiries, where public authorities provide information to address complaints and improve processes.¹⁸⁹ However, where appropriate, the Ombudsman may conduct an investigation on the basis of a complaint or on the Ombudsman's own motion.¹⁹⁰ Following an investigation, a report is prepared for the public authority that may contain recommendations to remedy actions.¹⁹¹ The report may also be provided to the relevant minister and to Parliament.¹⁹² Importantly, the Ombudsman does not have the power to compel a public authority to adopt recommendations, although these are 'ordinarily accepted and acted upon'.¹⁹³

In addition, the Youth Justice Act gives a young person the right to complain to the Ombudsman about the standard of care, accommodation or treatment they receive while in a detention centre.¹⁹⁴ The Ombudsman Act also requires that organisations and agencies take all available steps to help a person detained in custody to make a complaint without delay.¹⁹⁵

6.4.3 Integrity Commission

The Integrity Commission is an independent statutory authority established under the *Integrity Commission Act 2009* ('Integrity Commission Act'). Under the Act, the Integrity Commission has several functions and powers related to public officers, including:

- receiving and assessing complaints or information relating to matters involving misconduct
- investigating matters related to misconduct
- referring complaints to other appropriate parties for investigation and action.¹⁹⁶

The Integrity Commission investigates allegations of serious misconduct in line with the investigative processes and powers set out in the Integrity Commission Act.¹⁹⁷ The Act defines 'serious misconduct' as 'misconduct by any public officer that could, if proved, be a crime or an offence of a serious nature, or misconduct providing reasonable grounds for terminating the public officer's appointment'.¹⁹⁸ Child sexual abuse in institutional contexts would likely be covered by this definition, as could some failures to adequately respond to such abuse.

Following an investigation, the Board of the Integrity Commission may dismiss a matter, refer it to a public authority for investigation (along with any recommendations), require the matter be further investigated, recommend the Premier establish a commission of inquiry or undertake an inquiry by the Integrity Tribunal.¹⁹⁹ After determining the outcome of an investigation, the Board of the Integrity Commission also considers whether a report should be tabled in Parliament.²⁰⁰

The Integrity Commission also has a responsibility to educate public officers and the public about integrity in public administration, as well as guiding public officers in the conduct and performance of their duties.²⁰¹ It encourages public authorities to notify the Integrity Commission when they receive misconduct allegations and undertake internal investigations. This assists the Integrity Commission to identify misconduct trends and risks, as well as the capacity of public authorities to manage allegations of misconduct.²⁰²

6.4.4 Auditor-General

The functions and powers of the Auditor-General are set out in the *Audit Act 2008*.²⁰³ The Auditor-General is supported in this role by the Tasmanian Audit Office.²⁰⁴ As an independent statutory officer appointed by the Governor, the Auditor-General is not subject to the direction or control of the Parliament or Government.²⁰⁵ The purpose of the Auditor-General and the Tasmanian Audit Office is to 'provide independent assurance to the Tasmanian Parliament and the community on the performance and accountability of the Tasmanian Public Sector'.²⁰⁶

This is primarily achieved through financial, performance and compliance audits as well as investigations of state entities, the outcomes of which are reported to Parliament.²⁰⁷ Notably for our Commission of Inquiry, the Auditor-General could inquire into systemic matters relevant to preventing and responding to child sexual abuse.²⁰⁸

6.5 Support

There are two main sexual assault services in Tasmania: the Sexual Assault Support Service (in southern Tasmania) and Laurel House (in northern Tasmania). Both services provide immediate and longer-term support for victim-survivors of sexual abuse.²⁰⁹ Victim-survivors can also get support through the Government's 24-hour crisis line, 1800 MY SUPPORT, which offers immediate support and information concerning sexual abuse.²¹⁰

Victim-survivors may access therapeutic support, particularly longer-term support, via other pathways. These include Victims of Crime, the National Redress Scheme, mainstream counselling or mental health services and national online or telephone sexual support services.

The Tasmanian Government is currently piloting two multidisciplinary centres ('Arch' centres) that will co-locate sexual assault support services with other specialised services for victim-survivors of sexual violence.²¹¹

6.6 Justice and redress

Victim-survivors can seek formal redress or justice for their abuse through different avenues. They can seek justice through civil compensation claims or the criminal justice system, or they can seek redress via the National Redress Scheme. The criminal and civil justice options place what could be seen as higher demands on the victim-survivor, including the need to provide a statement under oath and provide the alleged abuser with natural justice. The National Redress Scheme allows victim-survivors to seek recognition and justice from the institution in which their abuse occurred, without the need to interact with the person who abused them.

6.6.1 Civil claims

In 2020, the Tasmanian Government introduced significant changes to civil compensation claims for child sexual abuse in response to National Royal Commission recommendations. Amendments to Tasmania's *Limitation Act 1974* and *Civil Liability Act 2002* included removing limitation periods for personal injury proceedings concerning victim-survivors of child abuse, enabling courts to set aside a previously settled right of action in relation to child abuse and expanding organisations' duty to prevent child abuse and vicarious liability.²¹²

A victim-survivor may seek civil compensation from the person who abused them or from the institution that may be held legally responsible for the conduct of the abuser, such as by being their employer. In the context of institutional abuse, this means that victim-survivors may initiate civil claims against the State of Tasmania. Claims may be settled out of court or, if contested, the victim-survivor must satisfy a court on the balance of probabilities that their abuse occurred and caused them harm. If satisfied, the court will determine damages.

Recent changes making it easier for the State to be held liable for the actions of employees have resulted in an increase in civil claims against the State. In August 2022, lawyers lodged a class action on behalf of more than 100 claimants seeking compensation from the State of Tasmania, with four lead plaintiffs alleging systemic negligence in the management of Ashley Youth Detention Centre from 1961 to at least December 2019.²¹³

6.6.2 Criminal claims

Victim-survivors can also seek justice through the criminal justice system by making a report to police and hoping their abuser is charged, prosecuted by the Office of the Director of Public Prosecutions and convicted by a court. In this scenario, the abuse must satisfy the elements of a child sexual assault offence and be proven beyond reasonable doubt.

There are currently no criminal offences related to institutional responsibility for child sexual abuse, although the Government is proposing to introduce a failure-to-report offence.

6.6.3 National Redress Scheme

The Australian Government set up the National Redress Scheme in July 2018.²¹⁴ It enables victim-survivors of institutional child sexual abuse to seek financial compensation of up to \$150,000, counselling and a direct personal response from the responsible institution.²¹⁵

The scheme's purpose is to:

- acknowledge that many children were sexually abused in Australian institutions
- recognise the suffering they endured because of this abuse
- hold institutions accountable for this abuse
- help victim-survivors gain access to counselling, a direct personal response from the institution and a redress payment.²¹⁶

The National Redress Scheme is scheduled to run for 10 years and is only available to people abused prior to 1 July 2018, although we express some concerns about this in Chapter 17. The Tasmanian Government joined the National Redress Scheme and enacted legislation to enable non-government institutions to join in 2018.²¹⁷

By April 2022:

- 689 claims had been made against Tasmanian Government agencies
- 494 of these claimants were offered redress
- 48 claims were not approved
- a further 147 claims were yet to be determined at the national level.²¹⁸

7 Reforms made during our Commission of Inquiry

The Tasmanian Government and its institutions have responded to problems revealed by our Commission of Inquiry in our public hearings and engagement work. In May 2022, the Government announced a package of *Keeping Children Safer* actions as an interim response to evidence from victim-survivors, state representatives and experts at our first public hearing.²¹⁹ During our Commission of Inquiry, the Government continued to make reforms or commitments to reforms.

The Tasmanian Government provided Parliament with an update on their *Keeping Children Safer* actions in November 2022. All 30 actions in this response are reproduced in Appendix D. The Department for Education, Children and Young People also provided an update to our Commission of Inquiry on 9 February 2023.²²⁰ In summary, the Government has already:

- established the Office of Safeguarding Children and Young People in the Department for Education, Children and Young People and drafted the Safeguarding Framework
- appointed a Safeguarding Lead in every government school and established a statewide Safeguarding Network
- appointed extra senior support staff in education as well as two Student Support Response Coordinators who will be responsible for managing responses to incidents of child sexual abuse and harmful sexual behaviours
- rolled out annual, compulsory training on mandatory reporting for all staff in child-facing departments
- commissioned a project designed to improve the safety of children in out of home care

- undertaken the Child Safe Governance Review at Launceston General Hospital
- outlined a plan for Ashley Youth Detention Centre and the youth justice system in the *Keeping Kids Safe: A Plan for Ashley Youth Detention Centre Until its Intended Closure* and the *Draft Youth Justice Blueprint 2022–2032*
- consulted on proposed legislation to introduce a new crime of failing to protect a child or a young person from people in authority, and other changes to the criminal law
- consulted on proposed legislation to introduce child safe standards, a reportable conduct scheme and a framework to ensure compliance (now the *Child and Youth Safe Organisations Act 2023*)
- established the Statewide Complaints Oversight Unit to handle future complaints about misconduct across Tasmanian health services, including child sexual abuse
- issued an apology to victim-survivors in Parliament.

The Government has also committed to:

- measures directed at supporting the rights of victim-survivors such as:
 - improving the Right to Information process
 - reviewing civil litigation procedures to ensure a trauma-informed approach
 - establishing two pilot multidisciplinary centres ('Arch' centres) to offer a best-practice model of support and safety services to victim-survivors of sexual and family violence
- reforming youth justice including:
 - closing Ashley Youth Detention Centre and establishing new youth justice facilities
 - introducing a new service delivery model focused on early intervention, diversion and rehabilitation
 - raising the minimum age of detention from 10 to 14 years
 - preparing the *Draft Youth Justice First Action Plan 2023–2025*
- measures designed to improve Child Safety Services including:
 - establishing out of home care standards and accreditation, and a carers register
 - allocating funding to develop and procure a Wellbeing, Care and Recovery Placement Program (therapeutic residential placement program)

- establishing a community-led palawa Child Safe and Supported Policy Partnership Working Group to improve outcomes for Aboriginal children and families at risk of entering or in contact with the child safety or out of home care system
- measures to support a skilled and ready child safety workforce
- actions to safeguard children and support their wellbeing in schools including:
 - appointing a further eight psychologists and eight social workers
 - rolling out safeguarding training for principals and school leaders, and developing Registration to Work with Vulnerable People training
- actions aimed at State Service employees including:
 - expanding the scope of regulated activities under the Registration to Work with Vulnerable People legislation
 - establishing a central register of employees who have been terminated because of an Employment Direction No. 5—Breach of Code of Conduct
 - rolling out trauma-informed training across the State Service
- other actions such as:
 - designing a multimedia resource (*tell someone*) for children, young people and families to raise awareness of child sexual abuse
 - establishing information-sharing groups with other jurisdictions and engaging with representative bodies concerned with the safety and wellbeing of children and young people
 - establishing a whole of government Commission of Inquiry response unit
 - developing a website to publicly report progress on implementation of the interim response actions and expected delivery dates.²²¹

The Government indicated that most of the proposed actions were underway. We discuss these recent and proposed reforms, where relevant, in subsequent chapters.

The Government said it will continue to publicly report on these actions via a dedicated webpage, established in January 2023.²²² It will expand the list when it receives our recommendations in August 2023. We understand that the Tasmanian Government has already set up a Commission of Inquiry response unit within the Department of Justice, to coordinate the implementation of our recommendations.

Other reforms the Government has undertaken in response to issues our Commission of Inquiry and other inquiries have identified include:

- bringing services related to children under the responsibility of one new agency —the Department for Education, Children and Young People
- establishing the Keeping Children Safer Working Group, reporting to the Secretaries Board
- implementing the recommendations of the Independent Inquiry into the Tasmanian Department of Education’s Responses to Child Sexual Abuse, including establishing the Office of Safeguarding Children and Young People.

In December 2022, the Commissioner for Children and Young People announced an investigation into case management for children and young people in out of home care, focusing on the allocation of Child Safety Officers.

Notes

- 1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 2 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) parts 2(1), 3(1), 6(2) and 12(1).
- 3 *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, A/RES/54/263 (entered into force 18 January 2002).
- 4 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
- 5 *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, open for signature 18 December 2002, A/RES/57/199 (entered into force 22 June 2006).
- 6 Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) Baseline Assessment of Australia's Readiness* (Report Number 3, September 2019).
- 7 *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, open for signature 18 December 2002, A/RES/57/199 (entered into force 22 June 2006) parts 17–23.
- 8 *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, open for signature 18 December 2002, A/RES/57/199 (entered into force 22 June 2006) parts 2, 5–16.
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- 11 UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted 15 December 2015).
- 12 Committee against Torture, *Concluding Observations on the Sixth Periodic Report of Australia, 75th sess, UN Doc CAT/C/AUS/CO/6* (5 December 2022) 11.
- 13 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).
- 14 *United Nations Declaration on the Rights of Indigenous People*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 15 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) parts 1, 3, 4, 7, 8, 16, 18, 23, 24, 25, 30; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195, (entered into force 4 January 1969) parts 1 and 2; *United Nations Declaration on the Rights of Indigenous People*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) preamble and parts 7, 14, 17, 21, 22.
- 16 Article 16 of the *Convention on the Rights of Persons with Disabilities* provides that States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect people with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
- 17 *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, concluded 19 October 1996 (entered into force 1 January 2002); *Family Law Act 1975* (Cth) s 111CZ; *Family Law (Child Protection Convention) Regulations* (Cth) 2003.

- 18 *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, concluded 25 October 1980 (entered into force 1 December 1983); *Family Law Act 1975* (Cth) s 111B; *Family Law (Child Abduction Convention) Regulations 1986* (Cth) r 1A.
- 19 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report into Missing and Murdered Indigenous Women and Girls (Canada)* (Final Report, June 2019); Commission to Inquire into Child Abuse, *Commission to Inquire into Child Abuse Report (Ireland)* (Final Report, May 2009); Commission of Investigation, *Report into the Catholic Diocese of Cloyne (Ireland)* (Final Report, December 2010); Royal Commission of Inquiry into Abuse in Care, *Tāwharautia: Pūrongo o te Wā (New Zealand)* (Interim Report, December 2020); Independent Inquiry Child Sexual Abuse, *Interim Report of the Independent Inquiry into Child Sexual Abuse (United Kingdom)* (Interim Report, April 2018); Historical Institutional Abuse Inquiry, *Report of the Historical Institutional Abuse Inquiry (Northern Ireland)* (Final Report, June 2017); *Scottish Child Abuse Inquiry* <<https://www.childabuseinquiry.scot>>; Independent Jersey Care Inquiry, *The Report of the Independent Jersey Care Inquiry 2017 (Jersey)* (Final Report, July 2017); Karen J Terry et al, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950–2010* (Report presented to the United States Conference of Catholic Bishops by the John Jay College Research Team, May 2011).
- 20 For example, the Historical Abuse Inquiry in Northern Ireland spanned 1922 to 1995, and the Canadian Inquiry, *Reclaiming Power and Place*, spanned 1960 to 2018.
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- 22 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017).
- 23 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 1, 27, 183, 189.
- 24 Refer to, for example, Government of Western Australia, *Royal Commission into Institutional Responses to Child Sexual Abuse: Response by Minister McGurk on behalf of the Government of Western Australia* (June 2018) 10, 11; Government of the Australian Capital Territory, *The ACT Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, June 2018) 2.
- 25 Recommendations 10.2 and 10.3 of the National Royal Commission, refer to Department of Justice, *Tasmanian Response: Royal Commission into Institutional Responses to Child Sexual Abuse* (June 2018) 51.
- 26 Department of Justice, *Fourth Annual Progress Report and Action Plan 2022: Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, December 2021) 26.
- 27 Department of Premier and Cabinet, ‘Harmful Sexual Behaviours Program – Open for Referrals’, *Safe from Violence* (Web Page, 15 June 2021) <<https://www.safefromviolence.tas.gov.au/resources-hub/news-and-announcements/news/harmful-sexual-behaviours-program-open-for-referrals>>.
- 28 Tasmanian Government, *Second Annual Progress Report and Action Plan 2020* (Report, December 2019) 15–17.
- 29 Child Abuse Royal Commission Response Unit, Department of Justice, ‘Tasmanian Response to the Royal Commission into Institutional Responses to Child Sexual Abuse’ (Web Page, 15 December 2022) <<https://www.justice.tas.gov.au/carcru/tasmanian-response-to-the-royal-commission>>.
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- 32 National Office for Child Safety, *Our Work* (Web Page, 2023) <<https://www.childsafety.gov.au/our-work>>.
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- 45 Stephen Smallbone and Tim McCormack, *Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse* (Final Report, 7 June 2021) 74–82. The Independent Education Inquiry nominally made 21 recommendations; however, recommendations 11 and 15 were duplicates (refer to page 79 of the Final Report).

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- 52 Department of Health and Human Services, *Report of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 16–17.
- 53 Department of Health and Human Services, *Report of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 18.
- 54 Department of Health and Human Services, *Report of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 20.
- 55 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, 28, Recommendation 6.8; *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 7, 24, Recommendation 7.9.
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- 60 Statement to Parliament on 27 August 2015, Minister for Human Services, the Hon Jacquie Petrusma MP, quoted in: Department of Health and Human Services, *Redesign of Child Protection Services Tasmania: Strong Families – Safe Kids* (2016) 5, 10.
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- 62 Tasmanian Government, *Tasmanian Child and Youth Wellbeing Framework* (2018) 2.
- 63 Tasmanian Government, *Strong Families Safe Kids: Next Steps Action Plan 2021–2023* (2021) 8.
- 64 Tasmanian Government, *It Takes a Tasmanian Village: Child and Youth Wellbeing Strategy* (2021).
- 65 Tasmanian Government, *It Takes a Tasmanian Village: Child and Youth Wellbeing Strategy* (2021) 36.
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3 Child sexual abuse in institutions

1 Introduction

This chapter sets out what our Commission of Inquiry learned about child sexual abuse in institutional contexts. Understanding the nature, causes and effects of child sexual abuse helped us consider institutional failures and our recommendations to better prevent child sexual abuse in the future and respond appropriately to victim-survivors.

Our work was greatly informed by the Royal Commission into Institutional Responses to Child Sexual Abuse ('National Royal Commission') that ran from January 2013 to December 2017. The National Royal Commission drew on thousands of personal stories, hundreds of written accounts, dozens of hearings and an extensive program of research.¹

Although the National Royal Commission provided an important foundation for our Commission of Inquiry, our task was to examine the Tasmanian context. To this end, we commissioned our own research and sought and received evidence from many sources about child sexual abuse in Tasmanian Government schools, hospitals, out of home care settings and the Ashley Youth Detention Centre.

We have no reason to believe that the nature, causes and effects of child sexual abuse in Tasmania differ substantially from the national experience, but there may be aspects of the Tasmanian context that require special consideration:

Tasmania is a small community. People are closely connected through school, work, marriage, partnership or friendship circles. That context of close connection intensifies the concern about reporting and about making allegations against people. This presents difficulties for those individuals on whom we rely to ... [raise] concerns and [remain] vigilant about matters of child safety.²

Tasmania's small population may also have implications for the availability of financial, human and other resources to address the risk of child sexual abuse.

We consider the specific Tasmanian context in more detail in Chapter 2 and throughout this report. In this chapter, we:

- briefly describe the different forms of child sexual abuse
- examine the factors that increase the risk of child sexual abuse occurring in an institutional context or compromise the ability or willingness of an institution to respond when it does occur
- describe the effects of child sexual abuse in institutional contexts on victim-survivors, their family members, communities and the broader society.

2 What is child sexual abuse?

As discussed in Chapter 1, our Commission of Inquiry has defined child sexual abuse as:

Any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the [touching] of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, [touching] of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child's inhibitions in preparation for sexual activity with the child; and

Any related matters.³

We acknowledge the dynamics of child sexual abuse and that it may or may not be coercive. Professor Ben Mathews, Research Professor, Queensland University Technology School of Law, states:

Child sexual abuse can be inflicted by an adult, or by an older (and sometimes even a younger) child. It is inflicted in secret, and usually by an adult who is known to the child or a family member. It can be inflicted in circumstances where force or coercion is clearly apparent, but it can also be inflicted where such coercion is not as stark but where the victim is not developmentally capable of understanding the acts and/or where the child is in a position of physical, cognitive, emotional or psychological vulnerability such that consent is not freely given.⁴

This is recognised in the criminal law, which makes it clear that children below the age of 17 years in Tasmania cannot legally consent to sexual acts, except in very limited circumstances.⁵

2.1 Forms of child sexual abuse

The two most common forms of child sexual abuse reported by victim-survivors to the National Royal Commission were non-penetrative contact abuse and penetrative abuse.⁶ Non-penetrative contact abuse includes sexual touching of a child's body or making a child touch the abuser's body. These behaviours are described with terms including 'molestation, indecent assault, [touching], sexual harassment and sexual assault'.⁷ Penetrative child sexual abuse refers to 'the insertion of a penis, another body part or an object into the vagina (including labia and other genitalia), anus or mouth'.⁸ It may also be described as rape, sexual intercourse with a child or sexual assault.⁹

Other forms of child sexual abuse identified through research, and that we heard more about over the course of our Inquiry, include:

- violation of children and young people's privacy, such as forcing a child to undress or watching them in a private space
- exposing children and young people to sexual acts and material
- child sexual exploitation (historically called child prostitution)
- production, consumption, dissemination and exchange of child sexual exploitation material (historically called pornography)
- forcing children to witness the sexual abuse of others.¹⁰

'Grooming' is a common strategy used by abusers to enable, facilitate and conceal their sexual abuse of a child or young person by acting to gain the trust of a child over time. Grooming can involve 'psychological manipulation that is subtle, prolonged, calculated, controlling and premeditated', with the ultimate purpose of making a child compliant with abuse.¹¹ Abusers commonly use grooming to support them to gain access to the child or young person, initiate and maintain the abuse of that person, and conceal the abuse from others.¹²

Grooming behaviours can be difficult to identify because they are not necessarily overtly sexual and can be consistent with non-exploitative and even positive social behaviours.¹³ Grooming can be so effective that the child or young person believes they 'consented' to the sexual acts or even that they are in a 'relationship' with the abuser. Victim-survivors told us that at the time of their abuse they admired or even 'loved' their abuser.¹⁴ Leah Sallese gave evidence to our Inquiry that for a long time she understood sexual abuse by her teacher as an 'affair'.¹⁵

Tiffany Skeggs told us that her abuser:

... fully groomed me to believe that I loved him and I had to protect him, that was my job. If I didn't do that it would destroy his family, it would destroy me; he was very clear about the fact that I would lose the respect of everybody that ever knew me.¹⁶

Abusers may also direct grooming behaviours towards adults and other significant people in the child or young person's life. The purpose of grooming others is to establish trust and cooperation that can facilitate the abuser's access to the child and help the abuser avoid detection.

'Institutional grooming' refers to grooming children in an institutional context. It involves abusers exploiting the institutional environment to carry out the abuse and to evade detection.¹⁷ Abusers also groom people who work with children in institutions.¹⁸

Not everyone who breaches a professional boundary does so with an intent to groom. However, professional boundary breaches are a key warning sign for the risk of child sexual abuse.¹⁹ Abusers may also use professional boundary breaches to 'test' how resistant the organisational culture is to perpetration, with their boundary breaches becoming incrementally more serious with each breach they get away with.²⁰

Previous research and inquiries into grooming and professional boundary breaches by child sexual abusers show that boundary breaches should be considered cumulatively. When multiple breaches are considered together, a pattern of behaviour consistent with grooming may be revealed. As separate incidents they can seem innocuous, and it can be easier for abusers to provide plausible excuses to explain the behaviour.²¹

2.2 Child sexual abusers

The National Royal Commission found there is no 'typical profile' of child sexual abusers. Child sexual abusers are diverse and cannot be easily identified based on factors such as age, gender, background or behaviours.²² However, it also sought to identify and understand characteristics that were frequently noted among abusers in institutional contexts. For example, abusers were frequently described as 'charming, charismatic and popular' when in public.²³ Abusers who use the institution or organisation within which they work to abuse children commonly hold roles associated with positions of leadership, power and authority, such as roles in religious ministries or as teachers.²⁴ Abusers in institutional settings may use techniques such as 'coercion, favouritism, alienation, secrecy, and boundary violations' to 'groom' or 'entrap' children and young people.²⁵

Most victim-survivors who gave evidence to the National Royal Commission reported that their abusers were male.²⁶ Evidence presented to our Inquiry reflected previous findings that adults who sexually abuse children in institutional settings are predominantly male.²⁷ We did, however, hear about some female abusers.²⁸

The National Royal Commission noted that while most adult abusers are male, most men do not sexually abuse children.²⁹ However, there is clearly a relationship between gender and sexual abuse perpetration and victimisation. A 2023 Australian study found significant gender differences in victim-survivors of child sexual abuse: women reported ‘substantially more childhood sexual abuse’ than men.³⁰ In addition, people who identified as gender diverse were found to be more likely to experience all types of child maltreatment.³¹

The National Royal Commission further identified several ‘risk factors’ that may contribute to the likelihood of a person becoming a sexual abuser of children.³² These risk factors include:

- adverse experiences in childhood (such as abuse and neglect)
- interpersonal, relationship and emotional difficulties
- distorted beliefs and thinking errors (such as deviant sexual interests or distorted attitudes about sex and/or children)
- indirect influences such as contextual or trigger factors.³³

However, while such risk factors may appear at higher rates in child sexual abusers, they cannot be reliably used to determine the likelihood of abuse occurring: ‘There is no clear causal link that explains why a person becomes a perpetrator and no clear pathway to perpetration’.³⁴

Only some abusers are preferentially sexually attracted to children.³⁵ They may actively seek out institutional settings that increase their opportunities to sexually abuse children.³⁶ Other abusers are opportunistic. They may only begin abusing children once they are in an institution where the culture and environment enable them to overcome their inhibitions.³⁷

2.3 Harmful sexual behaviours

Harmful sexual behaviours are sexual behaviours displayed by children and young people that may:

- fall outside what is considered developmentally, socially and culturally expected
- cause harm to themselves or others
- occur face to face and/or via technology.³⁸

When these behaviours involve another child or young person, they may include a lack of consent, reciprocity and mutuality, and involve the use of coercion, force or a misuse of power.³⁹

Harmful sexual behaviours can include behaviours that are criminal. The effects of these behaviours on victim-survivors can be equal to those of adult-perpetrated child sexual abuse.⁴⁰ However, the emotional and sexual development of children who have engaged in such behaviour is different from that of adults. The culpability that attaches to children's behaviour, as well as prospects for rehabilitation, also differ from those of adults.⁴¹

Social and environmental factors that may influence children and young people's propensity to engage in harmful sexual behaviours include 'prior sexual, physical or emotional abuse, exposure to family violence, social difficulties, and exposure to and consumption of pornography'.⁴²

The National Royal Commission reported that other children carried out just under one-quarter of the child sexual abuse reported to them.⁴³

2.4 Characteristics of children associated with greater vulnerability to child sexual abuse

All children are potentially vulnerable to adult abusers because they depend on adults and lack comparative physical, social and legal power.⁴⁴ Aspects of some institutional settings have implications for this vulnerability of children because they are separated from those who usually protect them. In addition, the power imbalance between adults and children can be heightened in some institutional contexts, 'particularly those that are highly controlled, are isolated and exhibit hierarchical and authoritarian features'.⁴⁵ It is important to note that, while several factors may increase a particular child's vulnerability to sexual abuse, responsibility for abuse lies only with the abuser and the institution responsible for the child's safety, never with the child.⁴⁶

While all children are vulnerable, some children may be more at risk of sexual abuse at different times, based on certain characteristics or circumstances.⁴⁷ Unfortunately, most children who have experienced sexual abuse have also experienced other types of maltreatment (exposure to domestic violence, emotional abuse, physical abuse and neglect).⁴⁸ Other risk factors include gender, age and developmental stage, family characteristics and circumstances, and the child's personal and physical characteristics.⁴⁹ However, these risk factors do not mean a child will be abused, nor does the presence of protective factors ensure a child's safety.⁵⁰

Some groups of children are more vulnerable to sexual abuse due to being exposed to more of these risk factors. The National Royal Commission reported that, while Aboriginal children, children from culturally and linguistically diverse backgrounds and children with disability are 'not inherently more vulnerable to sexual abuse', they are at increased risk because, among other things, they are more likely to have sustained

contact with institutions within which abusers have opportunities to abuse them.⁵¹ Aboriginal children, children from culturally and linguistically diverse backgrounds and children with disability were also shown to experience added challenges that affected their likelihood of disclosing or reporting sexual abuse.⁵²

3 Risks of child sexual abuse in institutions

Child sexual abuse can occur within any institution. However, some institutional contexts and cultures enable sexual abuse more than others.⁵³ This section focuses on the institutional factors that can increase the risk of abuse occurring in an institution, or an institution failing to identify or respond appropriately to child sexual abuse.

The National Royal Commission concluded that cultural, operational and environmental factors contribute to the likelihood of children being sexually abused and of abuse being identified, reported and responded to appropriately.⁵⁴ It explained that:

- Institutional cultural factors include leadership and organisational culture, which shape assumptions, values, beliefs and norms.⁵⁵
- Operational factors include governance, internal structure, day-to-day practices, the approach to implementing child safe policies and the recruitment, screening and training of staff and volunteers.
- Environmental factors include the characteristics of physical and online spaces that enable potential adult abusers and children with harmful sexual behaviours to access victims.⁵⁶

Some of these factors are highlighted in Sections 3.1, 3.2 and 3.3, with particular reference to child sexual abuse in Tasmanian Government institutions.

3.1 Cultural factors

3.1.1 ‘Closed’ or ‘total’ institutions

There is generally a higher risk of child sexual abuse occurring in institutions that are less ‘open’ and therefore less accountable to the broader community.⁵⁷ ‘Closed’ or ‘total’ institutions are those that exercise full control over a child’s day-to-day life. In these institutions, children are subject to strict rules and procedures, are entirely dependent on the institution, and are isolated from the outside world.⁵⁸ Such institutions are often said to have the purpose of ‘reforming’ or ‘protecting’ children.

Because closed institutions are not common environments, they can become ‘alternative moral universes’—the cultural norms and rules are established and maintained wholly

within the institution and are distinct from the norms and rules of general society.⁵⁹ Closed institutions are also often hierarchical in nature, enforcing obedience to authority.⁶⁰ Staff, volunteers, children and young people may therefore be less inclined or feel less able to report or act on abuse. We note in the real world that these factors exist on a continuum that result in some institutions being more closed than others.

3.1.2 Leadership

An institution's leadership affects the risk of child sexual abuse. Leaders have decision-making power and so shape an institution's culture and practices. Leaders influence the culture of their institutions through the people they hire and fire, the behaviours they reward or punish, the issues they prioritise, how they respond to crises, and the attitudes and behaviours they model.⁶¹

The way leaders work to prevent or respond to child sexual abuse can be distorted by things such as the often competing expectations to avoid public or political exposure, protect budgets and stakeholder confidence, maintain reputational standards and avoid litigation.⁶² Prioritising these factors can create a 'damage control' mindset that may lead to minimising or denying abuse, silencing victim-survivors, shifting risks elsewhere, or even, in extreme circumstances, actively concealing abuse.⁶³

3.1.3 Trust and values

Some professions and institutions are highly trusted by the community. This can lead to a greater willingness to allow children to be unsupervised in their care, to be deferential and to second-guess suspicions or allegations of abuse when they arise.⁶⁴ In the past, such institutions have included religious or spiritual organisations, elite sports organisations and medical practices.⁶⁵ Children can find it harder to recognise abuse, or be discouraged from reporting abuse, when their family or community holds the institution, or the people in it, in high regard.⁶⁶

In some settings, staff, volunteers and members can become 'fused' with the identity or 'values' of an institution. This may occur, for example, in relation to an elite school with a strong 'brand' and investment from alumni.⁶⁷ People associated with an organisation may overidentify with it, and they may become defensive if they perceive that the organisation is under threat. They may take threats to the reputation of the institution personally, which can lead them to prioritise the institution's reputation over the safety of children.⁶⁸

3.1.4 Institutional culture and behavioural dynamics

Institutions comprise people who are conditioned by social norms and are susceptible to cognitive biases and psychological defences. Certain beliefs, behaviours and biases can influence a person's ability and willingness to identify and respond to child sexual abuse.

Broad community attitudes also inform institutional norms, although it is possible for institutions to develop values and norms that depart from those held in the community, sometimes significantly.⁶⁹ The views of people working in institutions are subject to various influences including:

- community attitudes about sexual abuse and the likelihood and frequency of it occurring
- attitudes about children's rights
- attitudes about gender, race and sexual orientation.⁷⁰

Researchers have found that psychological defences, called 'techniques of neutralisation', can stop people from feeling guilty about engaging in misconduct or for failing to intervene when they perceive a person's behaviour as being wrong. In simple terms, these psychological defences can lead a person to:

- dismiss the capacity or humanity of a child or young person
- ignore the harm or distress a behaviour is causing
- believe they have no agency to change a situation
- believe they are doing 'good', or that the good they are doing outweighs the bad
- understand their failures—for example, to intervene in wrongdoing—as no worse than others' failures.⁷¹

It is generally very difficult for people to overcome these behaviours. The most effective strategies for changing such behaviours involve creating a safe space to consider alternative perspectives and engage in critical self-reflection.⁷²

Within institutions, these behaviours can become part of a larger dynamic, or 'organisational culture', that works against protecting children from harm.⁷³ Organisational culture has been described as the 'assumptions, values and beliefs, and norms that distinguish appropriate from inappropriate attitudes and behaviours in an organisation'.⁷⁴ Organisational culture can be shaped through the messages and actions that are formally and informally communicated between staff and others in an institution, as well as by community attitudes.⁷⁵

In the context of contemporary youth detention environments, the National Royal Commission identified the cultural characteristics of institutions that may increase the risk of child sexual abuse.⁷⁶ These included:

- failing to prioritise children's welfare and wellbeing⁷⁷
- lack of voice—failing to provide children with the opportunity to communicate their views reflects a culture in which children are not listened to, and their views are not respected⁷⁸

- disrespecting children⁷⁹
- tolerating humiliating and degrading treatment of children—an institutional culture of dehumanising children can weaken the usual inhibitions or concerns of staff⁸⁰
- engendering a strong sense of group allegiance—children are less likely to disclose abuse, and less likely to be believed, in institutions with strong group allegiance between adults⁸¹
- minimising the significance of harmful acts against children and young people.⁸²

Research undertaken for the National Royal Commission found many barriers to identifying grooming or abusive behaviours in organisations. One barrier is the errors of reasoning that humans unconsciously employ daily. Errors of reasoning may contribute to the failure to notice or intervene in behaviours that indicate a risk of child sexual abuse.⁸³ Three significant errors of reasoning identified in the research are:

- Confirmation bias—being more likely to notice evidence that supports pre-existing views and overlook evidence that challenges them. For example, being unwilling to characterise the behaviour of a well-liked colleague as grooming.⁸⁴
- The representativeness heuristic—assessing people based on assumptions about the category they belong to, such as professionals working in children’s services. People tend to assume that employees of children’s services are there to act in the best interests of children, even when there is evidence to the contrary.⁸⁵
- The availability heuristic—paying attention to a limited range of information, particularly first impressions and information that is ‘vivid, concrete, emotion-laden and recent’, rather than considering information that may lead to a different view. For example, forming a positive first impression of someone and thereafter disregarding small indicators of grooming behaviour.⁸⁶

The authors of this research noted that overcoming errors of reasoning can be challenging, so organisations need to actively create environments that help identify and overcome them.⁸⁷ In addition, dynamics in a workplace can affect a person’s willingness to take any action that may damage their relationships with their colleagues or superiors.⁸⁸ In smaller communities, like Tasmania, these behavioural dynamics can extend from the workplace to the wider community; that is, people may fear they will lose their social relationships and standing if they act on a concern about a child or young person’s safety where that concern may place them in conflict with existing social hierarchies or consensus (for example, where an alleged abuser has an otherwise ‘good reputation’ within the community).⁸⁹

Abusers often exploit the beliefs, behaviours and biases of individuals, communities and institutions, which allows them to sexually abuse children and young people freely.

3.2 Operational factors

The nature of the services or activities an institution engages in with children can increase the risk of abuse. Risk is generally greater in institutions where there is:

- a high degree of physical or intimate contact with children—for example, medical, disability and child care⁹⁰
- a high degree of institutional control over the day-to-day lives of children or their living environment—for example, youth detention, out of home care, boarding schools or inpatient health care⁹¹
- a strong emotional or psychological connection between the child and the institution—for example, religious organisations or sporting clubs⁹²
- regular unsupervised contact with children.⁹³

In ‘closed’ or ‘total’ institutions, control over children is often achieved through strict rules and procedures, and children may depend entirely on the institution to provide care.⁹⁴ Youth detention facilities and inpatient mental health services are such institutions.⁹⁵

3.2.1 Management and governance

The management and governance structures of institutions can also affect the safety of children. For example, abuse can be difficult to report if there is a single manager in the hierarchy who is either the abuser or closely allied to them. Abuse can also be difficult to report where there is limited external scrutiny of the institution and its leadership.⁹⁶ Conversely, where there is no clear responsibility for child safety within an organisation, abusers can easily go undetected.

3.2.2 Child safe policies and norms

The policies and practices of an organisation provide important practical protections against abuse, as well as signalling the importance of child safety to staff and volunteers.

There is a greater risk of harm to children occurring in institutions that do not have child-centred policies for preventing, detecting and responding to abuse.⁹⁷ The absence of clear and appropriate policies creates ambiguity about appropriate standards of behaviour and makes it hard for staff and volunteers to know what to do if they have concerns about or receive disclosures of abuse.⁹⁸ People are less likely to make complaints or disclosures if they do not understand or are not confident that such disclosures will be managed effectively through a transparent process that also respects confidentiality.⁹⁹

Child safe policies will not be effective if they do not define and articulate the process for addressing sexual abuse, if they are impractical, if staff are not trained or resourced to implement them, and if they are not promoted, monitored or enforced.¹⁰⁰

Most organisational policies will also require a degree of interpretation or judgment. For example, legitimate efforts to build rapport and demonstrate care towards children can be mistaken for grooming behaviours. Organisations need to consider the context of the behaviour and promote an open culture that encourages staff to seek advice about concerns.¹⁰¹ Safer organisations will generally describe in detail and explain discretions and ambiguities within policies and procedures, and support staff to use their judgment. Staff should feel safe to admit mistakes or breaches.¹⁰²

Noncompliance can become normalised and accepted when institutions tolerate departures from otherwise robust policies—for example, by ignoring when teachers spend extra time with students unsupervised, or when staff have inappropriate non-sexual physical contact with children.¹⁰³ The effectiveness of the best policies will also erode over time if institutions do not empower the children and young people in their care to speak up about safety concerns.¹⁰⁴

In 2015, the then Tasmanian Commissioner for Children and Young People, Mark Morrissey, conducted a review into child safe organisations. This review directly engaged with children and young people. It found that many of the children felt they were not listened to by adults, did not understand what abusive behaviour was, and were unaware of their right to safety from all forms of abuse and about what behaviour is unacceptable.¹⁰⁵

Research we commissioned confirmed that to feel safe, children and young people need to have ‘confidence in themselves as well as in adults’ and organisations’ efforts to keep them safe and respond when they have been harmed’.¹⁰⁶ Without the confidence that institutions will act to keep them safe, children and young people reported being less likely to raise concerns, disclose abuse or seek assistance.¹⁰⁷

Children are also less likely to experience institutions as safe if the institution is not inclusive or does not embrace diversity.¹⁰⁸ Children who experience discrimination, whether relating to their culture/ethnicity, gender identity, sexual orientation, disability status, faith or other characteristics, are less inclined to report abuse because they may not feel confident they will be believed.¹⁰⁹ This reluctance may be exacerbated if the institution also fails to embrace the diverse backgrounds and characteristics of its staff.¹¹⁰

There are links between patriarchal ‘macho’ culture and abuse. Research shows that abuse is more prevalent in institutions that normalise aggressive or sexualised behaviours as valid expressions of masculinity.¹¹¹ Where institutions permit or require the routine use of force or violence (for example, threats, strip searching or restraints), staff can become desensitised. This makes it easier for them to minimise or tolerate harm against children in their care.¹¹²

In extreme cases, institutions can develop entrenched toxic behaviours involving ‘hazing’, bullying and overtly sexualised behaviours.¹¹³ There is also evidence that

abusive or bullying behaviours between staff and volunteers can be mirrored between children in institutions.¹¹⁴

We talk about the elements of a child safe organisation and their implementation in Tasmania in Chapter 18.

3.3 Environmental factors

An institution's physical environment can also increase the likelihood that a child or young person will be sexually abused. Abusers take advantage of spaces that are monitored infrequently.¹¹⁵ The risk that sexual abuse will occur in an institutional setting is therefore increased when that setting is enclosed, isolated, difficult to supervise or has limited options for entry and exit.¹¹⁶ In institutions such as schools, the physical design and layout can play a significant role in increasing or mitigating the risk that sexual abuse will occur by inhibiting or facilitating oversight, particularly in relation to higher risk spaces such as toilet blocks, professional offices or specialist classrooms.¹¹⁷ More open design including large windows, with fewer closed or hidden spaces, can allow increased lines of sight into and between spaces where children are expected to be, increasing opportunities for oversight and potentially decreasing the risk of abuse.¹¹⁸

Inappropriate residential placements in youth detention or out of home care—such as placing younger children with older children or those who have displayed concerning behaviour—can also significantly increase the risk of abuse.¹¹⁹ Inadequate adult supervision may enable children to display harmful sexual behaviours against others.¹²⁰

Our Commission of Inquiry heard that children and young people in institutions are increasingly using online technology to engage with peers, people outside the institution, and staff and volunteers within the institution.¹²¹ Although there are many positive aspects to online communication, using this type of communication also comes with significant challenges relevant to keeping children safe.¹²² Abusers often use online environments, such as social networking sites and mobile phones, to groom children.¹²³ Children and young people's boundaries can be readily pushed by abusers online, who may progressively expose children and young people to intimate and sexualised messages and imagery.¹²⁴ Technology can enable abusers to have ongoing contact with children out of physical sight.¹²⁵

Online environments can also be difficult for parents, institutional leaders and staff to monitor.¹²⁶ Mitigating the risk of abuse online relies on a nuanced understanding of how grooming works and when online contact is appropriate.¹²⁷ Authorities such as the eSafety Commissioner are undertaking research and developing educational materials and resources for parents and children to support safe online engagement.¹²⁸ Critically, in institutional contexts, children are better protected when they are aware of the rules for engagement through technology for adults in authority and are empowered to notify a parent or trusted adult if inappropriate contact occurs with a stranger or someone they know.¹²⁹

4 The risk of child sexual abuse in particular institutions

This section provides an overview of the factors that increase the risk of child sexual abuse and compromise the ability of an institution to respond to abuse in hospitals, schools, detention centres and out of home care. In later chapters, we consider in depth how institutions in Tasmania that fall within these four categories have acted to prevent children from experiencing child sexual abuse and responded to children and adult victim-survivors.¹³⁰

4.1 Hospitals and health institutions

Children in the care of any hospital are inherently vulnerable. Children in need of hospital-based medical care are often temporarily living away from their families and support networks, sometimes for long periods. Hospitals can be frightening and overwhelming places for children. Children who are admitted to hospital for extended periods due to illness or injury experience many of the features of a closed institution.

Risks of child sexual abuse are also present in health services more broadly. As the National Royal Commission observed, children and their parents often do not question a medical practitioner's access to intimate parts of a child's body because they 'believe that a health practitioner is acting in pursuit of a higher purpose ... and not out of personal sexual gratification'.¹³¹

In research we commissioned into the safety of children in Tasmanian institutions, researchers spoke to a range of children and young people who had spent time in hospital. These researchers found that children sometimes did not feel safe or confident in hospital and that they relied heavily on parents or carers to advocate for them.¹³² The often private one-on-one nature of medical care, where children and young people may not always have a parent present to advocate, places children in a vulnerable position.¹³³ Health professionals can also abuse children and young people under the guise of medical treatment (including with medication or medical instruments), which can make it more difficult for patients and their families to recognise the behaviour as abusive.¹³⁴

We report on what we found on preventing and responding to child sexual abuse in Tasmanian health services in Volume 6 and make recommendations for system-wide improvement.

4.2 Schools and educational institutions

In Tasmanian schools, as elsewhere in Australia, teachers and other staff step into the role of supervisors for children, in place of their parents, during school hours. On the whole, Department for Education, Children and Young People employees provide

a safe and supportive learning environment for Tasmanian students. Schools are the most common institution with which children engage; most children attend school, and schools are generally the place children spend the most time outside their homes. Schools are not inherently a high-risk environment, but the large population of children in schools and the length of time they spend there means many concerning sexual incidents have occurred in state school systems.¹³⁵

There is also increasing recognition that some factors in the school environment can expose children and young people to a greater risk of sexual abuse. These factors are ‘the amount of time children spend in school, the inherently hierarchical relationship between students and teachers (and other school staff), and the fact that children of different ages attend school together’.¹³⁶ It is not feasible within a busy school environment for adults to have their eyes on every child all the time, and incidents of child sexual abuse can occur quickly and do not always occur behind closed doors.

In Volume 3, we examine in detail responses to child sexual abuse in Tasmanian government schools and make recommendations for systemic improvements.

4.3 Youth detention

While the risk of child sexual abuse is present in all residential institutions, youth detention centres ‘perhaps illustrate the highest level of risk’.¹³⁷ As mentioned, detention centres are ‘closed’ institutions. The National Royal Commission identified specific characteristics as increasing the risk of child sexual abuse in youth detention:

- a culture of humiliating and degrading treatment of children, deprivation of liberty and invading children’s privacy
- a heightened power imbalance between staff and detained children, including the use of strict rules, isolation, discipline and punishment by staff
- young people detained in the centre having no say about their daily lives
- a culture that engenders strong group allegiance among staff, including management.¹³⁸

Children and young people who are held in youth detention centres are more likely to have experienced past abuse or neglect. As noted in Section 2.4, past experiences of abuse and neglect have consistently been found to heighten children’s risk of experiencing child sexual abuse. Children in detention are also at a disproportionate risk of being involved with child safety services or to be in the care of the state in out of home care. They are therefore less likely to have a trusted adult to whom they can turn for help.¹³⁹

Children in youth detention face several other barriers to disclosing abuse due to the characteristics of that institution.¹⁴⁰ For example, cultural norms to not speak out or

‘snitch’ decrease the likelihood of children raising complaints, particularly where they are experiencing harm caused by another child or young person in detention.¹⁴¹

People who engage in sexual abuse in youth detention settings can include:

- youth workers and other custodial staff
- doctors, nurses, psychologists and other health professionals
- case managers, community, recreation and educational service providers
- chaplains and other religious personnel
- legal representatives
- people undertaking external inspection and complaint handling functions.¹⁴²

There is also a high risk of young people in youth detention engaging in harmful sexual behaviours.¹⁴³ These behaviours may be modelled on how adults or older children have behaved towards them outside and inside detention settings.¹⁴⁴

We report on what we found in relation to Ashley Youth Detention Centre in Volume 5.

4.4 Out of home care

For the purposes of our Commission of Inquiry, out of home care means formal care that is arranged or provided by the Tasmanian Government for children and young people who cannot live safely at home. Out of home care includes foster care, kinship care, respite care, sibling group care, residential care, third-party guardianship and therapeutic services for children in care.¹⁴⁵

Children in out of home care spend a lot of time alone with adults who are outside their usual family or social environment. As the National Royal Commission observed, the ‘very nature of out of home care involves adults having opportunities to be alone with children, primarily in home-based care but also in residential care settings, and to develop supportive relationships with those children’.¹⁴⁶ Unfortunately, this means that in some instances sexual abuse will occur.

People who sexually abuse children in out of home care include adults within the out of home care system, such as foster carers, residential care workers or child safety officers; adults outside the out of home care system who have access to children and young people in care; and other children within the system, such as another young person in the care setting.¹⁴⁷

Adults who sexually abuse children in out of home care are more likely to be male, charismatic, controlling and in positions of power.¹⁴⁸ Abuse is often accompanied by grooming so children will trust the abuser and believe they have consented to the abuse.¹⁴⁹ As discussed earlier in relation to health settings, abusers also engage in

‘institutional grooming’, whereby they manipulate other staff and communities into trusting them so their abusive behaviour is not suspected.¹⁵⁰

Adults outside the out of home care system can pose a risk to children in out of home care through child exploitation. While child sexual exploitation occurs across the general population, there are adults who actively target children in out of home care, particularly in residential care, due to their increased vulnerability to grooming and abuse.¹⁵¹

Children who have engaged in harmful sexual behaviours are a significant concern in out of home care. Research suggests a strong correlation between young people living in residential settings and engaging in, or being subjected to, harmful sexual behaviours.¹⁵² Children in out of home care may be at greater risk of child sexual abuse by other children in their placement than by adult staff members.¹⁵³

The National Royal Commission found that certain factors increase the risk that abusers will target a child or young person in out of home care. These factors generally relate to the vulnerability of the child in the eyes of the abuser and include the child’s:

- previous experience of abuse or neglect
- loss of connection to family and culture
- lack of understanding of what constitutes abuse.¹⁵⁴

Female children and young people seem to be at greater risk of child sexual abuse in out of home care. However, the evidence is difficult to interpret because male children and young people are less likely to disclose abuse.¹⁵⁵ Children with disability are about three times more likely than children who do not have a disability to experience sexual abuse in out of home care.¹⁵⁶ The exposure of Aboriginal children and young people to the risk of institutional child sexual abuse is increased by being in out of home care. Also, when Aboriginal children are placed with non-Aboriginal families, they can experience disconnection from culture that can render them even more vulnerable to sexual abuse.¹⁵⁷

In Volume 4, we examine in detail responses to child sexual abuse in Tasmania’s out of home care settings and make recommendations for reform.

5 The effects of child sexual abuse

This section examines the effects of child sexual abuse in institutional contexts on victim-survivors, as well as on their family members, communities and broader society. We also provide an overview of how institutional responses can reduce or aggravate the effects of child sexual abuse. In this section we draw on the work of the National Royal Commission and on what those affected by child sexual abuse in Tasmania told us.

5.1 Effects on victim-survivors

One victim-survivor told us:

People have asked me about, you know, the impact and stuff like that and I just want to say that I got to survive but I didn't get to thrive. I will never get to know the person I could have been because of him ...¹⁵⁸

Sexual abuse causes profound trauma. It adversely affects children and young people's emotional and educational development, physical and mental health, the quality of their relationships, their connection to culture, and their sense of identity and wellbeing. These effects often continue into adulthood and can have lifelong consequences for a victim-survivor's ability to work, raise a family, feel part of a community and enjoy intimacy.¹⁵⁹ Trauma expert Bessel van der Kolk writes that traumatic experiences affect humans on multiple levels, leaving 'traces on our minds and emotions, on our capacity for joy and intimacy, and even on our biology and immune systems'.¹⁶⁰ He explains that:

Trauma, by definition, is unbearable and intolerable. Most rape victims, combat soldiers, and children who have been molested become so upset when they think about what they experienced that they try to push it out of their minds, trying to act as if nothing happened, and move on. It takes tremendous energy to keep functioning while carrying the memory of terror, and the shame of utter weakness and vulnerability.¹⁶¹

The timeframe for experiencing the effects of child sexual abuse can vary. For some victim-survivors the effects are immediate and ongoing, for others they are temporary, while for others still they emerge later in life, when the trauma of the abuse is triggered by an event or different life stage.¹⁶²

As the National Royal Commission observed, the factors that influence how a victim-survivor is affected by sexual abuse are complex, unique, profound, enduring and interconnected.¹⁶³ Some of these factors include:

- the type, duration and frequency of the abuse
- the relationship of the abuser to the child
- the victim-survivor's circumstances, experiences and characteristics
- the social, historical and institutional contexts of the abuse.¹⁶⁴

A review of research findings prepared in 2017 for the National Royal Commission found that physical violence, penetration, prolonged/frequent abuse and grooming have all been associated with heightened detrimental effects for victims.¹⁶⁵ Prior maltreatment and trauma, such as exposure to domestic violence and neglect, can also intensify the impacts of sexual abuse.¹⁶⁶ Children with disability may experience particular and severe effects of abuse.¹⁶⁷

Some victim-survivors experience cumulative or compounded trauma because of child sexual abuse and other forms of mistreatment and adverse life experiences, including heightened vulnerability due to intergenerational and collective trauma.¹⁶⁸

Many victim-survivors who gave evidence to the National Royal Commission placed importance on the nature of their connection to the abuser and whether the abuser held a position of power over them.¹⁶⁹ This power may arise from the abuser's attributes, including their age, reputation, personality, professional expertise or role.¹⁷⁰ If the abuser was a trusted person or another child, feelings of betrayal were exacerbated for many victim-survivors.¹⁷¹ One victim-survivor told us:

That man was my favourite person in the world. He was so funny and kind and I absolutely adored him ... He broke my trust so much.¹⁷²

The effects of sexual abuse may also be exacerbated if the abuse occurred in 'closed' institutions that heighten a child's powerlessness and their capacity to remove themselves from the abuse, or to get support.¹⁷³ Victim-survivors are often retraumatised by the way that abusers, and those with authority in the institutions where the abuse happened, respond to allegations of child sexual abuse.¹⁷⁴

We heard from many victim-survivors about the effect that abusers had on their lives. For example, victim-survivor Robert Boost told us that:

... my whole life since the abuse or since that sort of 13, 14 year age, I have been running away from it and setting goals. So, initially I thought, you know, if I get a girlfriend, I will not feel this way anymore, and then for a moment everything's good, and then sort of the tortoise and the hare: I run away and ... the tortoise catches up.¹⁷⁵

We commonly heard that victim-survivors have problems with mental health and substance use as a consequence of sexual abuse. For example, Erin (a pseudonym) gave the following evidence to our Inquiry:

... I went down a massive spiral ... I started using ice, speed and smoking bongos. I drank a lot. This was my way of blocking things out and helping me forget ... I've got PTSD, anxiety and depression. I struggle to trust males in particular. It impacts my relationships, which now impacts my children.¹⁷⁶

We also heard about the distressing effects that sexual abuse had on victim-survivors' own parenting as adults. For example, victim-survivor Alex (a pseudonym) stated:

I've got three kids. I won't allow them to have sleepovers. I never bath my eldest child. I'm certainly on a hyperalert status all the time, especially in public. When I take my kids to the park I sit there and I can work out, you know, this child to that family, to this person to that person, and sadly this goes on and these people don't wear red flags.¹⁷⁷

The National Royal Commission noted that although child sexual abuse in any context has similar effects on victim-survivors, institutional settings can have specific impacts.¹⁷⁸ These include distrust and fear of institutions and authority.¹⁷⁹ Mr Boost told us of the effects of his abuse as a student:

I have developed a deep distrust of institutions because of the perpetrator. I never thought I'd get to a point that I'd trust another institution, even one like this Commission. However, I realised that it is important for me to give evidence to help me accept that this abuse has happened, to tell the community that it happened to me, and to move forward with my healing process.¹⁸⁰

Mr Boost went on to describe how his abuse shaped his world view and led him to distrust those who held power and authority in society:

Through my life, I have come to understand that most people are decent and good-hearted, but there is still a large portion of sick and perverted people in society that will take advantage of vulnerable people. Because of this underground that I witnessed, I find it difficult to trust anyone ... I do not like being under the power or control of another; it makes me feel uncomfortable to be in situations where there is a level of control over myself or my family. I try to avoid getting into that position.¹⁸¹

The National Royal Commission further found that the social and historical contexts in which child sexual abuse occurs can influence the way victims are affected. Community attitudes that children are inferior, lack of social awareness of child sexual abuse and the extent to which an institution is perceived to be a source of authority in the community can all exacerbate the impacts of sexual abuse on victim-survivors, as can gender stereotypes, racism and discriminatory attitudes to diverse sexual orientations.¹⁸²

5.2 Effects on families and communities

Child sexual abuse can significantly affect the families of victim-survivors, others involved with the institution where the child sexual abuse occurred, religious and cultural groups (including Aboriginal communities) as well as broader society.¹⁸³ The National Royal Commission found that people who are affected by the trauma of child sexual abuse in institutional contexts also includes children who witness the abuse, staff in the associated institution, whistleblowers and the family members of abusers.¹⁸⁴

One mother of a victim-survivor said:

Sexual abuse doesn't just affect the victim. It affects the whole family. They all had to process this and deal with this and try to keep [name redacted] safe, and I needed support. All she got was a phone number for [a sexual assault service] and a phone call begging her not to go to the media.¹⁸⁵

Sexual abuse causes 'cultural trauma'; that is, it affects the identity, cohesion and sense of safety of a community.¹⁸⁶ The cultural trauma of child sexual abuse for Aboriginal communities is particularly pronounced because of the underlying 'collective and intergenerational trauma' caused by colonisation, dispossession, discrimination and the forced removal of children from their families.¹⁸⁷

Parents, partners and siblings of victim-survivors have all reported 'secondary traumatic stress', including hypervigilance, insomnia, exhaustion and hopelessness, after the sexual abuse of a family member.¹⁸⁸ For example, a parent of a victim-survivor said that:

It's a fourth job for us. There are full-on email trails. Every time we make a complaint we have to revisit all the details and tell the whole story again. It's traumatic. You should only have to tell your story once. They wear you down. They did it the first time she was abused, and they were successful, but this time, no.¹⁸⁹

Sexual abuse also has an intergenerational effect. Children of victim-survivors may grow up in unstable environments where they are exposed to their parent's trauma, mental illness and substance abuse. This increases the likelihood of victim-survivors' children being placed in out of home care, continuing the pattern of institutionalisation across generations.¹⁹⁰

A person who witnessed the sexual assault of her friend by a foster carer described to us the traumatic effect of being a witness in the criminal justice process in a case where the abuser was acquitted:

I lost hope. Later, in [the mid 2000s], when I was 16, I attempted suicide. In part, it was because I was extremely morally injured by the Tasmanian justice system. I couldn't reconcile how to live in a world which was so unjust, and that unjustness was public, and enshrined into law in a power differential that seemed unquestionably sanctioned.¹⁹¹

Some whistleblowers told us about their experiences of trying to raise the alarm about institutional handling of complaints of child sexual abuse. Will Gordon, the whistleblower in relation to the Launceston General Hospital's management of complaints about serial offender James Griffin, said:

I stand by my convictions in my pursuit for the abuse of children to not be hidden behind closed doors and for those who are vulnerable to find their voice to speak and heal. This has caused hardship within my social, personal, and professional life, and yet I have continued in my objective because of my moral principles ... I now struggle to have trust in family, colleagues, acquaintances, and friends due to the stories of abuse I have heard since fighting for this.¹⁹²

Alysha (a pseudonym), a whistleblower who exposed failings at Ashley Youth Detention Centre, where she worked, expressed her anguish at trying to improve the safety of detainees:

I had large boys crying to me and begging me to rescue them from the risk of sexual assault. The helplessness I felt, whilst telling them I would do all I could to ensure their safety—whilst knowing full well my recommendations would be undermined immediately—was soul destroying.¹⁹³

5.3 Effects of institutional responses

How an institution responds to a child or young person who discloses abuse can either compound the distress and trauma they experience, or it can contribute to their healing and sense of justice. Inappropriate responses—including disbelief, hostility, or non-supportive and dismissive responses—can compound the negative effects of abuse and retraumatise a victim-survivor.¹⁹⁴ The responses of other institutions, such as police, the justice system, support services and health services, are just as important as that of the institution where the abuse occurred.¹⁹⁵

Inappropriate responses—including failing to act after a disclosure, enabling the abuser to remain in their position, and adopting an adversarial, delayed or overcomplicated approach to redressing the abuse—further compound the trauma of the abuse for victim-survivors.¹⁹⁶ For example, one victim-survivor told us that:

To take a child who is already in a situation of powerlessness—and the powerlessness is extraordinary, particularly in a school environment—but to then be suddenly thrust into this world of police officers and court rooms and lawyers and cross-examination ... I've had three, four psychiatric evaluations and they are brutal, you know? So, how do we do this process? How do we find ways that are supportive and not retraumatizing?¹⁹⁷

'Institutional betrayal' describes the experience of a victim-survivor who is harmed by a trusted and powerful institution on which they depend for their security and wellbeing.¹⁹⁸ Institutional betrayal can refer to the failure of an institution to provide a safe environment for a victim-survivor, therefore putting that person at risk. It also refers to institutions that do not act once a disclosure of abuse is made, which can result in the continuation of abuse of the victim-survivor or other children.¹⁹⁹ We identified a sense of institutional betrayal in many of the victim-survivors and staff in the out of home care system, youth detention, schools and hospitals. Tiffany Skeggs, who was abused by Mr Griffin, told us that many of his victim-survivors had lost trust in Tasmanian government institutions:

Even when I speak to people now, I struggle to tell them that they should come forward, and that they will be safe if they do. Because the reality at the moment is that it is not safe for them to do that ... I have absolutely zero faith in referring them to any department, anywhere, in Tasmania.²⁰⁰

Victim-survivors reported to the National Royal Commission and to our Inquiry that being silenced or disbelieved after disclosure, punished, blamed for the abuse, or accused of lying, resulted in intense feelings of injustice, anger and shame.²⁰¹ The shock of enforced silence is evident in this account:

One of the most demoralising things in my life was that after the perpetrator was acquitted, my friend and I were told that we couldn't mention his name or tell the truth publicly, because if we did we'd be liable for defamation. This left us feeling extremely angry, demoralised and disillusioned.²⁰²

Victim-survivors emphasised the importance of being heard and believed, and the importance of associated institutions acknowledging and accepting responsibility for the harm caused.²⁰³ As one young person who participated in the research we commissioned said:

Children would kinda get depressed [if adults don't protect them] because we're told the teachers are there to look out for us but when they don't help us, who are we supposed to turn to? ... It makes you feel unsafe because you are all alone and you have to do it by yourself ... You would feel horrible because there's no-one you can trust.²⁰⁴

Victim-survivors reported to us that poor institutional responses to their disclosures of abuse had adversely affected their capacity to work, participate in society and to trust or engage with institutions in general. Some victim-survivors said they also avoided accessing services—including services to manage trauma related to the abuse they suffered—which further impeded their healing.

We also heard that victim-survivors faced ostracism after identifying or disclosing child sexual abuse. When abusers continued to be employed or otherwise supported by an organisation after an allegation of abuse was upheld, victim-survivors, their family members and supporters felt isolated and sometimes forced to leave their community.

We have been deeply affected by the accounts we have heard of the profound impacts of child sexual abuse. We have also seen the courage and resilience of many victim-survivors who are living with the effects of child sexual abuse and continuing to make positive and important contributions through their families, communities, careers and advocacy. We are deeply grateful to every victim-survivor of child sexual abuse in Tasmanian institutions who came forward to share their experience with us.

In the following four volumes (Volumes 3, 4, 5 and 6), we discuss the Tasmanian Government's response to allegations of child sexual abuse in schools, out of home care, youth detention and health services, and make recommendations for reform. In Volume 7 we discuss the justice system's response to child sexual abuse, before discussing system-wide reforms in Volume 8. We trust that the recommendations we propose in those volumes will assist in preventing institutional child sexual abuse and improve the lives of those who do experience such abuse.

Notes

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- 3 For details, refer to the Terms of Reference at Appendix B. Refer also to Order of the Governor of Tasmania made under the *Commissions of Inquiry Act 1995*, 15 March 2021, 5 (refer to Appendix A); *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 1, 19. For the purposes of this Commission of Inquiry, we have replaced the word ‘fondling’ with the trauma-informed term ‘touching’.
- 4 Statement of Ben Mathews, 10 June 2022, 4 [12].
- 5 Refer to, for example, *Criminal Code Act 1924* s 124.
- 6 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 2, 32.
- 7 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 2, 32. For the purposes of this Commission of Inquiry, we have replaced the word ‘fondling’ with the trauma-informed term ‘touching’.
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- 9 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 2, 32.
- 10 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 2, 32–34.
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- 13 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 2, 40.
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