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 8: Oversight, coordination and therapeutic support

August 2023

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

Volume 8
Oversight, coordination and therapeutic support

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Introduction to Volume 8

In this volume—Volume 8—we consider how the Tasmanian Government can better coordinate and strengthen its approach to addressing child sexual abuse. The recommendations we make in the chapters of this volume are relevant to all the institutions we consider in detail across our report, as well as institutions that we did not consider in detail. There are six chapters in this volume, as well as appendices to our report.

In Chapter 18—Overseeing child safe organisations, we consider the community-wide child sexual abuse prevention strategies recommended by the National Royal Commission. We also consider the Tasmanian Government's investment in ensuring that staff and volunteers who work within child-facing organisations have a good baseline knowledge of child sexual abuse and how to respond to it. We recommend a new Commission for Children and Young People. The new Commission would subsume the functions of the current Commissioner for Children and Young People, which include advocating for, and promoting the wellbeing of, all children in Tasmania. The new Commission would also be responsible for:

- educating relevant organisations on the Child and Youth Safe Standards
- overseeing and enforcing compliance with those standards
- administering, overseeing and monitoring the Reportable Conduct Scheme.

We make recommendations to support the independence of the Commissioner for Children and Young People. We recommend the Ombudsman, the Integrity Commission, the Registrar of the Registration to Work with Vulnerable People Scheme and the new Commission for Children and Young People clarify and formalise their respective functions and information-sharing arrangements and ensure these are clear to the community.

In Chapter 19—A coordinated approach, we describe what is required to ensure there is a united approach to child safety issues across the Tasmanian Government. We recommend the development of a child sexual abuse reform strategy and action plan to bring together an extensive reform agenda, hold government and government funded agencies and statutory bodies to account for their responsibilities in implementing child sexual abuse reforms, and provide information to victim-survivors and their families, the community and government and non-government agencies about what is being done to address child sexual abuse in Tasmania. We recommend this strategy and action plan is overseen by a strong governance structure led by the Department of Premier and Cabinet and ensure children and young people and adult victim-survivors of child sexual abuse take part. We also recommend improving whole of government information sharing, coordination and response.

In Chapter 20—State Service disciplinary processes, we consider the disciplinary processes that apply when an employee of a government institution is the subject of an allegation of child sexual abuse or related conduct. We outline many problems with the State Service's disciplinary framework in responding to allegations of child sexual abuse and related conduct, including in relation to the State Service Code of Conduct and employment directions. We propose reforms relating to the application and implementation of the Code itself, and to the employment directions related to suspensions, breaches of the Code of Conduct and inability to perform duties. Fundamentally, we are calling for a shift in the focus of this disciplinary framework to allow for the safety of children to be prioritised. It will take significant commitment and culture change to achieve this outcome. We invite unions to support these reforms.

In Chapter 21—Therapeutic services, we review the support services available to children, young people and adults who have experienced child sexual abuse in an institutional setting. We also consider the support needs of children and young people who have engaged in harmful sexual behaviours and require an additional level of specialised intervention to address those behaviours. We recommend the Tasmanian Government:

- provides leadership, and funds the development of a therapeutic service system with optimal maximum waiting periods
- ensures that funding agreements with non-government specialist services have appropriate governance requirements, sexual abuse service standards, service evaluation and child safe accreditation built into them. They should require that services meet the needs of all victim-survivors and children who have displayed harmful sexual behaviours, irrespective of their gender, background, culture or identity
- establishes and funds a peak body for the sexual assault service system, distinct from and working collaboratively with the family violence peak body
- develops a statewide framework and plan for preventing, identifying and responding to harmful sexual behaviours. This framework should ensure the Government provides ongoing and increased funding for specialist therapeutic interventions for abusive and violent harmful sexual behaviours.

In Chapter 22—Monitoring reforms, we note the Tasmanian Government has committed to implementing our recommendations and propose that the Government establishes an implementation monitor to ensure the recommendations of our Commission of Inquiry result in:

- sustained systemic improvements towards preventing child sexual abuse in institutions
- improved institutional responses to such abuse
- victim-survivors receiving the supports they need.

In a final chapter of this volume and of our report, Chapter 23—Afterword, we outline challenges we have faced due to the legislation that applied to our Commission of Inquiry. We make suggestions to address these challenges for the benefit of future commissions of inquiry.

18 Overseeing child safe organisations

1 Introduction

Across our report, we have focused on prevention and responses to child sexual abuse in government institutions, particularly within government schools and health services, the out of home care system, and youth detention. We also have considered the systems that respond to abuse, including the criminal and civil law justice systems and psychological and support services. We make a range of recommendations specific to those institutions and systems. This chapter focuses on the oversight of a child safe system across Tasmania more broadly.

Every member of the Tasmanian community has a role to play in keeping children safe. Whether in their role as staff member, volunteer, parent or carer, trusted family friend or bystander—we consider it is critical that everyone has at least a basic understanding of child sexual abuse, including the factors that increase its likelihood and the signs that it may have occurred.

This foundational understanding must counteract common myths and misconceptions about sexual abuse, the credibility of children, and the nature of perpetrators. It must equip everyone in the community with the skills to respond to disclosures of abuse—including awareness of who to report to and how to offer a supportive response.

The National Royal Commission directed most of its community-wide prevention recommendations to the Australian Government. However, we consider the Tasmanian Government has a role to make sure national prevention investment benefits and is accessible to Tasmania, and to ensure it also invests in addressing the specific community educational needs of Tasmanians. We consider community-wide education will give staff and volunteers who enter child-facing organisations a good baseline of knowledge that can then be further built upon.

We welcome the Tasmanian Government's Child and Youth Safe Organisations Framework, which will see Tasmania implement recommendations from the National Royal Commission to legislate Child Safe Standards (called Child and Youth Safe Standards in Tasmania) and a Reportable Conduct Scheme overseen by an Independent Regulator. These complementary regulatory schemes are designed to ensure organisations that engage with children have embedded the essential requirements to maximise child safety, including:

- robust policies and practices
- appropriate training and professional development
- clear strategies to reduce risks of abuse
- effective and transparent processes for escalating and addressing child safety concerns.

We consider the effective implementation of these schemes to be the most important strategy to prevent abuse within organisations and to improve responses to complaints, when made.

We broadly endorse the *Child and Youth Safe Organisations Act 2023* ('Child and Youth Safe Organisations Act'). However, we recommend the functions of the Independent Regulator sit with a new Commission for Children and Young People in Tasmania, with expanded functions to oversee and monitor child safety (particularly within the out of home care and youth justice systems). We consider the Commissioner for Children and Young People should be the Independent Regulator.

While we consider a new Commission for Children and Young People should be the primary body to oversee the management of child safety concerns in organisational settings, we recognise there may be situations where other oversight bodies—including the Ombudsman, Integrity Commission and Registrar of the Registration to Work with Vulnerable People Scheme—will have a shared interest or responsibility for addressing risks to children in organisations. Recognising that each body has a role in receiving information and/or investigating complaints relating to misconduct or unlawful

behaviour of individuals working within public bodies, we recommend clarifying roles and responsibilities between these bodies. We also recommend formalising information-sharing arrangements under a memorandum of understanding and, where necessary, legislative change.

2 Community-wide prevention strategies

Improving community awareness and understanding of child sexual abuse is a fundamental requirement to protect children from harm. Institutions exist within the community and comprise individuals who may bring their own attitudes and understanding of child safety issues which, individually or taken together, can determine how an institution responds to risks of child sexual abuse.

Professor Ben Mathews, Research Professor, Queensland University of Technology leads the Australian Child Maltreatment Study, and told us community awareness of child sexual abuse was an important element of strengthening 'the protective social fabric' of our society.[1] He added: 'In the long-term, this [awareness] would be of more value than anything else. Whilst it is not an easy solution, this is the foundation of everything else'.[2]

Despite the significant awareness the National Royal Commission raised and the recent development of the *National Strategy to Prevent and Respond to Child Sexual Abuse* (described further in Section 2.1), it is clear there is much to be done to increase and improve community understanding of child sexual abuse. The Australian Childhood Foundation, together with Monash University, has conducted periodic studies tracking community attitudes relating to child sexual abuse since 2003 across Australia. Its most recent study in 2021 found little progress in the state of awareness and appreciation of the nature and gravity of child abuse amongst participants. The study described awareness of such matters being 'virtually identical' to earlier studies. The 2021 study showed that:

- Just over one in three respondents did not believe child abuse was a problem they needed to be personally concerned about.
- 32 per cent of respondents believed children make up stories of abuse.
- Seven out of 10 respondents could not remember seeing or hearing anything about child abuse in the media in the preceding 12 months.
- One in five respondents were 'not at all' confident on what to do if they suspected a child was being abused or neglected.[3]

The report noted:

> The community lacks all of the building blocks required to prevent child abuse and adequately act to protect them from abuse and neglect. They are not aware of the true scale and impact of child abuse. They do not believe it is as widespread as it really is. They have a shallow definition of how it is defined, what its components are, how it develops … They lack confidence about when, what and why they should take action when exposed to information that children are being abused and neglected … These attitudes have been there for at least eighteen years and they have not changed.[4]

These findings, while shocking, did not surprise us. They reflect many of the views and attitudes that became apparent across different institutional settings through our Inquiry. We discuss some of these further in relation to community attitudes in Tasmania in Section 2.2.

The National Royal Commission made several recommendations relating to community-wide prevention, which were directed at the Australian Government. These included developing a national strategy to prevent child sexual abuse that encompassed a range of initiatives, including:

- social marketing campaigns targeting community awareness to increase knowledge of child sexual abuse—including challenging problematic attitudes that reflect myths and misconceptions
- prevention programs in preschools and schools and other community settings for children and young people, noting that such education can be linked with the existing Australian curriculums, such as respectful relationships and sexuality education
- online safety education for children, parents and other community members, supported by the Office of the eSafety Commissioner
- increased prevention education on child sexual abuse and harmful sexual behaviours for tertiary students entering child-related occupations
- help-seeking services targeting individuals who feel they may be at risk of sexually abusing children
- information on pathways to seek help if child sexual abuse is disclosed or suspected.[5]

The National Royal Commission recommended the Australian Government ensures prevention initiatives:

- align with relevant strategies relating to child maltreatment
- be appropriately tailored and targeted to reach different communities

- involve and engage children and young people in their design and development
- be based on best practice evidence of what works to prevent child sexual abuse and harmful sexual behaviours.[6]

2.1 National reforms relating to prevention

Since the National Royal Commission, the Australian Government has undertaken initiatives relevant to community-wide prevention of child sexual abuse, including:

- establishing the National Office for Child Safety on 1 July 2018, tasked with leading and implementing recommendations from the National Royal Commission, including the development of a national strategy[7]
- releasing the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* ('National Strategy') on 27 October 2021, supported by $307.5 million in implementation funding[8]
- delivering the initial five-year funding for establishing the National Centre for the Prevention of Child Sexual Abuse (ultimately named the National Centre for Action on Child Sexual Abuse ('National Centre')), which is a joint venture between Blue Knot Foundation, The Healing Foundation and the Australian Childhood Foundation, announced in October 2021.[9]

This National Centre is designed to 'commission critical research, evaluate interventions and therapeutic programs, raise community awareness, reduce stigma and provide training'.[10] In June 2023, the National Centre released *Here for Change: Five Year Strategy 2023–2027*, which is intended to transform the way child sexual abuse is understood and responded to in Australia.[11]

2.1.1 National Strategy to Prevent and Respond to Child Sexual Abuse

The National Strategy is an initiative of the Australian and state and territory governments. It is divided into four categories:

- National Strategy to Prevent and Respond to Child Sexual Abuse
- First National Action Plan
- Commitments
- Evaluation Reporting.[12]

The First National Action Plan and First Commonwealth Action Plan cover the period 2021–24, with subsequent three-year action plans scheduled for 2025–27 and 2028–30.[13] The former Premier, the Honourable Peter Gutwein MP, was a signatory to the National Strategy, alongside the then Prime Minister and other state and territory leaders.

The National Strategy seeks to set up a nationally coordinated and consistent way to prevent and respond to child sexual abuse, including within families, by other people, in organisations and online.[14] It is based on a public health approach. The prevention measures include:

- primary (aimed at the whole community and addressing the underlying causes)
- secondary (addressing the early warning signs that change the result for those at risk of being victims or perpetrators)
- tertiary (aimed at responding to child sexual abuse and preventing it from happening again)
- quaternary (evaluating the effectiveness of tertiary interventions).[15]

The First National Action Plan (which reflects the current priorities) has five themes. Most relevantly, preventing child sexual abuse is Theme 1, which covers 'Awareness-raising, education and building child safe cultures'. Under this theme, there are six measures that the National Office for Child Safety leads. These measures are:

- implementing and promoting the National Principles for Child Safe Organisations (described in Section 3.2.1)
- setting up ongoing national reporting for non-government organisations to report against their progress on creating and maintaining child safe cultures
- enhancing national information-sharing arrangements relating to child safety and wellbeing
- supporting educational resources to ensure children and young people learn about wellbeing, relationships and safety (including online safety)
- working with the National Centre for Action on Child Sexual Abuse on education and the skills and capabilities of the workforces to respond to child sexual abuse
- delivering a national awareness raising campaign on child sexual abuse.[16]

2.2 Community awareness and attitudes in Tasmania

Through our Commission of Inquiry, we saw how a lack of awareness and understanding of child sexual abuse contributed to poor prevention and responses to it within government service systems and organisations. The most common problems we saw across all the different organisational contexts included a limited appreciation for the many and varied strategies perpetrators rely on to identify, groom and coerce their victims. We also saw how such strategies can sometimes enthral victims of abuse and make children and adolescents compliant and loyal towards the person who is abusing them, rather than fearful and avoidant.

Kathryn Fordyce, Chief Executive Officer of sexual assault service Laurel House, highlighted grooming as a particular area requiring further education in Tasmania, noting there are 'considerable misconceptions' around it that make 'victim-blaming attitudes' all too common:[17]

> We need to educate people to identify the components of grooming and act on red flags and boundary breaches … this can be achieved by educating the community about what grooming looks like, providing examples and educating people to identify these components.[18]

We also observed simplistic understandings of 'consent'—including a tendency to conflate concepts of consent with compliance and an absence of physical resistance from a victim. We sometimes observed a lack of appreciation of the many ways in which 'consent' is usually irrelevant in the context of child sexual abuse and the significant power disparity that often arises where adults are in a position of trust and authority over a young person.[19] For example, in our commissioned research on children's experiences of safety within Tasmanian organisations, two high school focus group participants argued that if a young person consented to a sexual relationship with a teacher it 'might be OK', which generated much debate within the focus group more broadly.[20]

The July 2022 report commissioned by the Sexual Assault Support Service, *Sexual Violence in Southern Tasmania: Research Report for Sexual Assault Support Service Tasmania*, considered 'the scale of sexual violence, its nature, barriers to seeking help, and potential solutions' in Tasmania.[21] This also included some discussion of sexual abuse of children and young people.

This report highlighted a common narrow and simplistic understanding of consent and sexual abuse in the community, with the researchers noting:

> Discussion of consent was rarely framed by stakeholders or community participants as positive, affirming, and enthusiastic agreement; instead, participants defined sexual violence in terms of the absence of consent.[22]

This report also highlighted how abusive relationships can sometimes be normalised, with one participant in the study reporting:

> It's not frowned upon for a 15- or 16-year-old to date someone in his mid-20s and be impregnated by him. … I mean, two of my siblings, are the children of what I would deem paedophilia. My father was 27, and that woman 14, for one of my brothers, and he was 29 and the girl 15 for my sister. I have siblings literally born of paedophilia. Yeah, and it was completely normalised. Their families didn't care. They never thought it was weird. I didn't realise it was weird until I grew up … it is horrific, and it is everywhere.[23]

The most troubling area in which we saw confusion regarding consent was for children in out of home care who were being sexually exploited by adults outside the service system, to which they were sometimes seen—including by Child Safety Services and Tasmania Police—as consenting, which is discussed in Chapter 9.

We also discuss how the language of consent in criminal justice proceedings relating to child sexual abuse contributes to distress and confusion for participants and the broader public in Chapter 16.

Across several institutional settings, we observed a limited understanding of what constitutes harmful sexual behaviours, the harm it causes victims and the most appropriate way to manage the risks associated with a young person using such behaviours. We discuss these in more detail in Volumes 3, 4, and 5 (relating to children in schools, out of home care and youth detention).

We also observed a tendency to doubt and downplay the complaints of children, with particular scepticism reserved for complaints made by young people who are considered to be 'bad' or 'troubled' (for example, in complaints handling in the context of Ashley Youth Detention Centre, discussed in Chapter 11). There often exists a corresponding predisposition to sympathise and believe the accounts of adults. This trust in adults contributed to misguided blame and responsibility, with an undue scrutiny and focus on the actions and behaviours of a victim-survivor rather than the conduct of their alleged abuser (refer for example to 'Katrina's experience' in Chapter 5 or Case study 2 relating to Dr Tim (a pseudonym) in Chapter 14).[24] It also included an undue concern for reputational and other impacts on a person accused of abuse or misconduct and inadequate care and consideration extended to the suffering and support needs of a victim-survivor (refer to Chapter 20 on State Service disciplinary processes).

We also saw failures to recognise that child sexual abuse is often perpetrated by everyday people working in positions of trust within the community. Dr Michael Guerzoni, Indigenous Fellow, University of Tasmania with expertise in criminology, described a common lack of sophistication in community understanding (in Tasmania and more broadly): '[P]erpetrators of child sexual abuse are [commonly] understood as sexual deviants and "bad apples", and may be readily distinguished from other, "normal" people'. Dr Guerzoni told us this was a problem because:

> [W]hen there is a fixed understanding as to what an offender is, that will colour all of the interpretations of institutional policy and procedure towards child sexual abuse and, in turn, it may lead to non-compliance with what is written down in the policies and procedures.[25]

Victim-survivor, Robert Boost, told us of the importance of not making assumptions about who is likely (or unlikely) to perpetrate abuse, noting the inherent power difference between adults and children:

> Society needs to see every adult as being 'capable' of abusing children because of their relative positions of power towards children. This is made even more acute when an adult is in a position of power relative to other adults … We as a society need to recognise that real danger in order to protect our children, even if it means some adults' lives will be made more difficult. We need to stop worrying about hurting adults, and look at the damage that is being done to children.[26]

We discuss 'situational' perpetrators of abuse (and related prevention strategies) in Section 3.1.

The *Sexual Violence in Southern Tasmania: Research Report for Sexual Assault Support Service Tasmania* report commissioned by the Sexual Assault Support Service also highlighted how sexual violence (and the attitudes that enable it) could be amplified in isolated and close-knit communities.[27] As Mr Boost reminded us: 'In a close-knit place like Tasmania, relationships often influence outcomes'.[28]

Michael Salter, Scientia Associate Professor of Criminology, School of Social Sciences, University of New South Wales, told us that rather than acting as a barrier to prevention of child abuse, Tasmania's relatively small population and close-knit features could be a 'resource that should be capitalised on'.[29] Dr Salter cited bystander intervention programs (where members of an institution or community receive training on how to detect the signs of abuse and intervene effectively) and community mobilisation programs (which build community-wide connections to services and agencies to respond to social problems) as examples of prevention strategies that are well-suited to discrete communities.[30]

2.2.1 Tasmanian prevention initiatives

While we recognise National Royal Commission recommendations relating to primary prevention were directed largely at the Australian Government, we agree with the National Children's Commissioner, Anne Hollonds, who noted the National Strategy (as well as the implementation of the National Principles for Child Safe Organisations, discussed in Section 3.2.1) are 'important steps and will require the commitment of all federal, state and territory governments to be fully implemented'.[31]

In line with our terms of reference, our key recommendations for preventing child sexual abuse in Tasmania include implementing:

- a mandatory child sexual abuse prevention curriculum from early learning programs to year 12 students, drawing on expert evidence of best practice (refer to Recommendation 6.1 in Chapter 6)
- legislated Child and Youth Safe Standards for Tasmanian organisations engaging with children, overseen by an Independent Regulator (which has been implemented through the Child and Youth Safe Organisations Act and is discussed in Section 4.3).

However, we also consider it is important for the Tasmanian community to receive the full benefit of any national community education and awareness initiatives by ensuring they are fit-for-purpose and suited to the needs of Tasmanians.

We also consider it may be necessary for the Tasmanian Government to complement national initiatives by developing specific local content for Tasmanians. We understand the Department for Education, Children and Young People is working on a 'tell someone' website and accompanying public campaign, although we have limited information on this initiative.[32]

Dr Charlie Burton, Manager Policy, Tasmanian Council of Social Services, emphasised the importance of a public health approach to address child sexual abuse:

> This means looking beyond practices in particular institutions or organisations and taking a whole-of-community lens, with action along the continuum from universal prevention, early intervention and targeted tertiary responses, as well as trauma informed support for recovery.[33]

Dr Burton recommended the Tasmanian Government work to translate national initiatives (such as those connected to the National Centre for Action on Child Sexual Abuse) to the Tasmanian context, guided by victim-survivors and Tasmanian organisations with expertise in sexual assault.[34] Dr Burton also felt the Tasmanian Government had a clear role in funding general prevention programs itself:

> In particular, it needs to drive change to address a societal culture that minimises or dismisses behaviours that escalate to child sexual abuse. It needs to invest in understanding the evidence of what works in prevention and early intervention and follow that up with resources and action.[35]

Ms Fordyce, whose organisation Laurel House currently designs and delivers a range of prevention programs in schools, workplaces and the broader community, told us her service could expand prevention initiatives with increased funding, rather than being 'predominantly reactive service':[36]

> We could focus additional efforts towards preventing the occurrence of child sexual abuse by educating people working in and interacting with institutions where there are high incidences of abuse. We would like to be more visible in schools and the community so we can supplement formal training opportunities with incidental conversations with people who work with children to help them understand the critical role they play in preventing, identifying, responding to and reporting sexual abuse, and other forms of violence.[37]

Jillian Maxwell, Chief Executive Officer, Sexual Assault Support Service, which also delivers primary prevention programs, described some of the challenges for Tasmanian organisations to get funding for particular initiatives (for example, under the National Strategy). Ms Maxwell recognised the importance of being accountable for funding but described how 'red tape' associated with Commonwealth funding management was

onerous.[38] Ms Maxwell said such problems did not exist for state-based funding, which often benefited from closer relationships with ministers, advisors and grant managers that made managing such funding more straightforward as you 'get a chance to talk them through the issues'.[39]

We consider it is important the Tasmanian Government ensures Tasmanians receive the full benefit of national prevention initiatives, by advocating to federal counterparts on the specific needs of Tasmanians to ensure such measures translate to tangible and meaningful change. We also consider the Tasmanian Government may need to invest in its own targeted community awareness initiatives to complement national strategies, where practical, using and drawing upon Commonwealth-funded materials and resources. Such programs should be developed to meet the Tasmanian context.

Recommendation 18.1

The Tasmanian Government should continue to advocate for Tasmania to receive the full benefit of Australian Government prevention strategies, including under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030*.

3 Creating child safe organisations

Across our Commission of Inquiry, we have heard how some of the most trusted organisations have not been safe places for children. Many times, child sexual abuse could have been prevented or identified earlier if the organisation in question had taken a more proactive, targeted approach to identifying and addressing risks of abuse. This includes having an organisational culture vigilant to potential harms to children and that encourages and empowers anyone with child safety concerns to report them, with confidence that such reports will be taken seriously.

Earlier in this chapter, we discussed prevention initiatives designed to educate the entire Tasmanian community. However, we consider organisations that engage directly with children have additional responsibilities to prevent and address risks of abuse.

In this section, we discuss some of the evidence we received about how organisations can (and should) adopt 'situational prevention' strategies to reduce risks of child sexual abuse. Such strategies make organisations less vulnerable to motivated perpetrators who may actively seek environments in which they can abuse children. However, such strategies can also reduce the likelihood of abuse or harm from 'situational' perpetrators who may—under unsafe and permissive conditions—engage in inappropriate conduct with children.

The value of situational prevention is reflected in the National Principles for Child Safe Organisations. In Tasmania, these are reflected in the Child and Youth Safe Standards legislated through the Child and Youth Safe Organisations Act. As discussed in Section 4, this legislation requires child-facing and other in-scope organisations to take active steps to prevent harms to children through robust policies, practices and a child-centred culture. We support this legislative reform and consider its successful implementation a key pillar to prevent abuse within Tasmanian organisations.

Tasmania's proposed Reportable Conduct Scheme, which complements the Child and Youth Safe Standards, will strengthen independent oversight for the response of an organisation to complaints or concerns, improving the mitigation of risk to children and young people. We expect organisations to examine the circumstances that contribute to reportable conduct they investigate, and work to further strengthen and refine their child-safe practices over time. In this sense, a reportable conduct scheme is a mechanism to ensure appropriate responses to reports of harm to children. It also offers a clear opportunity for organisations to learn, improve and prevent similar occurrences into the future.

3.1 Situational prevention of abuse within organisations

We sought evidence from relevant experts on how organisations can reduce the likelihood of child sexual abuse occurring. This included considering the features of organisations that were more, or less, likely to enable abuse to occur.

Dr Guerzoni defined situational crime prevention as 'a theory of criminology that argues that crime occurs due to the interconnection of individual and environmental factors; it is not solely a matter of premeditated desires of this offender'.[40] He noted the benefit of adopting a situational crime prevention model is that 'it moves consideration away from endless debates about abuse causation … to emphasis on what can be done by organisations to prevent abuse based on empirical criminological research'.[41]

As foreshadowed, not all perpetrators of child sexual abuse have a pre-existing motivation to offend. Professor Donald Palmer, Graduate School of Management, University of California has expertise in organisational misconduct (including child sexual abuse) and told us some individuals only develop the motivation to offend against children after they have joined an organisation, describing them as 'situational offenders'.[42] Professor Palmer told us that situational offending can occur due to 'individual psychological factors' but also noted that 'organisational structures and processes also can influence the likelihood that organisational participants will become situational child sexual abusers'.[43]

Professor Palmer noted situational offenders will abuse when they think children will be vulnerable to their advances and they are unlikely to be detected and punished. He stated:

> For this reason, most situational prevention measures focus on creating conditions under which potential offenders believe that their advances will be rejected (for example, child sexual abuse training of children and youth) and believe that if successful, their advances will be detected (for example, prohibition of one-on-one staff/child interactions) and addressed (for example, staff training).[44]

Because some offenders are situational, Dr Guerzoni highlighted flaws with organisations adopting a 'bad apples' mentality, which has the organisation looking out for characteristics assumed to align with motivated sex offenders. Instead, it is more effective to consider the factors that are more likely to give rise to abuse. Dr Guerzoni gave some examples of the factors that may be relevant for organisations to consider:

> [E]nvironments where few other persons are present, rooms without surveillance, professions which enable isolated interactions with minors or remote locations. Such situational factors tend to manifest in the circumstances of the profession. For example, helping the child change after sport, a consultation with a child in one's office, staying behind after class, or driving a child home. These isolated environments are known to both create opportunity for offending, as well as precipitate thoughts of offending amongst perpetrators.[45]

The *Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse* undertaken by Professors Stephen Smallbone and Tim McCormack discussed how the physical environment of schools could heighten risks of abuse to students.[46] We discuss this in greater detail in Volume 3.

Professor Mathews described the challenge of responding to grooming and boundary violations. He noted that, properly construed, grooming is an intentional act of cultivating a relationship to enable child sexual abuse. However, he noted:

> A boundary violation could take place without an intention to sexually abuse the child in any proximate time. It may for example be an isolated mistake that could be the subject of positive intervention, such as an inappropriate comment in a text message or email. These types of instances involving adults should be easily remedied through proper education, policies and codes of conduct.[47]

Professor Palmer described how the dynamics of an organisation can shape and influence a person's attitudes and behaviour, noting that '[a] person's behaviour is subject to much more control within an organisation, when compared to other settings'.[48] He said that organisations should invest in ensuring their policies, practices and culture prioritise child safety, rather than relying only on the goodwill and capabilities of the individuals within it.

Dr Guerzoni described the best approach as a partnership between the individual and the institution:

> In that partnership, organisations must be willing to be aware and active in their monitoring of child safety matters. This should extend to ensuring staff are supported to make complaints (including that they are given time to make such complaints), staff are required or encouraged to undertake relevant professional development, and that matters of child safety are framed as a present (as opposed to historical) risk that is to remain consistently on the agenda.
>
> Simultaneously, individuals must be willing to monitor the environment and their colleagues for risks or signs of grooming and victimisation. This includes being open to, and aware of, the fact that if that individual is not careful, they may put themselves in a position where they may be more susceptible to criminal decision making. Individuals must also be willing and open to raising complaints or concerns.[49]

Dr Guerzoni described how organisations can strengthen their policies by:

- recognising a criminal record check is not enough to determine the potential risk a person may pose to children
- considering child safety in interview and recruitment processes
- challenging myths (that sexual offending against children is only perpetrated by paedophiles) and helping staff to understand the situational factors that may contribute to abuse
- introducing requirements that minimise isolated interaction with children and try to mitigate situational risk factors.[50]

Robert Ryan, Executive Lead, Strategy and External Engagement, Life Without Barriers, described that organisation's whole of organisation approach to child safety in its *We Put Children First* child sexual abuse prevention strategy:

> The strategy is based on a situational prevention approach, which recognises that the risk of child sexual abuse can be reduced by making environmental and cultural changes within an organisation, rather than only focusing on the risk presented by particular individuals. To reduce the risk of child sexual abuse, organisations need to create conditions where offending is difficult, the risk of detection is high, environmental cues that can trigger offending are removed and permissibility is reduced.[51]

While Professor Palmer agreed these factors are important, he explained organisations are often looking for a 'free lunch' when attempting to become safer for children and young people.[52] Policies go some way but are not a 'comprehensive solution' for the following reasons, stating: 'They don't address culture, they don't address power, they don't address informal groups, they don't address socialisation'.[53]

Professor Palmer said there is much work to be undertaken by an organisation to 'truly embed child safe practices in an organisation'.[54] Professor Palmer described the first step for an organisation is to outline its mission and goals and assess the extent to which

they conflict with child safety objectives 'and then deal with that conflict in an honest fashion'.[55] Professor Palmer gave an example of this tension in schools, where a balance needs to be struck between the benefit of fostering close student/teacher relationships that improve a child's learning and development, and the risk that such dynamics can be open to abuse by teachers.[56] Dr Guerzoni agreed on the importance of striking the right balance in managing risks to children as '[s]trict approaches to child safety may cause adults to not pursue proper or nurturing relationships with young people … for fear of not doing the right thing'.[57]

Associate Professor Tim Moore, Deputy Director, Institute of Child Protection Studies, Australian Catholic University, also cautioned against such situational prevention strategies having 'unintended consequences' by making adults reluctant to engage with children due to fears of how such behaviour would be perceived—for example, workers in residential care units being wary of hugging children in their care.[58] A disproportionate emphasis on the risks adults can pose could also erode children and young people's trust in those engaging with them.[59] Associate Professor Moore told us of the importance of ensuring children and young people have the benefit of healthy connections with adults, using the example of the out of home care system:

> Again, if you look at some of the lives of some of these children and young people who have been potentially sexually abused or physically harmed in their family environments, we put them through a system that discourages children and young people to have their intimacy needs met. When I'm talking about intimacy I'm not talking about sexual intimacy necessarily, I'm talking about to feel loved and cared for, to be hugged, you know, to feel like someone's demonstrating their care and love for you in this physical kind of way. Kids are often denied that within the system and therefore don't know what's okay and what's not okay and how to express themselves.[60]

We agree it is important that organisations are careful when assessing risks but must ensure their risk mitigation is proportionate and appropriate to their specific context and operating environment. It is also important that staff and volunteers are clear on appropriate standards of behaviour towards the children and young people they engage with. This is to limit the potential for inadvertent boundary breaches that may arise from a lack of experience or clarity on appropriate professional boundaries within the context of a particular organisation. Children and young people can benefit greatly from the services and care offered by organisations they interact with. The overwhelming majority of adults who provide services to children do so with their best interests at the forefront of their minds.

Striking the appropriate balance is entirely consistent with implementing Child and Youth Safe Standards, which encourage organisations to design and embed child safe practices suited to the services and care they provide. We discuss this in the next section.

3.2 Child Safe Standards

A note on language

Child Safe Standards is a term used by the National Royal Commission and adopted by certain jurisdictions. We use 'Child Safe Standards' where we specifically refer to the National Royal Commission or jurisdictions, such as Victoria, that use that term.

We use the term 'Child and Youth Safe Standards' when we refer to Tasmania's implementation of these Standards, as this is the term adopted in the Child and Youth Safe Organisations Act. When we use this term, we intend for it to also encompass the Universal Principle, which is an additional Tasmanian requirement for organisations to protect Aboriginal cultural safety. Where Tasmanian witnesses have used 'Child Safe Standards' we have not altered the language.

Child Safe Standards reflect a set of principles and requirements that, taken together, articulate what constitutes a child safe organisation.[61] The National Royal Commission developed ten Child Safe Standards and described them as interrelated, overlapping and of equal importance, noting they should be 'dynamic and responsive' rather than 'static and definitive'.[62] The National Royal Commission noted:

> The standards are designed to be principle-based and focused on outcomes and changing institutional culture as opposed to setting prescriptive rules that must be followed or specific initiatives that must be implemented. This is to enable the standards to be applied to, and implemented by, institutions in a flexible way, informed by each institution's nature and characteristics. The risk of child sexual abuse varies from institution to institution. Therefore, every institution needs to consider each standard and take time to identify risks that may arise in their context, and find ways to mitigate or manage those risks.[63]

3.2.1 National Principles for Child Safe Organisations

Following the release of the National Royal Commission report, the Australian Government tasked the former National Children's Commissioner, Megan Mitchell, to lead the development of National Principles for Child Safe Organisations, which were ultimately endorsed by members of the Council of Australian Governments in February 2019, including the Tasmanian Government.[64] These draw heavily on the Child Safe Standards the National Royal Commission developed but are framed to apply to a broader set of harms to children. National Children's Commissioner, Anne Hollonds explained:

> The National Principles cover all forms of potential harms, and adopt a child rights, strengths-based approach to organisational development. Applied collectively, they demonstrate that a child safe organisation is one that creates a culture that empowers and values children and young people, engages families and the broader community, adopts suitable strategies and takes appropriate action to promote child safety and wellbeing.[65]

National Principles for Child Safe Organisations

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.

The National Principles have informed and underpin many of the recommendations we have made in the chapters that relate to specific organisations.

Since the development of the National Principles, resources and guidance material have been created to support organisations to implement them. These include:

- a draft child and wellbeing policy template
- an example code of conduct

- an introductory self-assessment tool for organisations
- a checklist relating to online safety.[66]

SNAICC – National Voice for Our Children, Victorian Aboriginal Child Care Agency and the National Office for Child Safety have also developed a guide specifically designed to support organisations to embed cultural safety for Aboriginal children and young people within organisations, in line with the National Principles.[67] Resources have also been developed at state and territory level, such as the Victorian and New South Wales guides to enabling children's participation in decision making.[68]

As we discuss in Section 4.1, these National Principles largely form the basis of Tasmania's legislated Child and Youth Safe Standards and will become mandatory for institutions that provide services to, or engage with, children from 2024 onwards.[69]

We heard of varied approaches to implementing the National Principles across the Tasmanian Government. This includes the following (non-exhaustive) initiatives:

- In the context of education, the relatively newly established Office of Safeguarding Children and Young People has been tasked with mapping the Department's activities against the National Principles. Secretary, Department for Education, Children and Young People, Timothy Bullard, told us 'this includes understanding where there may be overlap with work underway in response to recommendations of the [National] Royal Commission and the [Department of Education independent] inquiry, where there are gaps and the key areas in which work must be prioritised'.[70] We note that since the education hearings, the Office of Safeguarding has broadened the remit of its work within an expanded Department for Education, Children and Young People to develop a whole of department framework for safeguarding children and young people that aligns with the National Principles.[71]
- In the context of health, the Child Safe Organisations Project team was established in 2021 to implement the National Principles and evaluate the Department of Health's performance against them. The Tasmanian Government told us the Department of Health has since made progress implementing those National Principles, including delivering:
    - a signed Statement of Commitment to child safety and wellbeing by members of the Health Executive
    - a new Child and Young Person Advisory Panel to provide a process for seeking the views of children and young people on changes across the Department that affect them

- a Child Safety and Wellbeing Policy that establishes the requirement to comply with the National Principles and children's rights, and the roles and responsibilities of executive and senior leaders, and all staff in the Department of Health
- a new Child Safety and Wellbeing Service to support the promotion of child safety and wellbeing, prevention of harm, analysis to identify trends, patterns and red flags, compliance and performance monitoring, and managing risks
- increased mandatory child safeguarding training, clearer guidance to staff on recognising signs of harm and responding to disclosures of harm by children, and improvements to incident reporting to capture any child safeguarding concerns, among other initiatives.[72]

- In the context of youth justice, former Secretary of the Department of Communities, Michael Pervan, told us work was undertaken in 2021 to 'contemporise all [Ashley Youth Detention Centre] policies and procedures to be compliant with Child Safe Standards' alongside the commencement of a Learning and Development Framework.[73] A commitment to the National Principles is also referenced in the Draft Youth Justice Blueprint 2022–2032.[74]
- In the context of out of home care, in July 2019, the Tasmanian Government created a policy obliging all government funded non-government organisations with significant liabilities under the National Redress Scheme to demonstrate they were engaging in child safe practices. This included mapping the services and existing standards and regulatory regimes against the National Principles. It also included developing a self-assessment tool the community sector could use.[75]

We note that much of this effort and initiative began during our Commission of Inquiry. We also observe that despite the Tasmanian Government's commitment to the National Principles in 2019, their implementation within Tasmanian Government departments is in its relative infancy.

While the obligations imposed by Tasmania's Child and Youth Safe Standards start from 2024, there has been nothing preventing an institution from adopting these requirements voluntarily. Indeed, the National Royal Commission recommended all organisations implement its Child Safe Standards to uphold the rights of the child, as required by Article 3 of the United Nations Convention on the Rights of the Child.[76] While our terms of reference limit our recommendations to government (or government funded) organisations, we consider all organisations committed to the safety of children should take steps to apply the National Principles, whether they are legislatively bound to or not. Organisations that will be legislatively mandated to comply from 2024 may also wish to take steps to comply with the requirements before they are legislatively required to do so.

Recommendation 18.2

All organisations engaging in child-related activities should voluntarily comply with the National Principles for Child Safe Organisations (as reflected in Tasmania's Child and Youth Safe Standards) to the greatest extent possible, regardless of whether they are legislatively bound to do so or when their legislative obligations commence.

3.2.2 Legislated Child Safe Standards

The National Royal Commission recommended Child Safe Standards be legislated and apply to a range of organisations that engage with children. These include health, disability, education services, youth detention, out of home care, childcare, and coaching and tuition services, among others.[77] It recommended compliance with these requirements be overseen and enforced by an independent body.[78]

New South Wales, Victoria and South Australia have implemented legislated Child Safe Standards, although there is some variation in the approach and model adopted by different jurisdictions.[79] At the time of writing, Western Australia and the Australian Capital Territory were considering legislated Child Safe Standards.[80] Different governments (and departments) in Queensland, the Northern Territory and the Australian Capital Territory have 'committed' to the National Principles, but have not, at the time of writing, legislated compliance with them.[81]

Because it is one of the more advanced legislated models (having been introduced in 2016), we sought evidence from Victoria about its approach to legislating, monitoring and enforcing Child Safe Standards. The implementation of Victoria's Child Safe Standards was also reviewed in 2019. This information is reflected in the following box.

Victoria's implementation of legislated Child Safe Standards

Victoria has had legislated mandatory Child Safe Standards since 2016, adopting a staged approach to implementation. Some organisations were required to comply from January 2016 and a broader range of organisations from January 2017.[82] The Commission for Children and Young People in Victoria assumed its formal functions in relation to the Child Safe Standards in January 2017.[83]

Principal Commissioner, Commission for Children and Young People (Victoria), Liana Buchanan, shared with us her view of the importance of Victoria's Child Safe Standards:

> As a mandatory set of standards with a very broad reach, the Child Safe Standards are very important in terms of changing the way children are seen in organisations, changing awareness in organisations about children and child safety issues and about supporting organisations to have all of the systems and processes necessary to keep children safe.[84]

Emily Sanders, Director, Regulation, Victorian Commission for Children and Young People told us: 'The focus on prevention of abuse and the capability building elements of the Child Safe Standards are key elements'.[85]

The operation of Victoria's Child Safe Standards was reviewed in 2018 by Victoria's then Department of Health and Human Services. This review found strong support for the Child Safe Standards among regulated organisations but described implementation as resource intensive and difficult.[86] The review also found strong support for harmonisation with the National Principles and that oversight and compliance functions needed to be clarified and strengthened.[87] This review informed several amendments and refinements to Victoria's model.

Since 1 July 2022, Victoria's Child Safe Standards largely mirror the 10 National Principles, with an additional Standard that requires '[o]rganisations establish a culturally safe environment in which diverse and unique identities and experiences of Aboriginal children and young people are respected and valued'.[88] A detailed guide supports Victoria's 11 Child Safe Standards, which includes the minimum requirements that an organisation must meet (which reflect the key action areas of the National Principles). The guide also includes 'compliance indicators' (what the Commission will look for to assess compliance), as well as advice and information on how to be compliant and create a child safe organisation.[89]

When asked to reflect on the successful features of Victoria's Child Safe Standards, Ms Buchanan described how the Commission's functions supported their implementation. Ms Buchanan told us that most organisations 'demonstrate goodwill and preparedness to implement the Child Safe Standards' but benefit from support and guidance to do so.[90] She explained the Commission's functions supported it to do a range of activities, including:

- developing educational guides and tools
- running information sessions
- supporting a Child Safe Standards Community of Practice
- engaging with peak bodies and sector leads
- providing targeted support and guidance to organisations to support their compliance.[91]

Ms Buchanan told us of the value of having recourse to stronger compliance functions, when warranted. This includes the Commission for Children and Young People having powers to:

- issue notices to produce and notices to comply
- attend and inspect premises to enable the Commission to speak to staff and volunteers
- request further information to assess compliance.[92]

Ms Buchanan said these powers are important where organisations are uncooperative, repeatedly fail to comply or where significant risks to children have been identified. She added: 'In many cases, the fact that organisations know we can resort to enforcement measures is sufficient to prompt action'.[93]

Since 1 January 2023, the Commission has had additional enforcement powers to:

- enter premises with consent (without notice)
- enter with a warrant
- search premises
- seize information and documents.[94]

The Commission can also now:

- issue official warnings for non-compliance
- accept enforceable undertakings (legally enforceable agreements that describe what an organisation will do to comply)
- issue infringement notices
- seek a range of court orders, including injunctions and adverse publicity orders (in which an organisation is required to publicise their failure to comply with the Standards and the consequences of those failures).[95]

Ms Buchanan foreshadowed these amendments to us when she gave evidence in May 2022 and welcomed them, observing the changes would help to 'address some of the gaps needed in instances where we are unable to support organisations to comply, and need further powers to ensure compliance, especially where children are at risk'.[96] From 1 January 2023, the Commission for Children and Young People shares responsibility with Victorian government departments, the Victorian Registration and Qualifications Authority and the Wage Inspectorate for promoting and supporting compliance with the Child Safe Standards.[97]

The Commission for Children and Young People has a graduated approach to enforcement, which it describes as follows (noting this pre-dates some of its newer enforcement powers):

- inform and educate (including general awareness raising and guidance materials)
- support to comply (including providing specific advice and guidance where non-compliance is identified)
- monitor compliance (including inspecting an organisation's premises and documents, investigating non-compliance or conducting an own motion investigation, sharing information with other regulators)
- enforce the law (including issuing a 'Notice to Comply' with the Standards to compel action, applying to court for a declaration of non-compliance or naming organisations, where appropriate, when publishing information relating to the operation of the Standards).[98]

In 2021–22, the Commission initiated action against 33 organisations for potential non-compliance with the Child Safe Standards.[99] Since commencing the Child Safe Standards, non-compliance actions have been initiated against 250 organisations.[100]

Ms Buchanan also stated oversight of the Child Safe Standards has led to a 'large improvement' in the Commission's understanding of the organisations and sectors at risk, which 'has in turn informed the Victorian Government and others through formal submissions, inquiries and other information sharing processes'.[101]

We discuss Victoria's implementation of its Reportable Conduct Scheme further in Section 3.3.

3.2.3 Tasmania's implementation of legislated Child Safe Standards

In 2018, the Tasmanian Government accepted in principle the National Royal Commission recommendations related to Child Safe Standards. In doing so, the Tasmanian Government expressed support for the 'aspirational principles as the architecture of the National Framework' but noted jurisdictions may differ in their implementation approach due to their existing systems and that consistency would be achieved over time, where possible.[102] As noted before, the Government endorsed the National Principles for Child Safe Organisations in February 2019.

In late 2020, the Tasmanian Government released a draft Child Safe Organisations Bill 2020 for consultation.[103] Ginna Webster, Secretary, Department of Justice, explained the delay to us in her statement as follows:

> By way of context it is important to note that some of the delays in relation to drafting the Child Safe Organisations Bill 2020 were due to urgent legislation required to manage the COVID-19 pandemic. This is not to say that the Bill was not a priority for Government however the capacity of the Office of Parliamentary Counsel (OPC) and the State Service in a state the size of Tasmania presents some limitations.[104]

Feedback from stakeholders through that consultation showed general support for implementing the National Royal Commission recommendations relating to regulating organisations that provide services to children, with an acknowledgment that some organisations (particularly those that are smaller or volunteer run) may need help and support to comply.[105]

However, the Tasmanian Government received critical feedback from stakeholders, including that:

- Tasmania's proposed Child Safe Standards did not align adequately with the National Principles.
- The scope of the obligations (particularly which organisations would and would not be captured) was not clear.
- There was a lack of clarity around the role, powers and the designated body to undertake independent oversight.[106]

Secretary Webster gave her reflections on the feedback received:

> The feedback received on the Child Safe Organisations Bill supported the acceleration of the project to include independent regulation of the Child Safe Standards and a reportable conduct scheme. Despite intentions to align the Bill with the Principles for Child Safe Organisations endorsed by First Ministers at the Council of Australian Governments, during the drafting of the Bill some drafting changes were made to accommodate the structure of the Bill. Many stakeholders provided feedback about the departure from the wording of the Principles.[107]

Secretary Webster told us in her 10 June 2022 statement that the lack of consistency with the National Principles would be 'resolved in future drafts'.[108]

We consider it unfortunate the Tasmanian Government's initial attempt to progress implementation of Child Safe Standards was hampered by significant deficiencies in the 2020 Bill, as this represented a substantial loss of time and wasted effort.

Consistent with the feedback provided to the Department of Justice in response to its 2020 Bill, several individuals and organisations voiced support for implementing legislated Child Safe Standards, overseen by a strong and effective independent regulator, in our consultations and public submissions.[109] Tasmania's Commissioner for Children and Young People, Leanne McLean, told us:

> In my view, Tasmania can and should implement a best practice child safe system, including mandatory legislated child safe standards accompanied by a reportable conduct scheme with child-centred independent oversight consistent with the recommendations of the [National] Royal Commission.[110]

This ultimately occurred with the development and passage of the Child and Youth Safe Organisations Act, which introduced legislated Child and Youth Safe Standards and a reportable conduct scheme.

3.3 Reportable conduct schemes

The National Royal Commission described a reportable conduct scheme as 'a legislated scheme that requires reporting, investigation and oversight of child protection-related concerns that arise in certain government and non-government institutions that provide services to, or engage with, children'.[111]

A reportable conduct scheme is intended to ensure complaints or allegations relating to the abuse or neglect of a child by institutions are managed robustly and transparently. The National Royal Commission described the key features of such a scheme as follows:

- the head of an institution must notify an oversight body of any reportable allegation, conduct or conviction involving its staff (we describe how this relates to sexual abuse below)[112]
- the institution is generally responsible for appropriately managing reportable conduct matters (for example, by assessing and managing risk and conducting investigations) unless the oversight body directs otherwise or conducts its own investigation[113]
- the oversight body monitors and scrutinises the institution's handling and investigation of any allegation, complaint or notification[114]
- the oversight body can audit an institution's policies and procedures to help them improve their systems and practices for responding to complaints or allegations.[115]

Reportable conduct schemes do not apply to children who have displayed harmful sexual behaviours.[116]

The National Royal Commission recommended that state and territory governments establish reportable conduct schemes.[117] Four jurisdictions currently have a reportable conduct scheme: Victoria, New South Wales, Western Australia and the Australian Capital Territory.[118]

Conduct reportable under a reportable conduct scheme includes the abuse or neglect of a child, including sexual abuse (including sexual misconduct), physical abuse and psychological abuse.[119] Importantly, sexual misconduct is intended to capture behaviour that may not meet the threshold of a sexual offence, including crossing professional

boundaries, sexually explicit or other overtly sexual behaviour or grooming.[120] This creates far greater opportunity to identify and address concerning behaviours at an early stage. It also overcomes some of the paralysis that can arise when organisations are confronted with conduct that is concerning but may not meet reporting thresholds to police or child protection, by giving a mandated lever for some action to be taken at an early stage.

Ms Fordyce felt that creating an environment for complaints and concerns to be acted upon at an early stage was important for minimising risks of abuse, noting at present, in Tasmania, organisations often only acted in response to child sexual abuse once a serious incident had occurred.[121] Ms Fordyce added:

> Low reporting thresholds are important in protecting children from child sexual abuse. If minor issues are identified, corrected and dealt with constantly and consistently, this deters perpetrators of child sexual abuse from committing child sexual abuse because they are aware that the system will be able to identify them.[122]

Stephen Kinmond, recently appointed as the New South Wales Children's Guardian, reflected on his experience overseeing New South Wales' Reportable Conduct Scheme in a former role as New South Wales Deputy Ombudsman (Human Services). Mr Kinmond also highlighted how a reportable conduct scheme could allow for earlier intervention in response to high-risk behaviours. He noted the importance of broad definitions of sexual misconduct, as these provide an opportunity for the organisation and oversight body to closely assess the risk posed by the person who is the subject of the allegation, recognising it can be difficult to initially determine the nature and extent of the conduct at the initial report.[123] Broad definitions for sexual misconduct also reflect that substantiating criminal charges, particularly for complex conduct such as grooming, can be difficult. Mr Kinmond added:

> I believe it is important to recognise that the threshold for taking action must be different to the threshold required to sustain a finding in a criminal matter. This need to proactively identify and respond to risk is vital to ensuring that we can take appropriate risk management action for the safety of children.[124]

As with the Child Safe Standards, we asked Victorian experts to describe the operation of its Reportable Conduct Scheme. This is described in the following box.

Overview of operation of Victoria's Reportable Conduct Scheme

Victoria's Reportable Conduct Scheme commenced in July 2017. Its scheme requires certain organisations to provide mandatory notifications relating to alleged child abuse and certain child-related misconduct to Victoria's Commission for Children and Young People.[125] A failure to do so without reasonable excuse is a criminal offence.[126] Ms Sanders told us:

> This means that, from the start of the investigative process to the outcome of the investigation, the CCYP [Commission for Children and Young People] is aware of the allegation and is able to independently and transparently scrutinise the organisation's investigation into that allegation. The CCYP can also educate and guide the organisation.[127]

The Reportable Conduct Scheme applies to organisations with a high level of responsibility for children and is not as broad as the category of organisations captured under the Child Safe Standards. It includes schools, disability and mental health services, hospitals, out of home care, religious bodies, occasional care providers and other prescribed entities (that could be zoos, libraries, museums and so forth).[128] In Victoria, the scheme was introduced in three tranches over 18 months, with different types of organisations captured by the scheme in each phase.

The Reportable Conduct Scheme in Victoria imposes obligations on the heads of relevant organisations to notify the Commission of a 'reportable allegation' within three business days of becoming aware of it.[129] In addition to the requirements of the Child Safe Standards (described in Section 3.2.2) it also requires the head of an entity to have systems in place to prevent reportable conduct and ensure it is reported and investigated where it does occur.[130] The 'head' of an organisation is defined in the Act to generally be the Secretary (where the entity is a department) or as otherwise prescribed in regulations, and in any other case the chief executive officer, the principal officer or otherwise a person nominated and approved by the Commission.[131]

'Reportable conduct' is defined broadly in Victoria to include:

- a sexual offence committed against, with or in the presence of a child (whether or not a criminal proceeding has been commenced or concluded)
- sexual misconduct committed against, with or in the presence of a child (defined as 'behaviour, physical contact or speech or other communication of a sexual nature, inappropriate touching, grooming behaviour and voyeurism')
- physical violence committed against, with or in the presence of a child

- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child.[132]

Under the scheme, allegations that may constitute criminal offences should also be reported to Victoria Police. A police investigation has priority, with any investigations by an organisation to be suspended or not started until police advise that it may proceed.[133] Guidance material from the Commission states that criminal allegations should be 'immediately reported' to police, in addition to the Commission.[134]

As soon as possible and within 30 calendar days after becoming aware of the reportable allegation, the organisation must provide the Commission with:

- detailed information about the reportable allegation
- whether or not any disciplinary action is proposed and reasons why (or why not)
- any written submissions made to the head of the organisation that the relevant employee wished to have considered in determining disciplinary or other action.[135]

As soon as possible after completing the investigation, the head of the organisation must provide the Commission with a copy of the investigation findings and information about actions.[136]

A snapshot of a head of organisation's obligations under reportable conduct

Source: Commission for Children and Young People Victoria, Information Sheet 1 'About the Victorian Reportable Conduct'.

Failure to notify the Commission of the reportable allegation, or to keep the Commission updated on actions taken to investigate and respond within 30 calendar days, is an offence.[137] The head of the entity must investigate the allegation (or engage another body, such as the Commission to investigate) and, as soon as possible after the investigation concludes, provide a copy and reasons for findings, details of disciplinary and other action to be taken and an explanation if no disciplinary or other action is proposed.[138]

The Commission can request information or documents relating to a reportable allegation or investigation at any time. The head of the entity must comply with the request.[139] The Commission can visit an entity to inspect any document related to the reportable allegation or conduct an interview.[140]

The Commission also has own motion powers to investigate a reportable allegation where:

- it receives information about a reportable allegation and believes on reasonable grounds that reportable conduct may have been committed and considers it in the public interest to investigate the reportable allegation
- it is advised the organisation will not or cannot investigate the reportable allegation or engage an independent investigator
- it is concerned there has been inappropriate handling of (or response to) a reportable allegation and considers it in the public interest to investigate itself.[141]

Affected parties can seek internal review of some decisions the Commission makes. This includes decisions to issue a notice to produce regarding the Reportable Conduct Scheme or findings by the Commission in an own motion investigation, for example.[142] Some internal review decisions can be further reviewed by the Victorian Civil and Administrative Tribunal.

The Commission for Children and Young People published *Guidance for Organisations: Investigating a Reportable Conduct Allegation* in June 2019. Key points from this guide include:

- Decision-makers in reportable conduct investigations must apply the 'balance of probabilities' standard of proof (whether more likely than not the reportable conduct happened). In so doing, the decision-maker must apply the 'Briginshaw test', which requires that the more serious the allegation and gravity of a substantiated finding, the more comfortably satisfied on the evidence they should be.[143]

- An independent investigator must be used, defined as an 'independent body or person (who can come from within the organisation) with appropriate qualifications, training or experience to investigate reportable allegations'.[144] The guide describes situations where an external investigator should be considered, including where the matter is complex or there is a conflict of interest.[145]
- An alleged victim and the subject of an allegation should be interviewed, unless there are good reasons not to (these should be documented). The guide includes the factors to consider when interviewing a child, including their age and developmental stage, whether they have been interviewed already and the nature of the allegations.[146] It also states that 'careful thought and planning' is required to enable a child to describe their experience, where appropriate, 'being mindful to avoid causing any further trauma to the child'.[147] The Commission for Children and Young People has developed the *Guide for including children and young people in reportable conduct investigations*, alongside other resources (including mock interviews). These provide specific guidance on how to ensure interviews are trauma-informed, including for Aboriginal children and young people.[148]
- A worker or volunteer who is the subject of a reportable allegation is entitled to receive natural justice (often called procedural fairness). The guide identifies the factors that will facilitate such fairness (including the provision of a notice on the nature and scope of allegations, ability to have a support person present, have reasonable opportunity to respond and have this considered before any final decisions are made).[149]
- The importance of organisations managing risks to children while investigations are conducted, with regard to the nature and seriousness of the reportable allegation, the vulnerability of the children and the position and duties of the subject of the allegation (including whether they have unsupervised access to children).[150]

In addition to the powers above, the Commission has specific functions in administering the scheme. This broadly includes:

- educating and providing advice to organisations to support compliance
- overseeing the investigation of reportable allegations (and in some instances, investigating the allegations itself)
- monitoring compliance

- exchanging information with Victoria Police, other regulators and Working with Children Check Victoria (we discuss information sharing in the context of New South Wales' Reportable Conduct Scheme below)
- reporting to the Minister and Parliament on trends.[151]

Ms Buchanan told us the Commission for Children and Young People works closely with many regulatory bodies and it has implemented formal memoranda of understanding with some of these bodies.[152] Ms Buchanan said this enhances the safety and wellbeing of children by ensuring relevant information is shared, while also reducing duplication of effort in responding to matters.[153]

Ms Buchanan said the Commission shares information with co-regulators and other agencies to help them perform their role regulating organisations or individuals in relation to child safety.[154] It can refer a substantiated allegation to the Working with Children Check Unit or a professional accreditation body (for example, Victorian Institute of Teaching or the Australian Health Practitioner Regulation Agency).[155] It can also bring agencies together to share information about a matter and support each regulator to fulfil its roles and responsibilities in addressing child safety issues, while minimising duplication.[156]

Where Victoria Police investigates a matter that falls within the scope of the Reportable Conduct Scheme, the Commission can request information about the matter from Victoria Police and share it with a relevant organisation.[157] Ms Buchanan said placing a police officer within the Commission during the first two years of operation of the Reportable Conduct Scheme helped the Commission to establish processes to effectively manage information and information requests between the two agencies. This resulted in an increase in intelligence about potential abuse being shared with Victoria Police to assist criminal investigations. The Commission now routinely shares with and requires considerable information from Victoria Police. Victoria Police also shares reportable conduct allegations with the Commission that may not have otherwise come to light.[158]

New South Wales was the first jurisdiction to establish a reportable conduct scheme. We asked Mr Kinmond to describe the features of the New South Wales model, including its lessons in implementation. Mr Kinmond described in detail the significance of a reportable conduct scheme in providing central oversight of high-risk individuals and strong collaboration with police and child protection agencies to actively manage the risks these individuals posed. We describe the New South Wales experience relating particularly to information-sharing in the following box.

Information sharing under the New South Wales Reportable Conduct Scheme

New South Wales implemented a reportable conduct scheme in 1999, originally sitting within the New South Wales Ombudsman before being administered by the Office of the Children's Guardian from 1 March 2020.[159] The regulator has responsibility for overseeing the handling of child abuse and neglect allegations against employees of more than 7,000 government and non-government agencies.[160]

Stephen Kinmond was appointed to lead the Employment-Related Child Protection Division within the New South Wales Ombudsman in 2010 and had responsibility for the Reportable Conduct Scheme. Mr Kinmond recognised the importance of an oversight body of this nature 'value adding' and being proactive in the management of risks to children.[161] He stated that before he joined the Office of the Ombudsman, it had 'reflected a more passive traditional oversight model'.[162] He described the action he took:

> [I] immediately went about establishing standard operating procedures with the police, getting access to the police system, getting access to the child protection system, ensuring that in fact we were proactive in our response.[163]

Increasing 'in-house' access to databases held by police and child protection enabled the Ombudsman to 'obtain a holistic understanding of the prevailing risks in particular matters and to better inform [its] assessment of any action that may be required' to supplement its own information gleaned through reportable conduct notifications.[164] This provided a 'helicopter view' of critical information.[165]

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ('Children and Young Persons (Care and Protection) Act') provides significant scope for the regulator of the Reportable Conduct Scheme, as well as other prescribed bodies, to proactively share risk-related information to promote the safety, welfare and wellbeing of children.[166] Section 245C states:

1. A prescribed body (the provider) may provide information relating to the safety, welfare or well-being of a particular child or young person or class of children or young persons to another prescribed body (the recipient) if the provider reasonably believes that the provision of the information would assist the recipient:
    a. To make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons ...
    b. To manage any risk to the child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency.
2. Information may be provided under this section regardless of whether the provider has been requested to provide the information.[167]

Provisions under the Act also permit an agency to request information relating to the safety, welfare or wellbeing of children from another prescribed body and provide protection from liability to those who provide information under provisions set out in the Act.[168] Prescribed bodies for the purposes of the Act include New South Wales Police, public service agencies or public authorities, government or registered non-government schools, TAFEs, public health organisations, private health facilities and persons or bodies prescribed in regulations.[169]

On a regulator's approach to information sharing, Mr Kinmond said:

> I took the view that an Ombudsman's Office should err on the side of disclosure, given the importance of ensuring the Office of the Children's Guardian was provided with relevant risk related information to carry out their functions. My approach was always to think about what the community's views would be on a failure to act in a particular situation, including failing to provide information that indicated an individual may pose a risk to children. I find this to be a simple but helpful test.[170]

The provisions in the Children and Young Persons (Care and Protection) Act seek to overcome agency concerns about breaching individual privacy.[171] Mr Kinmond said that a reportable conduct scheme regulator must take an active role to ensure relevant information is shared with appropriate agencies and acted on.[172] This is best achieved through broad information sharing powers.[173] He said the reportable conduct scheme regulator must also model proactive information exchange in its own practice to send a clear message to agencies and sectors that there is a 'collective responsibility' to share information to promote the safety, welfare and wellbeing of children.[174]

Mr Kinmond said the regulator of a reportable conduct scheme must assess the information it gathers and form a view about whether it can be exchanged with other prescribed bodies consistent with promoting the safety, welfare and wellbeing of a child or class of children.[175] This requires an assessment of the nature and quality of the information and ensuring the exchange of information beyond what is permitted by legislation does not occur.[176]

Mr Kinmond provided us with a submission the NSW Ombudsman made to the National Royal Commission in 2016 that cited an example where a historical child sexual abuse case was reopened by police after the Ombudsman identified an individual having two different 'unlinked' names within the police database.[177]

Mr Kinmond told us of the importance of regulators and oversight bodies being proactive in the context of overseeing a reportable conduct scheme:

> It's not an acceptable situation to have an oversight body that understands that risks are in play in relation to matters that are reported to it and remains passive, and so, in that respect it's perhaps different than other oversight arrangements because, if there is an unacceptable risk to children – or a child or children … the oversight body has to respond.[178]

Mr Kinmond stressed the importance of providing for capacity building for organisations through training, education and guidance, recognising that smaller agencies in particular often lacked the knowledge and experience to handle reportable allegations properly.[179] Failures to build capacity could also undermine the level and quality of reporting to the regulator.[180]

We consider that many of the problems we observed in responses to allegations or complaints of child sexual abuse or sexual misconduct in our Inquiry could have been prevented through a reportable conduct scheme, underpinned by proactive information-sharing arrangements and a supportive approach to helping organisations to manage investigations effectively. This is particularly the case for conduct that may not meet the threshold for more serious interventions (for example, not meeting the threshold for police reporting).

We consider that, had Tasmania adopted a reportable conduct scheme earlier, a range of problems we describe throughout our report may have been prevented, including:

- failures to notify other agencies of complaints or concerns relating to child sexual abuse (such as police, professional regulators or the Registrar of the Registration to Work with Vulnerable People Scheme) and to share information appropriately to ensure risks to children are properly assessed and mitigated (refer to, for example, Volumes 3, 4, 5 and 6)
- failures to investigate complaints or concerns, or investigate them adequately, and in a trauma-sensitive way (particularly in adopting best practice approaches to interviewing children and young people) (refer to, for example, Volumes 3, 4, 5, 6 and Chapter 20 in Volume 8)
- a tendency to prioritise the perceived rights and interests of the person accused of the conduct and the reputation of the organisation ahead of the safety of children by failing to ensure investigations were transparent, trauma-informed, appropriately included the accounts and perspectives of affected children and young people, and ensured risks associated with particular individuals were appropriately managed (refer to, for example, Volumes 3, 4, 5, 6 and Chapter 20 in Volume 8).

As noted, the Tasmanian Government released a consultation draft of the Child Safe Organisations Bill in 2020. This Bill did not provide for a reportable conduct scheme, as this was proposed to occur after the National Principles for Child Safe Organisations had been legislated.[181] As we noted earlier, Secretary Webster told us feedback on the draft Bill showed support for a reportable conduct scheme.[182] In her submission to us, Commissioner McLean outlined her 'strong view' that Tasmania should have both Child Safe Standards and a reportable conduct scheme.[183]

We agree and consider the value of a reportable conduct scheme lies in addressing a significant gap in responding to institutional responses to child sexual abuse and sexual misconduct. We note the child protection system is primarily focused on the care and protection of individual children and responding to risks of harm within the familial setting.

As we discuss in the next section, the Tasmanian Government has implemented a reportable conduct scheme in its Child and Youth Safe Organisations Act, which is due to commence in 2024. Secretary Webster told us:

> Once established, the Reportable Conduct Scheme … will be a central repository for reportable conduct and the investigation outcomes related to child sexual abuse in organisations, government and nongovernment. The Reportable Conduct Scheme will have an important role in data collection and monitoring the incidence of child sexual abuse.[184]

4 Child and Youth Safe Organisations Act 2023

In September 2022, the Government released a revised draft Child and Youth Safe Organisations Bill for public consultation. This consultation included an invitation for the views of children and young people, who could participate in a short survey about their ideas. Public consultation closed on 1 October 2022.[185] The revised Bill introduced a more comprehensive child safe organisation framework than the 2020 Bill. It was introduced into the Tasmanian Parliament on 22 November 2022.[186] The Child and Youth Safe Organisations Act was passed by the Tasmanian Parliament in May 2023 and commenced on 1 July 2023 (with some legislative obligations commencing in a phased manner in 2024).[187]

We summarise the key features of the Act in the following section.

4.1 Child and Youth Safe Standards and Universal Principle

As previously outlined, the Child and Youth Safe Organisations Act introduces Child and Youth Safe Standards that mirror the National Principles certain organisations must comply with, as part of the broader Child and Youth Safe Organisations Framework. Organisations must also comply with an embedded Universal Principle that requires a regulated entity to 'ensure that the right to cultural safety of children who identify as Aboriginal or Torres Strait Islander is respected'.[188] The Universal Principle has the same status as the Child and Youth Safe Standards, with the Independent Regulator's powers (including enforcement powers) identical to those of the Standards.[189] As we noted earlier, our references to Child and Youth Safe Standards should be read as inclusive of the Universal Principle.

A range of organisations must comply, including health, educational, accommodation providers, youth justice workers, recreational clubs and businesses that provide services to children.[190] The Act stipulates that local councils, legal practitioners providing services to children, government agencies and the Parliament of Tasmania must also comply.[191]

The Independent Regulator is given broad functions regarding the Child and Youth Safe Standards that relate to education and advice on compliance, oversight and enforcement, information sharing, data collection and analysis, and public reporting.[192] The Independent Regulator also has enforcement powers that extend to:

- requesting documents and information
- inspecting premises
- sharing information
- issuing relevant notices to an organisation (to produce a document or to comply with requirements the Child and Youth Safe Standards impose).[193]

Penalties apply to non-compliance with the legislation.[194]

4.2 Reportable Conduct Scheme

The Child and Youth Safe Organisations Act also introduces a reportable conduct scheme, which requires the head of a relevant entity to notify the Independent Regulator within three business days of becoming aware of reportable conduct. Most relevantly for our purposes, reportable conduct includes a range of sexual offences as well as sexual misconduct, which is defined to include inappropriate behaviour, physical contact and voyeurism when performed in a sexual manner or with a sexual intention.[195] The head

of an entity is required, as soon as practicable and no later than 30 days after becoming aware of the reportable allegation, to notify the Independent Regulator of information received, action taken, and any submissions received by parties related to the matter.[196]

The Reportable Conduct Scheme applies to a slightly narrower cohort of organisations than the proposed Child and Youth Safe Standards (which is consistent with the recommendations of the National Royal Commission) and includes all government agencies, out of home care and accommodation providers, youth justice, health services and schools, among others.[197]

The Independent Regulator has a range of functions to administer and oversee the scheme, including educating and advising entities, monitoring investigations of reportable conduct (and conducting own motion investigations), monitoring compliance with the scheme, facilitating appropriate information sharing, collecting and analysing data, and public reporting.[198]

As with the Child and Youth Safe Standards, the Independent Regulator has a range of powers, including to request documents or information, enter premises, conduct interviews and share information.[199]

4.3 Independent Regulator and Deputy Independent Regulator

The Child and Youth Safe Organisations Act provides for the Governor to appoint an Independent Regulator and Deputy Independent Regulator (one of whom must be known to be Aboriginal or Torres Strait Islander).[200] The Act makes it explicit the Independent Regulator and Deputy Independent Regulator are 'not subject to the direction or control of the Minister' and 'must act independently, impartially and in the public interest' when exercising their functions or powers.[201]

The Act also makes provision for 'entity regulators', which the Independent Regulator is to determine.[202] Entity regulators can exercise certain functions the Independent Regulator delegates, including powers to inspect premises, interview persons or give a notice to produce a document.[203]

At the time of writing, it is unclear how the Independent Regulator, Deputy Independent Regulator and the Child and Youth Safe Organisations Framework, including the Reportable Conduct Scheme, will be operationalised. The Tasmanian Government has stated its intention to establish a new entity led by the Independent Regulator 'focused on the institutional safety and wellbeing of children and young people' to administer the Child and Youth Safe Organisations Framework.[204] Recruitment for the role of the Independent Regulator is underway at the time of writing, with appointment of the Deputy Independent Regulator to follow.[205]

We consider the Tasmanian Government should establish a new and appropriately resourced Commission for Children and Young People (discussed further in Section 5.2), which should also administer the Child and Youth Safe Standards and the Reportable Conduct Scheme.

4.4 Information-sharing provisions

The Child and Youth Safe Organisations Act includes several provisions designed to facilitate appropriate information sharing between agencies. These provisions are expansively drafted to empower the Independent Regulator to obtain, record, disclose and otherwise use information for a broad range of purposes, including for:

- promoting and protecting the safety of children
- supporting investigations by law enforcement
- employment and disciplinary processes.[206]

It also provides that a range of persons and bodies may disclose information or documents relating to compliance with the Child and Youth Safe Standards or matters relating to reportable conduct between different organisations. This includes:

- heads of organisations
- entity regulators
- police (including police in other jurisdictions)
- the Registrar of the Registration to Work with Vulnerable People Scheme
- ministers
- an independent investigator (where necessary)
- the Chief Commissioner of the Integrity Commission
- others, including persons or bodies that can be prescribed.[207]

We note the Ombudsman is not listed as a body that can take part in information sharing. We are unclear on the reasons for this. We consider it important and necessary that the Ombudsman be expressly empowered to share information with the Independent Regulator, alongside those listed, given its complaints-handling and oversight functions.

The State has agreed with this position and committed to prescribing the Ombudsman within the regulations to bring it within information-sharing provisions under the Act, and to confer investigative functions on the Ombudsman as an entity regulator under the Reportable Conduct Scheme.[208]

Recommendation 18.3

The Tasmanian Government should ensure the Ombudsman is prescribed as an entity for the purposes of disclosure of information under section 40 of the *Child and Youth Safe Organisations Act 2023*.

4.5 Other matters

The Child and Youth Safe Organisations Act has a commencement date of 1 July 2023, with staggered commencement of the requirements in 2024.[209] The first tranche of organisations will be required to comply with the Child and Youth Safe Standards (including government agencies such as schools, health services, out of home care and youth justice) from 1 January 2024. A second tranche will be required to comply from 1 July 2024 (mostly private and commercial business, such as party services or talent and beauty competitions).[210] A similar logic applies to phasing the implementation of the Reportable Conduct Scheme, recognising some variation in the organisations subject to the scheme.[211]

A table outlining the organisations regulated by the Child and Youth Safe Standards and the Reportable Conduct Scheme and relevant commencement dates for compliance can be found at Table 18.1.

Table 18.1: Organisations regulated under the Child and Youth Safe Organisations Act 2023[212]

Type of organisation	Child and Youth Safe Standards	Reportable Conduct Scheme	Date must start to comply
Accommodation and residential services for children, including housing services and overnight camps	Yes	Yes	1 January 2024
Activities or services of any kind, under the auspices of a particular religious denomination or faith through which adults have contact with children	Yes	Yes	1 January 2024
Child care and commercial baby sitting services	Yes	Yes	1 January 2024
Child protection services and out-of-home care, including contact services	Yes	Yes	1 January 2024
Health services for children, including organisations that provide counselling services*	Yes	Yes	1 January 2024
An organisation that provides early intervention or disability support services	Yes	Yes	1 January 2024
Justice and detention services for children*	Yes	Yes	1 January 2024
Education services for children	Yes	Yes	1 January 2024
Tasmanian Government and Local Government	Yes	Yes	1 January 2024
Tasmanian Parliament	Yes	Yes	1 January 2024
Government House	Yes	Yes	1 January 2024
Neighbourhood Houses	Yes		1 July 2024
A club, association or cadet organisation that has a significant membership of, or involvement by, children	Yes	Yes	1 July 2024
An entity that provides a coaching or tuition service to children	Yes	Yes	1 July 2024
An entity that provides commercial services to children	Yes		1 July 2024
A transport service specifically for children	Yes		1 July 2024

Source: Department of Justice, 'Child and Youth Safe Organisations Framework'.

The Act also provides for a review of the first three years of its operation, with a report on the review outcomes to be tabled in Parliament.[213]

4.6 Stakeholder feedback

As foreshadowed, the Department of Justice released a consultation draft of the Child and Youth Safe Organisations Bill in September 2022. The Department of Justice published 11 submissions from stakeholders in response to the consultation draft, all of which reflected broad support for the objectives, aims and provisions of the Bill.[214] Some of the key themes emerging from the submissions included:

- recommendations that the Tasmanian Commissioner for Children and Young People assumes the functions of the Independent Regulator for the Child and Youth Safe Standards and Reportable Conduct Scheme.[215] The importance of ensuring the Independent Regulator was appropriately resourced was also emphasised[216]

- support for explicit consideration of cultural safety for Aboriginal children but recommending this align to the approach adopted in Victoria by introducing an additional Standard (rather than a Universal Principle)[217]
- some support for expanding the scope of the Reportable Conduct Scheme to capture all organisations that would be bound by the Child and Youth Safe Standards (acknowledging this goes beyond what the National Royal Commission recommended).[218]

Stakeholders who provided feedback on the consultation draft also made a range of technical and drafting suggestions.

The CREATE Foundation, the national consumer body for children and young people with an out of home care experience, also consulted a group of young people in September 2022 on the draft Bill. The feedback from this group was broadly positive. They suggested the Child and Youth Safe Standards should be accessible and understood by young people.[219]

As part of its consultation process, the Department of Justice established a range of advisory panels to support the implementation of the new requirements, including a:

- Lived Experience Advisory Panel—with members who have lived experience of child sexual abuse in institutional settings or are family members or friends who are victim-survivor advocates.
- Sector Implementation Advisory Panel—which brings together representatives from sectors likely to be affected by the reforms, including a range of services and organisations, businesses, clubs, associations, local government and private organisations (such as non-government schools).
- Interdepartmental Implementation Advisory Panel—chaired by the Department of Justice with representatives from the Department for Education, Children and Young People, the Department of Health, the Department of State Growth, the Department of Police, Fire and Emergency Management, the Department of Natural Resources and Environment Tasmania and the Department of Premier and Cabinet.[220]

4.7 Supporting the implementation of Tasmania's child safe regulatory framework

We welcome the Tasmanian Government's introduction of the Child and Youth Safe Organisations Act and consider it has appropriately responded to stakeholder feedback by:

- aligning with the National Principles for Child Safe Organisations
- reflecting the need for all organisations to take active steps to ensure they feel safe and welcoming for Aboriginal children
- capturing a wide range of organisations that must manage the most acute risks of harms to children in both the Child and Youth Safe Standards and Reportable Conduct Scheme
- facilitating and explicitly enabling robust information sharing between key agencies that prioritises the safety of children and young people
- embedding the independence of the Independent Regulator and Deputy Independent Regulator
- providing for a review of the operation of the legislation after three years.

We also welcome the adoption of broad definitions of reportable conduct. However, we note these rely on staff and volunteers to be sufficiently skilled to identify reportable conduct (for example, inappropriate boundary violations or breaches).

We are particularly pleased Tasmania Police will become a regulated entity for the Child and Youth Safe Standards and Reportable Conduct Scheme. We consider this appropriate, as police occupy unique positions of trust within the community and can wield significant power and authority over children and young people.

We consider there has been a significant delay in implementing the National Royal Commission recommendations as they relate to the Child and Youth Safe Standards and the Reportable Conduct Scheme. The Child Safe Standards in the 2020 draft of the Bill were not fit for purpose and had to be abandoned, while a reportable conduct scheme was only proposed in the draft Bill of 2022. The unfortunate effect of these delays is the opportunity to reduce any risks that children and young people may be subject to was missed. Valuable time was lost to start the necessary consultation, capacity building and preparation within regulated organisations needed to ensure the success of their implementation.

Given the broad alignment with the key features of interstate models, and the extensive delays to date, we do not propose revisiting the substance of the Act, beyond our recommendation regarding the inclusion of the Ombudsman as an information-

sharing entity (outlined in Section 4.4). In the interests of realising the benefits of these regulatory schemes as soon as possible, we encourage the Tasmanian Government to be considered and thoughtful with its implementation in order to maximise the success and impact of the regulatory schemes. We also recommend the issues we would like considered in the statutory review of the operation of the Act.

Other jurisdictions, such as New South Wales and Victoria, have substantially progressed implementation of these schemes and can offer valuable insight to guide Tasmanian implementation. It was clear from the evidence from these jurisdictions that close collaboration with other agencies with relevant information and responsibilities (such as police), including access to their information holdings, was an important enabler for effective information sharing. Tasmania can now leverage resources and guidance materials that have been developed at the national level to support organisations and regulators alike. These will greatly assist during the implementation process and avoid the need for Tasmania to 'reinvent the wheel'.

Recommendation 18.4

The Tasmanian Government, in implementing the *Child and Youth Safe Organisations Act 2023*, should ensure:

a. the functions of the Independent Regulator and Deputy Independent Regulator under the Act are embedded within the new Commission for Children and Young People (Recommendation 18.6)

b. the Commission is sufficiently resourced to enable it to effectively perform these regulatory functions

c. the Commission has access to government data systems such as those held by Tasmania Police, Child Safety Services and the Registrar of the Registration to Work with Vulnerable People Scheme to enable systematic and proactive monitoring and that those agencies have access to the Commission's data, where appropriate.

We note that section 64 of the Child and Youth Safe Organisations Act allows the Minister to initiate a review of the Act covering the three years since the Act started and to ensure a report of the review outcomes is tabled in Parliament within four years of commencement. We welcome this provision but offer recommendations in the next section regarding considerations we consider should guide this review, which we consider should be undertaken by an independent entity.

Recommendation 18.5

The Tasmanian Government should ensure its independent three-year review of the *Child and Youth Safe Organisations Act 2023* has a particular focus on:

a. whether the Independent Regulator is sufficiently resourced and empowered to perform its functions effectively, and new or additional resourcing, functions and powers are necessary to support compliance

b. how effectively the Independent Regulator is working with other agencies, including the Ombudsman or other oversight bodies, Registrar of the Registration to Work with Vulnerable People Scheme, Tasmania Police, professional regulatory bodies and other peak bodies, to support compliance, share information and manage active risks to children and young people

c. how organisations captured by the Child and Youth Safe Standards and the Reportable Conduct Scheme have experienced the new regulatory requirements, and in particular whether they have felt sufficiently supported to comply

d. analysing data emerging from the operation of the schemes, particularly as they relate to complaints and notifications and trends within and across sectors

e. whether the Universal Principle requiring organisations to uphold cultural safety is achieving its intended objective, and whether it should become an additional Child and Youth Safe Standard, mirroring the approach in Victoria

f. whether any further legislative changes are required to ensure appropriate information sharing between the Independent Regulator and other agencies.

4.8 The appointment of the Independent Regulator

The Child and Youth Safe Organisations Act does not specify the body that will assume the functions of the designated Independent Regulator and Deputy Independent Regulator. Secretary Webster told us:

> 'the establishment of an independent statutory oversight body will require the analysis of current legislation in Tasmania to identify the best placement and analysis around what existing functions of current statutory officers may need to be reviewed'.[221]

She noted Tasmania's relatively small size will need to be considered when examining how other jurisdictions have approached independent regulation.[222]

The Child and Youth Safe Organisations Project Plan states the Tasmanian Government is committed to establishing a 'dedicated independent oversight body' to oversee the Child and Youth Safe Standards and the Reportable Conduct Scheme.[223]

As noted in Section 4.3, the Government has stated its intention to establish a new entity led by the Independent Regulator to administer the Child and Youth Safe Organisations Framework.[224] Recruitment for the role of the Independent Regulator is underway at the time of writing, with appointment of the Deputy Independent Regulator to follow.[225]

The National Royal Commission contemplated that existing children's commissioners and guardians could assume responsibilities for Child Safe Standards and Reportable Conduct Schemes.[226] We agree these responsibilities should be assumed by an oversight body focused exclusively on children and young people. We consider the person or body appointed as Independent Regulator should:

- be independent of government
- have specialist knowledge of children
- be accessible to children and their parents/carers, as they may wish to make a reportable allegation
- have a child-centred focus and processes
- have appropriate regulatory skills, which could be built over time.

In a small jurisdiction such as Tasmania, it is also important the appointment of the Independent Regulator avoid duplication of work with existing roles and entities.

As described earlier, in Victoria, the Commission for Children and Young People administers its Child Safe Standards and Reportable Conduct Scheme, which also performs other important functions. As discussed in Chapter 9, these functions include:

- conducting inquiries into the safety and wellbeing of an individual vulnerable child or group of vulnerable children[227]
- undertaking systemic inquiries into the provision of services to vulnerable children[228]
- monitoring serious incidents in the out of home care and youth justice systems[229]
- administering an independent visitors scheme for children in youth justice centres.[230]

As outlined in Sections 3.2 and 3.3, we heard evidence from Ms Buchanan and Ms Sanders, about the Commission for Children and Young People Victoria.[231] We were impressed at the considerable knowledge and expertise the Victorian Commission for Children and Young People has built as a regulator of Child Safe Standards and Reportable Conduct Scheme since 2017.

Ms Buchanan believed there was benefit in the Commission for Children and Young People holding the role as regulator, as it is a body with 'specialised knowledge and understanding of children, children's development and child sexual abuse', noting that this knowledge and expertise continues to grow.[232] Ms Buchanan said:

> So, one of the really important aspects of performing an oversight function here is, [number one], you have to be an organisation that has and continues to develop a very good understanding of children, of risks to children, of the patterns of child abuse and harm to children and about what organisations need to have in place to prevent and appropriately respond to child abuse, so that knowledge, that expertise, that specialisation in children and harms to children is very, very important.[233]

Ms Sanders stated how Child Safe Standards and a reportable conduct scheme are complementary:

> The Child Safe Standards are about systems, while the [Reportable Conduct Scheme] is about more specific and detailed management of investigations by organisations. They work together as part of the same overall child safety framework. We consider that these are two key aspects of the safeguarding system that seeks to prevent and respond to child sexual abuse.[234]

Ms Buchanan and Ms Sanders pointed to benefits in one regulator overseeing both the Child Safe Standards and the Reportable Conduct Scheme.[235] These benefits are summarised as follows:

- The number and nature of reportable allegations received under the Reportable Conduct Scheme can offer intelligence as to the organisation's level of compliance with Child Safe Standards (where the number or nature of these reports is inconsistent with expected trends).[236]
- An assessment of how well an organisation is implementing Child Safe Standards can guide how the regulator may wish to oversee the management of a reportable allegation. For example, if there are compliance concerns arising from the Child Safe Standards relating to an organisation or sector, this may encourage the regulator to be more proactive in working with the organisation in its investigation into reportable conduct.[237]
- There are no information barriers to overcome as the information held about both the Child Safe Standards and Reportable Conduct Scheme are held by the one regulator.[238] This means the Commission's internal teams can use information gleaned in regulating one scheme to inform its approach or action in relation to the other.[239]

Commissioner McLean supported Tasmania's regulator overseeing both schemes, as occurs in Victoria.[240] She noted:

> I believe the Victorian child safe model provides a particularly useful example of how we could take the steps needed to further protect the safety and wellbeing of children and young people in Tasmanian institutional contexts.[241]

As outlined earlier, in New South Wales, Child Safe Standards and the Reportable Conduct Scheme are administered by the Office of the Children's Guardian.[242] The New South Wales Ombudsman was initially responsible for the Reportable Conduct Scheme, however this responsibility was transferred to the Office of the Children's Guardian in March 2020.[243]

We are pleased to see the Child and Youth Safe Organisations Act proposes the same entity regulates the Child and Youth Safe Standards and the Reportable Conduct Scheme.

With its specialist knowledge of matters relating to children and its child-centred processes, we consider our proposed new Commission for Children and Young People (discussed in Section 5.2) to be the logical choice for the functions of the Independent Regulator. This organisation, as the successor to the current Commissioner for Children and Young People, will have the benefit of being known to children and families in Tasmania as an organisation that can help with concerns relating to children and young people. It will also ensure there is one oversight body in Tasmania with a focus on the safety and wellbeing of children and young people. We consider this recommendation takes account of Tasmania's relatively small size and the need for regulation to be effective and efficient.

While we acknowledge it will take some time to fully establish the new Commission for Children and Young People, the implementation of the Child and Youth Safe Standards and Reportable Conduct Scheme should progress with some urgency.

5 Oversight and safeguards supporting a child safe system

A healthy and robust system of oversight is a critical pillar to improving children's safety in Tasmanian organisations. This is because well-regulated organisations are more likely to have the features of child safe organisations—including clear policies and procedures, healthy and protective work cultures, skilled and motivated staff and a culture of collaboration, reflection and continuous improvement. Organisations that tolerate poor practice, fail to properly address misconduct, and lack transparency and accountability are more likely to have heightened risks of abuse of children. In this section, we outline our recommendation to strengthen the oversight and regulation of child safety in Tasmania by establishing a new Commission for Children and Young People, which expands the current functions of the Commissioner for Children and Young People.

5.1 A confused and complex oversight system

In Chapter 2, we outline the current child sexual abuse system and identify that Tasmania has a range of oversight and integrity bodies (including professional regulators) that have some responsibility relating to child safety. In particular, the current oversight and integrity system in Tasmania is complex and confusing. The Ombudsman, Integrity Commission and the Commissioner for Children and Young People have certain highly specific (and often narrow) functions that relate to managing child safety.

Commissioner McLean acknowledged that Tasmania's oversight system lacks coordination, stating:

> In Tasmania we currently have a disconnected patchwork of systems and processes which do not provide an integrated and systematic approach to keeping children safe from abuse in institutional settings. The flow-on effects of the current system are that navigation by the public and agencies is difficult, there is limited coordination or communication between regulatory agencies, there is no central body with responsibility for systemic oversight …[244]

During our hearings, we convened a panel comprising the Chief Executive Officer, Integrity Commission, Michael Easton, the Ombudsman, Richard Connock, and Commissioner McLean to explain how their respective bodies work together in receiving and responding to complaints and concerns relating to child safety. Their evidence revealed what appeared to us to be a complex and confused integrity and oversight model in Tasmania, including:

- The Ombudsman's powers in relation to publicly funded private entities 'depends on the relationship between the private entity and the government'—which may create a lack of clarity for some out of home care providers, depending on their status.[245]
- The decision to initiate (or not initiate) disciplinary processes are administrative decisions but are not, in most cases, subject to the Ombudsman's jurisdiction.[246] We note the Integrity Commission has powers relating to misconduct by public officers.[247]
- The Commissioner for Children and Young People has individual advocacy functions for children and young people detained under the *Youth Justice Act 1997*, but no individual advocacy functions for children and young people in out of home care.[248] This means they cannot advocate on behalf of an individual child in the out of home care system or investigate a specific organisation providing care services, for example.[249] We discuss problems with these lack of powers in Chapter 9 relating to children in out of home care.

- The Commissioner for Children and Young People currently cannot, on their own motion, investigate decisions made about children and young people in detention. The Commissioner can only advocate on a child or young person's behalf (for example, to facilitate a complaint to the Ombudsman about their treatment).[250]
- The Commissioner for Children and Young People, the Ombudsman, the Custodial Inspector and the Tasmanian National Preventive Mechanism appointed under the United Nations Optional Protocol to the Convention Against Torture (noting the latter three roles are held by Mr Connock) all have functions relating to youth detention. For the Commissioner, this extends to visiting and advocating for children and young people in detention. For the Ombudsman, this relates to investigating administrative decisions made by the Department overseeing youth detention. For the Custodial Inspector, this relates to inspecting detention facilities against established standards.[251] The Integrity Commission may also be involved where there is misconduct by a staff member if, after considering whether the alleged misconduct could be a criminal offence and any necessary consultation with Tasmania Police, it considers that involvement to be appropriate regarding the principles set out in section 8(1)(l) of the *Integrity Commission Act 2009* ('Integrity Commission Act').
- Referral pathways could sometimes lead to potentially unintended outcomes—for example, if a young person shared a concern with the Commissioner for Children and Young People about their treatment in detention and they were fearful of making a formal complaint because of concerns about reprisal, it is possible the Commissioner for Children and Young People could still make a complaint to the Integrity Commission regarding the misconduct concerns. The Integrity Commission could refer the complaint back to the Department responsible for youth justice to investigate.[252] The young person in question would not necessarily know how their privately expressed concern was being managed.
- Only public officers or contractors who have entered into a contract with a public body can make public interest disclosures under the *Public Interest Disclosures Act 2002*, which limits who can receive the protections under the Act—for example, private individuals who may hold relevant information to the operation of a public body.[253] The Integrity Commission does not have such limitations as to who can make a complaint to it.[254]

In unpacking the various roles and responsibilities, how they intersect (and how they do not) Counsel Assisting posed questions for Mr Connock, Mr Easton and Commissioner McLean:

> Q [Counsel Assisting]: Would you each agree with me that this is a complex system … ?
>
> A [Ms McLean]: Yes.
>
> Q [Counsel Assisting]: Ombudsman?
>
> A [Mr Connock]: Yes.
>
> Q [Counsel Assisting]: Mr Easton?
>
> A [Mr Easton]: Yes.
>
> Q [Counsel Assisting]: Is it a difficult system for lay people to navigate, Commissioner?
>
> A [Ms McLean]: In my experience, yes, people are often confused about my role.
>
> Q [Counsel Assisting]: Mr Ombudsman?
>
> A [Mr Connock]: It can be, yes.
>
> Q [Counsel Assisting]: Mr Easton?
>
> A [Mr Easton]: I think it's difficult for people to understand the complexities, but they know—my sense is the layperson would know they could come to us about misconduct …[255]

All three oversight heads reported very few complaints (or public enquiries, in the case of the Commissioner for Children and Young People, who does not have a complaint handling function) relating to child sexual abuse.[256] Mr Connock seemed unable to explain why complaints about child sexual abuse, or whistleblowing complaints relating to misconduct were so low, but was cautious to attribute it to barriers to reporting.[257] In later hearings regarding Ashley Youth Detention Centre, Mr Connock reflected that there may be inadequate recognition of the protections for complaints-handling (including against reprisal), and that better publicising complaints avenues (and related protections) may help.[258]

Mr Easton was more willing to draw conclusions about barriers to reporting during our first week of hearings, stating:

> … it's our view based on our experience that people will not report things for fear of retribution or for fear of ostracisation as a whistleblower … But equally people won't report things because they don't understand the process within their agency of reporting things, or they won't report things because they don't think they have to.[259]

Mr Easton suggested there had been an uptick in such notifications since the establishment of our Commission of Inquiry.

Mr Kinmond, reflecting on his former role as New South Wales Deputy Ombudsman (Human Services) with responsibilities for a reportable conduct scheme, told us the absence of complaints should be a source of concern for a regulator:

> Q [Counsel Assisting]: [W]e can take it as read that the society that we live in has a problem with child sexual abuse and so, if it's not being reported, that itself indicates that something needs to happen?
>
> A [Mr Kinmond]: Absolutely, or if it has been reported and things aren't being handled appropriately, then the community would take a very dim view of an oversight body failing to act.[260]

We consider there is a lack of clarity about respective roles and responsibilities for oversight bodies as they relate to the safety of children in organisations. This makes it difficult for members of the public—including children, young people and their parents—to understand where they can make a complaint or seek help if they have concerns about their treatment within organisations. It renders the complaints process dependent on the judgment of the oversight bodies.

5.2 A new Commission for Children and Young People

As foreshadowed, we consider it is important that the prevention and management of child sexual abuse is overseen by a body with specialist skills in, and knowledge of, children's rights and safety. We consider a new Commission for Children and Young People in Tasmania—with appropriate independence, powers and resourcing—would achieve a clearer and more cohesive system of oversight of children's safety than exists currently.

It is not clear whether the Tasmanian Government has contemplated the establishment of a Commission for Children and Young People with expanded powers and responsibility for monitoring and oversight of the Child and Youth Safe Organisations Framework. While the Tasmanian Government has announced and made some progress towards appointing a new Independent Regulator, we consider these functions should ultimately be performed by the new Commissioner for Children and Young People.

The Commission for Children and Young People would subsume the current functions of the Commissioner for Children and Young People, which are to:

- advocate for all children and young people in Tasmania
- act as advocate for children and young people in youth detention
- research, investigate and influence policy development on matters relating to children and young people generally
- promote, monitor and review the wellbeing of children and young people generally
- promote and empower the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives

- help ensure the State satisfies its national and international obligations regarding children and young people generally
- encourage and promote the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them
- perform any other prescribed functions.[261]

However, the Commission for Children and Young People would also have several new and expanded functions to support recommendations in other parts of our report. In Chapters 9 and 12, we examine the oversight of the out of home care and youth detention systems respectively. In those chapters, we discuss oversight functions exercised regarding individual children in out of home care and youth detention, and, more broadly, regarding the out of home care and youth detention systems.

Regarding individuals, we distinguish between advocacy on behalf of an individual child—including visiting a child in out of home care or youth detention, assisting them to raise any concerns about their experiences and seeking resolution of those concerns—and the formal investigation of a complaint made by a child or young person about out of home care or youth detention. We also consider systemic advocacy by oversight bodies—for example, making recommendations to government to improve the out of home care and youth detention systems.

In Chapters 9 and 12, we make several recommendations to improve individual advocacy for children in out of home care and youth detention, and to strengthen oversight of those systems. We recommend (among other matters):

- establishing a Commissioner for Aboriginal Children and Young People to advocate for Aboriginal children and young people in out of home care and youth detention, and more broadly (Recommendation 9.14)
- establishing an independent community visitor scheme for children in out of home care, youth detention and other residential youth justice facilities (Recommendations 9.34 and 12.36)
- establishing an independent Child Advocate to advocate on behalf of children and young people in out of home care and youth detention, with the power to make a complaint to the Ombudsman on behalf of a child or young person in out of home care or youth detention, and to apply to the Tasmanian Civil and Administrative Tribunal to review departmental decision-making in relation to a child in out of home care (Recommendations 9.33, 9.34 and 9.35)
- expanding external monitoring and oversight of the out of home care and youth justice systems (Recommendations 9.38 and 12.38).

In addition to the current functions of the Commissioner for Children and Young People set out here, the functions of the new Commission for Children and Young People would therefore include:

- educating relevant entities on the Child and Youth Safe standards, overseeing and enforcing compliance with those standards and related functions under the Child and Youth Safe Organisations Act, with reference to the Victorian child safe organisational framework and underlying legislative framework[262]
- administering, overseeing and monitoring the Reportable Conduct Scheme and related functions under the Child and Youth Safe Organisations Act with reference to the Victorian child safe organisational framework and underlying legislative framework[263]
- administering the independent community visitor scheme for children in out of home care, youth detention and other residential youth justice facilities (Recommendations 9.34 and 12.36)
- advocating for individual children in out of home care and youth detention, including supporting children to make complaints to the Ombudsman and (for children in out of home care) to apply for an independent review of departmental decision-making (Recommendations 9.35 and 9.36)
- monitoring the operation of the out of home care and youth justice systems and the provision of out of home care and youth justice services to children, by analysing data on those systems regularly provided by the Department for Education, Children and Young People and conducting own motion systemic inquiries into aspects of those systems and/or the services received by an individual child or group of children in those systems (Recommendations 9.38 and 12.38)
- recommending improvements to government for the out of home care and youth justice systems
- promoting the participation of children in the out of home care and youth justice systems in decision-making that affects their lives
- upholding and promoting the rights of children in the out of home care and youth justice systems.

The new Commission for Children and Young People should have all powers necessary for it to perform these functions.

We also make some specific recommendations relating to oversight bodies in particular organisational contexts across our report. This includes recommendations relating to strengthening and clarifying the role of the Teachers Registration Board (refer to Chapter 6).

In the next section, we outline the key statutory roles required to support the new Commission for Children and Young People, the need to clarify regulatory and advocacy roles, and several measures to ensure the independence of the new Commission from government.

5.3 Statutory roles

Legislation establishing the new Commission for Children and Young People should provide for the appointment by the Governor of three statutory roles, each for a term of five years:

- Commissioner for Children and Young People, who would also be the Independent Regulator of the Child and Youth Safe Standards and the Reportable Conduct Scheme
- Commissioner for Aboriginal Children and Young People (recommended in Chapter 9)
- Child Advocate (Deputy Commissioner) (recommended in Chapter 9).

As is currently the case for the Commissioner for Children and Young People, the legislation should permit the reappointment of a person appointed to any of the above roles for a further five-year term.[264]

We note there are different models in Australian jurisdictions for establishing a Commissioner for Aboriginal Children and Young People. For example, in Victoria, the *Commission for Children and Young People Act 2012* (Vic) establishes a Commission for Children and Young People, which is constituted by the 'Principal Commissioner'. The Principal Commissioner has all the functions and powers of the Commission.[265] The Victorian Commissioner for Aboriginal Children and Young People is appointed by the Governor in Council as an 'additional Commissioner' under that Act but does not have separate statutory functions or powers.[266] The Principal Commissioner may delegate relevant functions and powers to an additional Commissioner.[267]

In practice, the activities of the Victorian Commission for Children and Young People relating to Aboriginal children are led by the Commissioner for Aboriginal Children and Young People, however the Commissioners consult each other on 'key policy or strategic issues'.[268] Ms Buchanan and the former Commissioner for Aboriginal Children and Young People, Justin Mohamed, have previously expressed the view that the Victorian legislation should include clearly defined functions and powers for the Commissioner for Aboriginal Children and Young People.[269]

In South Australia, the Commissioner for Children and Young People and the Commissioner for Aboriginal Children and Young People are appointed under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA), and each has their own separate legislated functions and powers.[270] These include the power to employ staff.[271]

A 2021 report of Western Australia's parliamentary Joint Standing Committee on the Commissioner for Children and Young People noted the potential for duplication and overlap with the South Australian model.[272] The committee did not recommend adopting the South Australian model, but suggested features of the South Australian legislation 'may be worth exploring' in the event of implementation of an Aboriginal children's commissioner in Western Australia.[273] We agree that the Commissioner for Children and Young People and the Commissioner for Aboriginal Children and Young People should work together and avoid duplication.

As outlined in Chapter 9, we recommend the role of Commissioner for Aboriginal Children and Young People be given its own, clearly defined statutory functions and powers to promote the safety and wellbeing of Aboriginal children. These functions and powers should be equivalent to those of the Commissioner for Children and Young People. However, we acknowledge it would not be practical to vest regulatory functions regarding the Child and Youth Safe Standards and the Reportable Conduct Scheme in two separate statutory roles. We therefore recommend the regulatory functions of the new Commission for Children and Young People be the responsibility of the Commissioner for Children and Young People, although they should consult with the Commissioner for Aboriginal Children and Young People where appropriate.

A further question arises about the relationship between the new Child Advocate and the Commissioner for Aboriginal Children and Young People. In Chapter 9, we recommend the new Commission for Children and Young People be given the function of advocating for individual children in out of home care and youth detention, primarily through an independent community visitor scheme (Recommendation 9.34). Under this scheme, independent community visitors would regularly visit children in out of home care, youth detention and other residential youth justice facilities, help them raise any concerns they may have with the Department for Education, Children and Young People, and seek to have those concerns resolved on the child's behalf. We also recommend appointing at least one Aboriginal visitor, who would be available to visit Aboriginal children in out of home care and youth detention where possible.

In Chapter 9, we also recommend the individual advocacy function of the new Commission for Children and Young People be supported by a small number of legally trained child advocacy officers, who would be available to help children in out of home care or youth detention with more complex matters or concerns, such as applying for a review of a departmental decision about out of home care (Recommendation 9.36). The new Child Advocate would be responsible for appointing community visitors and child advocacy officers and administering these programs.

Given the substantial over-representation of Aboriginal children in out of home care and youth detention (refer to Chapters 9 and 12), it would be extremely beneficial for Aboriginal children in those systems to have access to a senior Aboriginal person

to advocate on their behalf. The South Australian Guardian for Children and Young People, Penny Wright, told us that only an Aboriginal advocate can help foster strong connection to culture and identity for Aboriginal children in custody in a meaningful way.[274] Accordingly, in addition to the appointment of Aboriginal visitors, we recommend the Commissioner for Aboriginal Children and Young People undertakes individual advocacy for Aboriginal children in out of home care or youth detention who request the Commissioner's assistance.

Recommendation 18.6

1. The Tasmanian Government should establish a statutory Commission for Children and Young People, which includes the following roles, each appointed for a term of five years:
    a. a Commissioner for Children and Young People
    b. a Commissioner for Aboriginal Children and Young People
    c. a Child Advocate (Deputy Commissioner).
2. The Commission for Children and Young People should, in addition to the functions of the current Commissioner for Children and Young People under the *Commissioner for Children and Young People Act 2016*, have the following functions:
    a. educating relevant entities on the Child and Youth Safe Standards and overseeing and enforcing compliance with those standards as Independent Regulator under the *Child and Youth Safe Organisations Act 2023*
    b. administering the Reportable Conduct Scheme as Independent Regulator under the *Child and Youth Safe Organisations Act 2023*
    c. administering the independent community visitor scheme for children in out of home care, youth detention and other residential youth justice facilities (Recommendations 9.34 and 12.36)
    d. advocating for individual children in out of home care, youth detention and other residential youth justice facilities
    e. monitoring the operation of the out of home care and youth justice systems and the provision of out of home care and youth justice services to children (Recommendations 9.38 and 12.38)
    f. conducting inquiries into the out of home care and youth justice systems and the services provided to individual children in those systems, including own motion inquiries (Recommendations 9.38 and 12.38)

g. making recommendations to government for out of home care and youth justice system improvements

h. promoting the participation of children in out of home care and youth justice in decision making that affects their lives

i. upholding and promoting the rights of children in the out of home care and youth justice systems.

3. The Commission for Children and Young People should have all necessary powers to perform its functions.

5.4 Separation of regulatory and advocacy functions

As outlined earlier, the new Commission would have individual advocacy functions for vulnerable children, and systemic monitoring and oversight functions for the out of home care and youth justice systems, as well as being responsible for administering the Child and Youth Safe Standards and the Reportable Conduct Scheme.

As discussed, the Victorian Commission for Children and Young People regulates organisations subject to the Child Safe Standards and Reportable Conduct Scheme, while also undertaking systemic monitoring and oversight functions in relation to the out of home care and youth justice systems. While it does not have an explicit individual advocacy function under its enabling legislation, the Victorian Commission for Children and Young People administers an independent community visitor program for children in youth justice centres.[275] It also has an arrangement whereby children in youth justice centres can contact the Commission for Children and Young People directly via the Youth Justice telephone system to raise concerns.[276] In practice, the Victorian Commission for Children and Young People undertakes individual advocacy for children in custody.

In addition, in June 2022, the Victorian Government introduced a Bill to confer power on the Victorian Commission for Children and Young People to advocate for individual children in out of home care or in contact with the child protection system.[277] This suggests that there is no inherent obstacle to a single body undertaking advocacy for individual children, performing systemic monitoring and oversight functions, and administering Child Safe Standards and a reportable conduct scheme.

Still, we acknowledge there may appear to be a tension or conflict between the performance of individual advocacy functions and regulatory functions by a single entity. For example, a situation may arise in which the new Commission for Children and Young People is undertaking advocacy on behalf of a child in out of home care who is the subject of a reportable allegation and, at the same time, monitoring the investigation of that allegation. Commissioner McLean indicated that if the Tasmanian Commissioner

for Children and Young People was tasked with the oversight and administration of Child Safe Standards and a reportable conduct scheme, there would be a need to consider 'the appropriateness or otherwise of the Commissioner retaining an individual advocacy role' for children in youth detention.[278]

However, we consider this tension could be overcome by ensuring:

- functions in respect of the Child and Youth Safe Standards and Reportable Conduct Scheme are performed by the Commissioner for Children and Young People, supported by a separate regulatory team within the Commission for Children and Young People
- individual advocacy functions for children in out of home care and youth detention are performed by the new Child Advocate and (where Aboriginal children are concerned) the Commissioner for Aboriginal Children and Young People, supported by independent community visitors and child advocacy officers.

5.5 The importance of independence

The United Nations' Paris Principles for establishing national human rights organisations require such organisations to be independent of government.[279] The *Commissioner for Children and Young People Act 2016* ('Commissioner for Children and Young People Act)' requires the Commissioner for Children and Young People to act 'independently, impartially and in the public interest' when performing a function or exercising a power, 'unless otherwise specified'.[280]

Ms Buchanan observed that independence was crucial for her role as Principal Commissioner of the Victorian Commission for Children and Young People:

> I simply can't imagine performing my regulatory functions to improve child safety without that independence. My role, both as an oversight body in terms of youth justice and out of home care, but also in terms of a regulator of organisations to improve child safety often requires that I am having to consider what powers I have at hand, I'm having to engage and persuade, but ultimately I'm having to make decisions about, if an organisation is not doing what I think needs to be done, what the law and certain standards require, then my independence means that I can make a clear objective decision about what powers and functions might need to be exercised: that's what independence means to me.[281]

Ms Buchanan also referred to the inherent tension involved in maintaining 'good, open but robust' relationships with the bodies regulated by the Victorian Commission for Children and Young People, but taking action where a risk to a child or children requires it:

> … I cannot imagine overlooking an issue for the sake of a relationship; I need to be able to kind of engage constructively, collaboratively, work with organisations and leaders of organisations, but that only works if there's a mutual respect for our roles and if, to be frank, the organisation with which I'm working understands that at any point I may need to take some stronger and more formal action; that's kind of the way that I work.
>
> … all of our work really, whether it's oversight work or our regulatory work, is risk-based, so we kind of assess how significant is the risk, what are the issues for either the individual child or children more broadly, and we make our decisions on what action is needed based very much on that.[282]

Similarly, Mr Kinmond told us:

> And so, there is that aspect of being in no doubt that whilst on the one hand you seek to facilitate and work in a constructive relationship with bodies with a common aim of protecting children, your calling, your responsibility, is to act always in the public interest, and the moment you lose sight of that you probably should go and find employment elsewhere.[283]

We were impressed by the level of independence clearly shown in such comments.[284]

We also heard about the importance of adequate resourcing to support the independence of regulatory and oversight bodies. South Australian Guardian for Children and Young People, Penny Wright, told us the legislative independence of her roles as Guardian and Training Centre Visitor can be constrained if adequate resources are not provided to fulfil the statutory functions of those offices.[285] Similarly, Mr Kinmond commented that without institutional independence, and sufficient powers and resourcing to enable an integrity body to carry out its statutory functions, its aims are likely to go largely unrealised.[286]

Kim Backhouse, Chief Executive Officer, Foster and Kinship Carers Association, observed the role of Tasmanian Commissioner for Children and Young People has been 'a chequered portfolio' in the past, as it has been held by individuals from interstate who have 'clashed with the government'.[287] The role has been held by 10 individuals (including Commissioner McLean) since it was first established in 2000.[288]

Andrea Sturges, Chief Executive Officer, Kennerley Children's Homes, expressed the view that the Commissioner for Children and Young People 'should not be a political appointment'.[289] While we are aware some initial concerns were expressed at the time of Commissioner McLean's appointment about the appropriateness of an individual moving from a political role to an independent statutory office, the Commissioner indicated she had not experienced political interference during her term.[290]

Former Commissioner for Children and Young People, Mark Morrissey, told us that in 2017 he was asked to 'back off' advocating for changes at Ashley Youth Detention Centre by a senior government politician, and to 'cease writing' to the then Minister for Child Protection by a senior member of the Minister's staff.[291] According to Mr Morrissey, this appeared to be a request to change his relationship with the Minister and Parliament, to instead direct correspondence through the Department.[292]

Mr Morrissey also referred to 'several subtle factors' that can bring pressure to bear on the independence of the role of Commissioner for Children and Young People.[293] These include the Department delaying recruitment to staff vacancies and applying efficiency dividends, which Mr Morrissey described as 'turn[ing] the resourcing tap down, by increments and delay'.[294] He also observed that relying on the Department for human resources, information technology, finance and other corporate support can limit the efficacy of the role and may create 'real or perceived conflicts of interest', whereby the Commissioner for Children and Young People is required to hold to account the Department it relies on for operational support.[295] The Integrity Commission agreed with this observation, telling us '[a]s a small agency, it is inevitable that we be reliant on administrative and technological support from another department, and we are not sufficiently resourced to operate otherwise'.[296]

Ms Buchanan highlighted the importance of operational independence, observing that:

> I, as the Commissioner, need to be able to make decisions about the source of advice, make decisions about how I and we at the Commission approach our legislative functions. I need to make decisions, as I can, about who I employ, they need to be my employees, not employees of a department, all of those are very important aspects to my independence and my ability to perform my role.[297]

5.6 Transparency of statutory appointments

In Western Australia, the Governor appoints the Commissioner for Children and Young People on the recommendation of the Premier.[298] Before making a recommendation for appointment, the Premier must:

- advertise throughout Australia for expressions of interest from people with professional qualifications and substantive experience in matters affecting children
- consult with the leader of any political party that has at least two members in either house of parliament.[299]

The *Commissioner for Children and Young People Act 2006* (WA) also specifies that children and young people must be involved in the selection process.[300] We understand this requirement could be met through having a children's selection panel, as well as an adult selection panel, for example.

We note that the process for appointment of the Chief Commissioner of the Tasmanian Integrity Commission by the Governor requires the Attorney-General to consult first with the Joint Standing Committee on Integrity of the Tasmanian Parliament.[301] This is a multi-party committee comprising three members of the Legislative Council and three members of the House of Assembly, required to be appointed at the commencement of the first session of each parliament.[302]

The Integrity Commission Act also provides for the appointment of a chief executive officer of the Integrity Commission by the Governor on the recommendation of the Premier, following consultation with the Joint Standing Committee on Integrity.[303]

We recommend further safeguards to the integrity of appointments to the new Commission for Children and Young People, as described below.

Recommendation 18.7

The Tasmanian Government should ensure the process for appointing future Commissioners and Deputy Commissioners for Children and Young People adopts the following:

a. future Commissioners and Deputy Commissioners be appointed following an externally advertised merit-based selection process to ensure they have relevant professional qualifications and substantive experience in matters affecting vulnerable children

b. the recruitment process for these roles include a non-partisan adult selection panel with at least one member external to the Tasmanian State Service, and a separate children's selection panel

c. the adult and children's selection panels for the role of Commissioner for Aboriginal Children and Young People have a majority of Aboriginal members

d. before making a recommendation to the Governor for an appointment to the Commission for Children and Young People, the Minister be required to consult with the leader of any political party with at least two members in Parliament.

5.7 Funding and employment of staff

According to the Paris Principles, a national human rights organisation must have adequate funding to enable it to have its own staff and premises, and not be 'subject to financial control which might affect its independence'.[304] It is essential that the new Commission for Children and Young People receives enough funding to enable it to perform its various functions.

The funding allocated to the Commissioner for Children and Young People for 2021–22 was $1,386,000.[305] Commissioner McLean told us her budget flowed through the former Department of Communities, rather than being a separate appropriation.[306] In contrast, the Ombudsman, Mr Connock, told us he had a separate appropriation for funding and was therefore in control of his own budget, which was 'helpful'.[307] The Office of the Ombudsman has a service-level agreement with the Department of Justice for the provision of human resources and information technology support.[308]

As outlined in Chapter 9, Commissioner McLean told us that resourcing constraints have limited her ability to fulfil her current functions.[309] In particular, she told us in April 2022, the resourcing of her office seriously limited her ability to undertake 'own motion' investigations or inquiries.[310] Despite this, in December 2022, Commissioner McLean announced she would undertake an own motion investigation into the allocation of child safety officers for children in out of home care in Tasmania, under the new out of home care case management model.[311] Commissioner McLean told us that the decision to undertake an own motion investigation was 'not made lightly' as it diverted resources from and delayed other core reporting, research and advisory activities of her office.[312]

The Commissioner for Children and Young People Act provides that a person may be employed under the *State Service Act 2000* ('State Service Act') 'for the purpose of enabling the Commissioner to perform his or her functions' under the Act.[313] A person so employed may serve the Commissioner for Children and Young People in any capacity 'in conjunction with State Service employment'.[314] Commissioner McLean told us this 'creates an inherent conflict', as her staff are State Service employees employed to implement the Government's policies and programs, while the Commissioner 'sometimes communicates different policy views to those of the Government'.[315] In April 2022, Commissioner McLean told us she was supported by nine staff with several new positions recently established but not yet filled.[316]

It is not clear that having staff who are State Service employees necessarily creates a conflict for a regulatory or oversight body. Staff of the Tasmanian Integrity Commission and Ombudsman are appointed in line with the State Service Act.[317] Similarly, staff of the Victorian Commission for Children and Young People are employed under the *Public Administration Act 2004* (Vic), while staff of the Queensland Family and Child Commission are employed under the *Public Service Act 2000* (Qld).[318]

Ms Wright told us the funding for the South Australian Guardian for Children and Young People comes from the Department of Education, and her staff are Department of Education employees rather than employees of the Department of Child Protection.[319] She described this as 'a very effective arrangement' as 'a conflict of interest could well arise if the overseen body is determining the funding and employment arrangements of the oversight body'.[320] Ms Wright indicated it was 'not acceptable to have to rely on "goodwill" from the Departments or Ministers who are subject to … oversight'.[321]

In contrast, employees of the South Australian Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People are deemed not to be public service employees, other than for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* (SA).[322]

In our view, the new Commission for Children and Young People should be funded via separate appropriation, like the Ombudsman, rather than through the Department for Education, Children and Young People. The Commission for Children and Young People should have the power to control its own budget and hire its own staff. While we acknowledge Commissioner McLean's concerns about the status of her staff as State Service employees, we do not consider this would have a material bearing on the independence of the new Commission for Children and Young People, if the other protections that we recommend in this chapter were implemented. If human resource and information technology support are needed, this should be achieved through a service agreement with a department the Commission does not have a regulatory relationship with.

Recommendation 18.8

The Tasmanian Government should ensure the Commission for Children and Young People is separately and directly funded, rather than through the Department for Education, Children and Young People. Any funding arrangements or conditions should be structured to ensure the Commission has power to control its budget and staffing.

5.8 Oversight of the new Commission for Children and Young People

In Western Australia, the work of the Commissioner for Children and Young People is monitored and examined by the Joint Standing Committee on the Commissioner for Children and Young People of the Western Australian Parliament, appointed under the *Commissioner for Children and Young People Act 2006* (WA).[323] This committee comprises two members appointed by the Legislative Assembly and two members appointed by the Legislative Council.[324]

The functions of this committee are to:

- monitor, review and report to parliament on the exercise of the functions of the Western Australian Commissioner for Children and Young People

- examine the reports of the Western Australian Commissioner for Children and Young People
- consult regularly with the Western Australian Commissioner for Children and Young People.[325]

Similarly, in New South Wales, the Committee on Children and Young People—a parliamentary joint committee established under the *Advocate for Children and Young People Act 2014* (NSW)—oversees the work of the Children's Guardian.[326] Mr Kinmond indicated it was useful for a regulatory body to report to a 'Parliamentary oversight body' as an 'important check and balance'.[327]

In Tasmania, the Integrity Commission, Ombudsman and Custodial Inspector—referred to in the Integrity Commission Act as 'integrity entities'—are monitored by the Joint Standing Committee on Integrity of the Tasmanian Parliament.[328] The functions of this committee are to:

- monitor and review the performance of the functions of integrity entities
- examine the annual reports or any other report of an integrity entity
- report to both houses of parliament on matters relevant to an integrity entity.[329]

To maximise independence, we consider the performance of the functions of the new Commission for Children and Young People should be monitored by a joint standing committee of the Tasmanian Parliament—whether by the Joint Standing Committee on Integrity or by another joint standing committee established for this purpose, as in Western Australia.

The Ombudsman and the Integrity Commission should have the power to receive and investigate complaints about the new Commission for Children and Young People as a 'public authority' under the *Ombudsman Act 1978* ('Ombudsman Act') and the Integrity Commission Act respectively.[330]

Recommendation 18.9

A joint standing committee of the Tasmanian Parliament should oversee the performance and proper execution of functions of the Commission for Children and Young People.

6 Other oversight and regulatory bodies

While we expect the Commission for Children and Young People would be the primary gateway for child safety matters, we acknowledge there may be instances where complaints and concerns about how an organisation is working to protect children may fall within the jurisdiction of other oversight bodies—for example, where there is staff misconduct (Integrity Commission) or where there is a complaint about the administrative action of a public authority or a public interest disclosure (the Ombudsman).

While the Reportable Conduct Scheme will also ensure appropriate scrutiny and oversight of the management of child safety complaints in the most high-risk organisations in Tasmania, not all departments and organisations will be legally captured by these schemes where they are not directly involved with providing services to children. In addition, the Commission for Children and Young People may identify systemic concerns that fall outside its area of responsibility.

Even with a new Commission for Children and Young People with expanded functions, the Ombudsman would retain a role in investigating complaints about public authorities and public interest disclosures. The Integrity Commission would retain responsibility for promoting and enhancing standards of ethical conduct by public officers through education, dealing with and assisting public authorities in handling misconduct and making findings and recommendations regarding its investigations and inquiries. To achieve a cohesive and effective oversight system, we recommend greater clarity in how these bodies work together—and suggest that each should be proactive in encouraging any complaints or concerns that are within their powers to investigate and resolve. Once such complaints are received, these oversight bodies should work together seamlessly to achieve the best possible outcome that promotes the safety and wellbeing of children and young people—particularly through clear and enabling information sharing arrangements.

The Registrar of the Registration to Work with Vulnerable People Scheme also plays a role in managing the risks posed by staff and volunteers in a range of organisational settings.

In this section, we discuss the roles and functions of these other integrity and oversight bodies and make recommendations for improvements. Regarding the Registrar of the Registration to Work with Vulnerable People Scheme, we recommend statutory guidance on how they undertake an assessment of risk of harm.

6.1 Integrity Commission and Ombudsman

In Section 5.2, we propose a new Commission for Children and Young People that will support and oversee Tasmania's introduction of Child and Youth Safe Standards and the Reportable Conduct Scheme. These measures will go a long way to reducing the need for recourse to other oversight bodies, such as the Ombudsman and Integrity

Commission, as most matters relevant to children and young people will be within the remit of the new Commission. Organisations with the greatest risk factors for abuse will also be legislatively compelled under the Reportable Conduct Scheme to proactively notify the new Commission (as our recommended Independent Regulator) of any reportable complaints, which can then oversee and monitor the organisation's investigation and response to that complaint to ensure it is appropriate. This increased transparency and scrutiny (alongside the capacity building that will occur as the new Commission supports and guides organisations in their responses) will increase the integrity and quality of organisational responses over time. However, these other oversight bodies will still play a role in protecting the integrity and good administration of the State Service.

We hold concerns that oversight bodies have sometimes inappropriately referred matters back to departments to investigate complaints against them. While referring complaints back to an entity is standard practice, judgment must be exercised in deciding whether this is appropriate, and the oversight body should retain oversight of the department's subsequent actions.

The Integrity Commission told us it receives very few complaints about child sexual abuse.[331] Where it does so, it would generally liaise with Tasmania Police and would be unlikely to take further action if a police investigation were to occur, unless the complaint raised broader concerns, for example, relating to poor reporting structures or procedures.[332] We consider this appropriate, although note that in the future the complaint should also be referred to the Independent Regulator of the Reportable Conduct Scheme.

However, in Chapter 14, we discuss the Integrity Commission's handling of a whistleblower complaint about Launceston General Hospital management's response to child safety concerns relating to a registered nurse, James Griffin. In that complaint, the Integrity Commission conducted an initial assessment before referring it to the Department of Health to investigate. This departmental investigation was ultimately undertaken by the human resources team led by an individual who had a direct conflict of interest. Despite some reservations, the Integrity Commission ultimately accepted this investigation (which we now know was flawed) without further action. In that chapter, we find the Integrity Commission's monitoring of the Department's response to the complaint was insufficient.

In Chapter 11, Case study 7 we discuss how in the mid-2010s the Office of the Ombudsman referred a serious complaint made by a detainee back to Ashley Youth Detention Centre for response, without adequate monitoring and oversight. While we were told this was an error, this example shows why appropriate independent oversight over youth detention is important.

We consider it important that the Integrity Commission and Ombudsman clarify (and publicise) the circumstances in which it will be appropriate for complaints related to child sexual abuse to be referred back to an agency, and when it is not. We consider this guidance should consider the following matters:

- the significance of the matter being alleged or complained about and the risks associated with that conduct
- the potential for actual or perceived conflicts of interest in the relevant department or agency
- the capacity of the department or agency to undertake a robust and quality investigation
- the risks associated with retribution and reprisal toward the complainant and of their anonymity being compromised
- public considerations, including the importance of preserving public confidence in Tasmania's integrity and oversight regime
- whether the complaint goes to matters relevant to multiple public authorities, which may benefit from a more global, systemic review by the entity.

Where possible, the Integrity Commission and Ombudsman should consult the complainant on the intended approach to managing the complaint (particularly if the oversight body wishes to send the complaint back to the relevant department or agency) to enable that individual to give their views on the suitability of this approach. This is particularly important if the complainant is seeking to maintain anonymity or is fearing reprisal.

Recommendation 18.10

1. The Integrity Commission and Ombudsman should develop a publicly available policy for complaints related to child sexual abuse which explains the circumstances in which complaints may be referred back to the agency that is the subject of the complaint for investigation.
2. The Integrity Commission and Ombudsman should consult the complainant on the intended approach to handling the complaint, including referring the complaint back to the relevant agency.

The Reportable Conduct Scheme will not capture all departments and organisations, which may leave a role for the Integrity Commission in overseeing the management of allegations of child sexual abuse in some situations. The Integrity Commission

told us that currently, public authorities are not required to notify the Integrity Commission when they are responding to an allegation of misconduct (including serious misconduct). This means it 'may not be aware of matters involving child sexual abuse'.[333] Recommendation 11 of the *Independent Five Year Review of the Integrity Commission Act 2009* requires public authorities to notify the Integrity Commission of any allegations of serious misconduct.[334] The Integrity Commission advocated the Tasmanian Government implement this recommendation.[335] We agree this should occur, where the agency does not have an obligation to notify the Commission for Children and Young People of the allegation under the Reportable Conduct Scheme.

Recommendation 18.11

The Tasmanian Government should implement Recommendation 11 of the Independent Reviewer's 2016 Report *Independent Review of the Integrity Commission Act 2009*, which would oblige public authorities to notify the Integrity Commission of any allegations of serious misconduct.

6.2 Registrar of the Registration to Work with Vulnerable People Scheme

Registration to work with vulnerable people requirements are an important regulatory safeguard, as they provide for screening and monitoring of staff or volunteers who work with vulnerable people, including children. Tasmania requires individuals undertaking certain 'regulated activities', including a range of services to children (such as health, education and youth justice), to hold registration to work with vulnerable people.[336]

The importance of the role of the Registrar of the Registration to Work with Vulnerable People Scheme cannot be overstated. Although their office is small, it is pivotal to the administrative structures designed to protect children against sexual abuse. Any comments in this section should not be seen as criticism of the Registrar or the staff of their office.

6.2.1 Opportunities for reform

The former Registrar of the Registration to Work with Vulnerable People Scheme ('Registrar'), Peter Graham, told us in his statement that, as at 31 July 2022, there were 147,878 people who held registration.[337] Since establishing the scheme in 2014, there have been 2,204 people who have had their application for registration rejected (or have withdrawn their application after past conduct was queried), with a further 397 people having surrendered their registration (or having had it suspended or cancelled) in response to information reported to the Registrar.[338]

However, Mr Graham told us there were opportunities to strengthen the Registration to Work with Vulnerable People Scheme:

- ensuring a consistent understanding of reporting and notification requirements to make certain the Registrar receives information relevant to their decision making[339]
- all State Service agencies undertaking a systemic review of past complaints or investigations[340]
- amending the *Registration to Work with Vulnerable People Act 2013* ('Registration to Work with Vulnerable People Act') to enable determinations to suspend or cancel registration to be the subject of review by the Tasmanian Civil and Administrative Tribunal[341]
- creating statutory guidance regarding the power of the Registrar to suspend a person's registration.[342]

We heard that the Registrar is not consistently receiving information relevant to their decision-making, including from Child Safety Services.[343] Mr Graham said he was, however, optimistic about the ability of the Child and Youth Safe Organisations Framework to help reinforce the obligations of agencies and other organisations to report behaviour.[344]

Mr Graham told us that he considered it 'likely' that a systematic review by State Service agencies of past complaints or investigations would reveal information that should be reported to the Registrar.[345] In Chapter 11, we discuss examples of departments (including the Department of Justice and the former Department of Communities) not consistently reporting allegations of child sexual abuse received about current or former Ashley Youth Detention Centre staff. For this reason, we recommend in Chapter 12 an independent audit of past complaints and redress claims to ensure the Registrar has all relevant information they need to assess risk.

The Registration to Work with Vulnerable People Act requires that applications for the review of any decision or determination by the Registrar be made to the Administrative Appeals Division of the Magistrates Court.[346] Mr Graham told us he would support change to enable determinations to suspend or cancel registration be reviewed by the Tasmanian Civil and Administrative Tribunal.[347] We agree with this suggestion.

The Tribunal was created after the Registration to Work with Vulnerable People Act was introduced and we consider that its expertise in administrative law and its ability to provide appropriately qualified members to hear reviews makes it a more appropriate jurisdiction than the Magistrates Court for administrative reviews of determinations under the Registration to Work with Vulnerable People Act.[348] The introduction of a tribunal review process would also make Tasmania's approach consistent with that of other states and territories.[349]

Accordingly, we recommend that the Registration to Work with Vulnerable People Act be amended so that administrative reviews under the Act are undertaken by the Tasmanian Civil and Administrative Tribunal, instead of the Administrative Appeals Division of the Magistrates Court. Any legislative amendment should also require Tribunal members hearing administrative reviews of decisions under the Act to have the knowledge, skills, experience and aptitude to deal with each matter, including in relation to child sexual abuse, neglect and family violence.

We are aware that, where an applicant applies for a review of a determination of the Registrar to suspend, refuse or cancel their registration under the Registration to Work with Vulnerable People Act, there may be no person who opposes that application, whether the application is in the Magistrates Court or the Tasmanian Civil and Administrative Tribunal. We did not examine this issue in detail, and we are not making a formal recommendation about it. It is unclear to us whether the Registrar should be empowered to argue for such refusal, suspension or cancellation. This, however, may be an area where consideration could be given to providing a child affected by the registration, that child's representative, the Commission for Children and Young People or a government agency the authority to intervene and oppose such review applications.

In Chapter 11, we find that occasionally, the Registrar of the Registration to Work with Vulnerable People Scheme adopted too high an evidentiary threshold in assessing whether Ashley Youth Detention Centre staff with allegations against them posed an unacceptable risk to children. Mr Graham also told us there is a lack of statutory guidance regarding the power of the Registrar to suspend a person's registration. The Registrar is required to conduct an additional risk assessment of a registered person if they believe, on reasonable grounds, there is 'new, relevant information about that person'.[350] The Registrar is also empowered to suspend a person's registration while this risk assessment is undertaken, but there is no guidance on when and how that action should be taken.[351] Mr Graham told us he generally reserved this suspension power for situations where the new and additional information would likely prevent registration (for example, relating to a relevant criminal offence) or where he formed the view that the person posed an unacceptable risk and a suspension was justified while the cancellation process took place.[352]

The suspension of registration to work with vulnerable people can provide grounds for the termination of employment and Mr Graham reported that, at times, the Registrar has been pressured by agencies to suspend a person who is subject to an additional risk assessment.[353] Mr Graham accepted sometimes this was a desirable outcome but also often meant that employment direction investigations may cease before completion.[354] Mr Graham told us:

> The existence of such a power, the absence of clear legal test and the lack of appeal mechanism has caused confusion and had unintended behavioural responses from agencies.[355]

In Chapter 20, we discuss a tendency by departments to prefer managing concerns about conduct of staff through Employment Direction No. 6—Inability, which allows for a determination that an employee is unable to perform their duties because of a loss of registration, instead of managing concerns by conducting misconduct investigations.

We also discussed the response of the Registrar to information received about staff at Ashley Youth Detention Centre in Chapter 11. While we accept the Registrar was often working with limited or incomplete information, we saw examples of what we consider a high evidentiary threshold adopted in relation to suspensions. We make a finding in that case study that, on occasion, the Registrar of the Registration to Work with Vulnerable People Scheme appeared to adopt too high an evidentiary threshold in assessing whether staff at the Centre with allegations against them posed an unacceptable risk to children.

The Registration to Work with Vulnerable People Act is clear that the Registrar's assessment of whether a person poses an unacceptable risk to vulnerable persons is a predictive exercise to assess future risk to vulnerable persons, based on known facts and present circumstances.[356] Such an assessment does not need to be based on proof of previous harm to vulnerable persons. For example, the Registrar may consider a past allegation of child sexual abuse in their assessment despite not having substantiated, or being able to substantiate, that that allegation occurred 'on the balance of probabilities'.[357]

The broader understanding of a risk assessment under the Registration to Work with Vulnerable People Act is supported by the Second Reading Speech for the Registration to Work with Vulnerable People Bill which became the Act, which states that the Bill provides for a:

> … broader basis on which to conduct background checking that includes a person's criminal history, non-conviction information, relevant offences and other pertinent information.[358]

The concept of risk assessment and its predictive nature is not novel. It involves the evaluation of the likelihood of an event occurring, alongside gauging the magnitude of harm which may occur if the event occurs. The Registrar should decrease their threshold to determine whether to exercise their power under the Registration to Work with Vulnerable People Act to refuse or cancel registration as the risk that a person poses to vulnerable persons increases. That threshold should be lowered further in relation to a suspension of registration to protect vulnerable persons who may be at risk of harm while a comprehensive assessment of risk is undertaken.

We recommend that the Tasmanian Government provides the Registrar with guidelines for how risk assessments should be conducted. We further recommend that the Act be amended to provide that the principles outlined by the Federal Circuit and Family Court of Australia in the case named *Isles and Nelissen* regarding risk assessments be applied

by the Registrar in determinations of risk relating to registration, suspension and cancellation of registration under the Registration to Work with Vulnerable People Act.[359] That case considered the test relating to unacceptable risk under the Commonwealth *Family Law Act 1975* (Cth). It referred to:

> ...two separate questions ... on the one hand, whether or not allegations of abuse are proven on the balance of probabilities; and on the other, whether or not an unacceptable risk of harm is demonstrated, regardless of the finding made in respect of the frank allegations of abuse.[360]

That decision further held that the 'tendency rule has no work to do when assessing risk'.[361] This means the decision maker should not be precluded from considering evidence that might suggest a tendency of a person to abuse when assessing risk.

In Chapter 11, we also discuss instances where the Registrar had formed negative views about the complainants or sources of information to his office (in that instance, former detainees), including in some instances that complainants colluded or were financially motivated in seeking redress.[362] While we accept the Registrar is entitled and indeed required to apply judgment and discretion when assessing and weighing information, we consider it beneficial for this to be clearly guided by statute to limit the risks of personal value judgments (some of which may be based on myths and misconceptions or reflect societal stigma) in making assessments relating to child safety.

Recommendation 18.12

1. The Tasmanian Government should introduce legislation or regulations to provide statutory guidance to the Registrar of the Registration to Work with Vulnerable People Scheme on the factors to be considered when conducting risk assessments in respect of applications for registration, suspension or cancellation pursuant to the *Registration to Work with Vulnerable People Act 2013*.
2. The statutory guidance should provide that (among other things):
    a. the assessment of unacceptable risk is a predictive exercise that is not necessarily capable of empirical proof nor subject to a particular standard of proof such as 'the balance of probabilities'
    b. the assessment of unacceptable risk of harm to a child or children requires determination of two separate questions, without conflation, namely
        i. whether or not an allegation or allegations of previous harm to vulnerable people are proven on the balance of probabilities, and

ii. whether or not an unacceptable risk of harm is demonstrated regardless of whether there is a finding, on the balance of probabilities, that previous harm occurred

c. the Registrar is not limited in the factors they can consider in assessing unacceptable risk, including information that suggests a person's tendency to cause harm, as the ultimate determination of unacceptable risk is a predictive exercise

d. when the Registrar is considering suspending a person's registration, the focus on the prospective risk that a person may pose to children should have a lower evidentiary threshold, noting further assessment will likely occur prior to a decision to cancel registration or otherwise

e. once the Registrar makes a determination that a person poses an unacceptable risk to a child or young person, irrespective of other factors (such as employment or mental health), that person's registration must be refused, suspended or cancelled (as the case may be).

Recommendation 18.13

1. The Tasmanian Government should introduce legislation to amend the *Registration to Work with Vulnerable People Act 2013* and related statutory instruments to replace the Administrative Appeals Division of the Magistrates Court with the Tasmanian Civil and Administrative Tribunal as the forum for administrative reviews of decisions under the Act.
2. The Tasmanian Government should:

    a. introduce legislation or regulations to require the Tasmanian Civil and Administrative Tribunal to support Tribunal members who hear administrative reviews of decisions under the *Registration to Work with Vulnerable People Act 2013* to have the knowledge, skills, experience and aptitude to deal with each matter, including in relation to child sexual abuse, neglect and family violence

    b. provide sufficient funding to the Tribunal to support members to gain this knowledge, skills, experience and aptitude.

6.3 Coordinating oversight and regulation

As discussed, even with the establishment of the new Commission for Children and Young People, there will be instances where other bodies may need to assume responsibilities as they relate to child safety. For this reason, we recommend all these agencies work together to develop clear and user-friendly guidance describing their roles and responsibilities to help members of the public, and children and young people, to understand how they can raise concerns with these agencies and what to expect when they do. A single resource, including user friendly infographics, should be developed to support public understanding of the different roles and responsibilities of Tasmanian oversight bodies in relation to child safety. This includes reassurance and public commitment to a 'no wrong door' approach to complaints. This resource should be adapted for children and young people and form part of each agency's community education activities as they relate to promoting the safety of children and young people within Tasmanian organisations.

Recommendation 18.14

1. The Commission for Children and Young People, the Registrar of the Registration to Work with Vulnerable People Scheme, the Integrity Commission and the Ombudsman should work jointly to develop a user-friendly guide for the general public, which describes:
    a. how each of these agencies can assist with complaints and concerns about how organisations respond to child sexual abuse
    b. the process these agencies will adopt in responding to reports, complaints and concerns, including what outcomes these agencies are empowered to achieve
    c. how information provided by a person lodging a report, complaint or concern will be shared and managed
    d. that agencies are committed to a 'no wrong door' approach to complaints, so people are reassured that all reports, complaints and concerns will receive a response from an agency
    e. pathways for raising concerns about the way any of these agencies respond to reports, complaints or concerns.
2. A child and youth-friendly version of the guide should also be developed and should be publicised and distributed widely in schools, out of home care, youth justice and health settings.

3. Both guides should be available on each of the agencies' websites and form part of their child safety community education and engagement activities.
4. While the Commission for Children and Young People should be promoted as the key agency for receiving reports, complaints or concerns relating to conduct towards children, people should be able to raise reports, complaints or concerns with any of these agencies and these agencies should ensure the matter is appropriately referred (the 'no wrong door' approach).

6.4 Effective information sharing between oversight bodies

Effective information sharing is a crucial component of any child-centred system—not only to ensure risks to children and young people are effectively managed, but also to make certain responses by oversight or other agencies are clear and coordinated.

We examined the existing powers of the Commissioner for Children and Young People, Ombudsman and Integrity Commission to share information relevant to child safety, which we describe below:

- The Commissioner for Children and Young People is empowered to provide and request non-identifying information relating to a child or young person to and from an information-sharing entity.[363] An information-sharing entity may also, on its own initiative, provide the Commissioner with non-identifying information.[364] An 'information-sharing entity' is defined in the Commissioner for Children and Young People Act as having the same meaning as in the *Children, Young Persons and Their Families Act 1997*, and for our purposes includes a State Service officer or employee and other organisations providing health, disability and community services.[365] 'Non-identifying information' is defined as 'information in relation to a person that does not contain identifying details for the person or enable the identity of the person to be ascertained or discovered'.[366] An individual who provides this information does not breach professional standards or incur any criminal or civil liability.[367]
- The Ombudsman Act contains provisions that enable information disclosure. A person may disclose information to the Ombudsman's office where it relates to preliminary inquiries being made by the Ombudsman or to the making of a complaint or investigation by the Ombudsman.[368] The Ombudsman may also disclose information to a person exercising similar functions in another Australian jurisdiction, the Integrity Commission and the Custodial Inspector.[369] Protections are also available to the Ombudsman and its staff from criminal and civil proceedings for actions carried out in good faith under the Act.[370] There do not appear to be similar protections for complainants.

- The Integrity Commission Act contains provisions relating to referring and exchanging information. The Integrity Commission may refer a complaint to a public authority, integrity agency, Parliamentary integrity agency, the Commissioner of Police or any other person the Integrity Commission thinks appropriate for investigation and action.[371] 'Personal information custodians' are also authorised to disclose personal information to the Integrity Commission under the *Personal Information Protection Act 2004*.[372] The definitions provide that 'personal information custodians' include government agencies.[373]
- The Registration to Work with Vulnerable People Act contains provisions allowing the Registrar of the Registration to Work with Vulnerable People Scheme to require a range of Tasmanian entities, as well as certain bodies outside Tasmania, with information it reasonably considers relevant to its powers and functions.[374] The Registrar is also empowered to disclose particular information to a registering authority or prescribed entity (for example, agencies within the meaning of the State Service Act and Tasmania Police).[375]

We heard there are no consistent formal arrangements for information sharing between the Commissioner of Children and Young People, the Ombudsman and the Integrity Commission, with the determination of who is best placed to deal with a particular complaint often managed on a case-by-case basis.[376] Mr Easton said the Integrity Commission has memoranda of understanding with various entities, including Tasmania Police and the Auditor-General. For information sharing between the Integrity Commission and the Ombudsman, Mr Connock and Mr Easton said they would generally resolve informally which of their agencies are best placed to manage a complaint where their interests intersect.[377] Mr Connock felt informal information-sharing arrangements worked well: 'So we have a good idea, having been doing it for a while, where things should go'.[378]

While we do not underestimate the benefit of informal and practical approaches to information sharing between agencies, we consider it a risk for information of such importance to be left to the experience and good judgment of individuals. This creates a risk that complaints or enquiries fall between the cracks where they do not neatly fit the definitions of this complex model, or they are considered in a fragmented or piecemeal manner by several entities, limiting the ability to give appropriate visibility to the risks to child safety posed overall. We consider there is benefit in the Ombudsman, Integrity Commission, Registrar of the Registration to Work with Vulnerable People Scheme and the new Commission for Children and Young People to have clear and formalised information-sharing agreements to underpin their informal practices. This is particularly the case if the new Commission for Children and Young People receives oversight functions and powers under our recommendations and under the Child and Youth Safe Organisations Act, which has extensive information-sharing provisions in Part 5.

Generally (and considering the views of a complainant), we consider:

- The Commission for Children and Young People should lead matters that relate to its responsibilities to monitor and enforce the Child and Youth Safe Standards and the Reportable Conduct Scheme for relevant organisations and its responsibilities to oversee and monitor incidents in the youth detention and out of home care systems.
- The Integrity Commission should lead the response to complaints about misconduct and serious misconduct by public officers (which may include child sexual abuse) that are not otherwise captured by the Commission for Children and Young People's functions (for example, relating to agencies that are not legislatively required to comply with Child and Youth Safe Standards or the Reportable Conduct Scheme).
- The Ombudsman should lead the management of formal individual complaints about the administrative actions of a public authority that do not constitute reportable allegations.
- The Registrar of the Registration to Work with Vulnerable People Scheme should assess the suitability of individuals to work with, and alongside, children and young people. This assessment should be ongoing and subject to any additional information received about a registered individual.

Recommendation 18.15

The Commission for Children and Young People, the Integrity Commission, the Ombudsman and the Registrar of the Registration to Work with Vulnerable People Scheme should develop a formal memorandum of understanding relating to the management and oversight of reports, complaints and concerns relating to child sexual abuse and information sharing. The memorandum of understanding should:

a. define the roles, responsibilities, functions and limitations of each agency and describe where these overlap or intersect

b. require consultation prior to the initiation of systemic reviews or inquiries where the subject of that inquiry relates to areas of common interest or intersecting functions

c. provide for permissive and enabling information-sharing practices that prioritise the safety and welfare of children for individual matters and ensure each party receives from others de-identified trend data necessary to perform its functions.

7 Conclusion

Our Commission of Inquiry has established that Tasmanian children and young people are not as safe as they could be within organisations tasked with their care—including schools, health services, out of home care and youth detention. We recommend addressing specific risks and problems we identified in those specific settings, but firmly consider the foundations of child safety within organisations needs to improve across the board.

The primary objective for organisations should be to prevent child sexual abuse occurring in the first place. We consider this is best achieved through a combination of strategies, which includes robust community-wide education about the dynamics and risk factors associated with sexual abuse. We recommend the Tasmanian Government continues to work with the Australian Government to maximise the benefit of national prevention initiatives and ensure they are fit for purpose in Tasmania. In our chapter on children in the education system, we recommended specific preventative programs targeting school students.

We also consider that organisations must be proactive in developing policies and practices that target the specific risks of sexual abuse that arise in their setting, and consider legislated Child and Youth Safe Standards to be the best mechanism to ensure this occurs and endures.

We accept that no child safe system will be perfect. For this reason, it is critical to have robust and transparent processes to ensure any complaints and concerns that arise within organisations are dealt with quickly and prioritise the safety and wellbeing of children and young people. Responding to child safety concerns is not easy. Organisations will benefit from guidance and support. To ensure this occurs, and to ensure the integrity of investigative processes, we consider a reportable conduct scheme—which ensures there is appropriate support and oversight into organisational responses to complaints or concerns—is also an essential element to improving safety for organisations with the most direct contact with children and young people.

Working in tandem, we consider these regulatory schemes will improve safety for Tasmanian children and young people and build community trust and confidence in processes to register complaints and concerns individuals may have about the safety of children.

Having an empowered, well-resourced and suitably skilled Independent Regulator will be integral to the success of these schemes. We heard from experts in Victoria and New South Wales about the factors that made those jurisdictions' implementation of Child Safe Standards and a reportable conduct scheme successful. We also learned about the necessary functions and features of an effective oversight body in the context of child safety.

We consider the best way to support Tasmanian organisations to be safe for children and to provide oversight and scrutiny to particularly high-risk groups (including those in the out of home care system and within youth detention) is for Tasmania to establish a new Commission for Children and Young People, with a broader suite of powers and functions than those of the current Commissioner for Children and Young People. We also recommend establishing a dedicated role to promote the interests, wellbeing and cultural safety of Aboriginal children and young people.

A new Commission for Children and Young People should assume the monitoring and oversight functions of the Independent Regulator for the Child and Youth Safe Organisations Act. It should have specific powers to monitor and investigate concerns relating to the out of home care and youth justice systems. The new Commission should be fiercely independent, appropriately resourced and sufficiently empowered to lead genuine change across Tasmania. We make several recommendations directed at supporting this goal.

We consider the Child and Youth Safe Standards and the Reportable Conduct Scheme operating in tandem and overseen by a well-resourced and empowered Independent Regulator, will go a long way towards reducing the need for recourse to other oversight bodies, such as the Integrity Commission and the Ombudsman. However, these bodies may still play a role, particularly in addressing specific complaints and targeting broader systemic risk factors within organisations that can increase risks of abuse, particularly as they relate to misconduct, poor decision-making and tolerance for poor behaviour and practice. We consider it will likely increase the level and quality of information available to inform decisions of the Registrar of the Registration to Work with Vulnerable People Scheme. For this reason, we recommend the Ombudsman, Integrity Commission, Registrar of the Registration to Work with Vulnerable People Scheme and a new Commission for Children and Young People clarify and formalise their respective functions and information-sharing arrangements, and ensure these are clear to the community. We also recommend further clarifying the powers of the Registrar of the Registration to Work with Vulnerable People Scheme to suspend individuals when taking additional risk assessments relating to registered individuals.

We hope that over time, recourse to oversight bodies will be reduced, as organisations' proactive efforts to prevent abuse greatly reduce harm to children and ensure any complaints and concerns are managed quickly and effectively by the organisation at the earliest opportunity. We expect this to occur as Child and Youth Safe Standards and the Reportable Conduct Scheme become more thoroughly embedded across Tasmanian organisations. However, we consider there will always be a need for oversight bodies to be vigilant to risks to child safety and responsive to concerns about managing those risks.

Notes

1 Statement of Benjamin Mathews, 10 June 2022, 16 [58].

2 Statement of Benjamin Mathews, 10 June 2022, 16 [58].

3 Joe Tucci and Janise Mitchell, *Still Unseen & Ignored: Tracking Community Knowledge and Attitudes about Child Abuse and Child Protection in Australia* (Australian Childhood Foundation, August 2021) 3.

4 Joe Tucci and Janise Mitchell, *Still Unseen & Ignored: Tracking Community Knowledge and Attitudes about Child Abuse and Child Protection in Australia* (Australian Childhood Foundation, August 2021) 3.

5 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 2017) vol 6, Recommendation 6.2.

6 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 2017) vol 6, Recommendation 6.3.

7 National Office for Child Safety, *About Us* <https://childsafety.pmc.gov.au/about-us>.

8 National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021).

9 Healing Foundation, Blue Knot Foundation and Australian Childhood Foundation, 'National Centre for the Prevention of Child Sexual Abuse to be driven by Consortium of Leading Expert Organisations' (Media Release, 21 October 2021) <https://healingfoundation.org.au/2021/10/21/national-centre-for-the-prevention-of-child-sexual-abuse-to-be-driven-by-consortium-of-leading-expert-organisations/>.

10 National Centre for Action on Child Sexual Abuse, National Centre for Action on Child Sexual Abuse LinkedIn - About (Web Page) <https://www.linkedin.com/company/the-national-centre-for-action-on-child-sexual-abuse/about/>. Refer to also National Centre for Action on Child Sexual Abuse, 'About Us' (Web Page) <https://nationalcentre.org.au/about/>.

11 National Centre for Action on Child Sexual Abuse, *Here for Change: Five Year Strategy 2023–2027* (June 2023) 8.

12 National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021).

13 National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021).

14 National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021) 19.

15 National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021) 19.

16 National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (2021) 37–38.

17 Statement of Kathryn Fordyce, 3 May 2022, 25 [78].

18 Statement of Kathryn Fordyce, 3 May 2022, 25 [79].

19 Consent is irrelevant to child sexual offences except where it occurs between children of similar age. Lack of consent must be proven in a criminal prosecution for rape. Refer to Chapter 16 for further discussion of this issue.

20 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) 60.

21 Jess Rodgers et al, *Sexual Violence in Southern Tasmania: Research Report for Sexual Assault Support Service Tasmania* (Tasmanian Institute of Law Enforcement Studies, University of Tasmania and Sexual Assault Support Service, July 2022) viii.

22 Jess Rodgers et al, *Sexual Violence in Southern Tasmania: Research Report for Sexual Assault Support Service Tasmania* (Tasmanian Institute of Law Enforcement Studies, University of Tasmania and Sexual Assault Support Service, July 2022) 46.

23 Jess Rodgers et al, *Sexual Violence in Southern Tasmania: Research Report for Sexual Assault Support Service Tasmania* (Tasmanian Institute of Law Enforcement Studies, University of Tasmania and Sexual Assault Support Service, July 2022) 37.

24 The name 'Dr Tim' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 27 June 2022.

25 Transcript of Michael Guerzoni, 4 May 2022, 201 [33–38].

26 Statement of Robert Boost, 2 September 2022, 6 [34].

27 Jess Rodgers et al, *Sexual Violence in Southern Tasmania: Research Report for Sexual Assault Support Service Tasmania* (Tasmanian Institute of Law Enforcement Studies, University of Tasmania and Sexual Assault Support Service, July 2022) 47.

28 Statement of Robert Boost, 2 September 2022, 6 [35].

29 Statement of Michael Salter, 7 April 2022, 26 [101].

30 Statement of Michael Salter, 7 April 2022, 26 [102].

31 Statement of Anne Hollonds, 13 April 2022, 18 [83].

32 Letter from Timothy Bullard to the Commission of Inquiry, 'Acknowledgement and Response to "Take Notice, Believe Us and Act!" Report', 9 March 2023.

33 Statement of Charlie Burton, 12 April 2022, 10 [43].

34 Statement of Charlie Burton, 12 April 2022, 10 [43–44].

35 Statement of Charlie Burton, 12 April 2022, 13 [56].

36 Statement of Kathryn Fordyce, 3 May 2022, 18 [54].

37 Statement of Kathryn Fordyce, 3 May 2022, 18 [54].

38 Statement of Jill Maxwell, 26 April 2022, 7–8 [43–44].

39 Statement of Jill Maxwell, 26 April 2022, 8 [45].

40 Statement of Michael Guerzoni, 29 April 2022, 8–9 [28].

41 Statement of Michael Guerzoni, 29 April 2022, 11 [35].

42 Statement of Donald Palmer, 12 April 2022, 6 [25].

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320 Statement of Penny Wright, 6 June 2022, 37 [171].

321 Statement of Penny Wright, 6 June 2022, 40 [187].

322 *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) ss 12(2), 20F(2).

323 *Commissioner for Children and Young People Act 2006* (WA) s 51.

324 Joint Standing Committee on the Commissioner for Children and Young People, *Annual Report 2020–2021* (Report 1, 16 September 2021) 5.

325 Joint Standing Committee on the Commissioner for Children and Young People, *Annual Report 2020–2021* (Report 1, 16 September 2021) 5.

326 *Children's Guardian Act 2019* (NSW) s 8AC.

327 Transcript of Stephen Kinmond, 5 May 2022, 523 [46]–524 [3].

328 *Integrity Commission Act 2009* s 24(1)(a)–(c).

329 *Integrity Commission Act 2009* s 24(1)(a)–(c).

330 *Ombudsman Act 1978* s 4.

331 Submission 084 Integrity Commission Tasmania, 1.

332 Submission 084 Integrity Commission Tasmania, 1.

333 Submission 084 Integrity Commission Tasmania, 1.

334 Tasmanian Government Response, *Independent Review of the Integrity Commission Act 2009* (Report, November 2016) 14.

335 Submission 084 Integrity Commission Tasmania, 4.

336 Statement of Peter Graham, 15 August 2022, 1.

337 Statement of Peter Graham, 15 August 2022, 1.

338 Statement of Peter Graham, 15 August 2022, 1.

339 Statement of Peter Graham, 15 August 2022, 9.

340 Statement of Peter Graham, 15 August 2022, 10.

341 Transcript of Peter Graham, 24 August 2022, 3230 [31–39].

342 Statement of Peter Graham, 15 August 2022, 10.

343 Statement of Peter Graham, 15 August 2022, 9.

344 Statement of Peter Graham, 15 August 2022, 9.

345 Statement of Peter Graham, 15 August 2022, 10.

346 *Registration to Work with Vulnerable People Act 2013* s 53.

347 Transcript of Peter Graham, 24 August 2022, 3230 [31–39].

348 *Tasmanian Civil and Administrative Tribunal Act 2020*.

349 *Child Protection (Working with Children) Act 2012* (NSW) s 27; *Worker Screening Act 2020* (Vic) s 105; *Working with Children (Risk Management and Screening) Act 2000* (QLD) s 354; *Child Safety (Prohibited Persons) Act 2016* (SA) s 43; *Working with Children (Screening) Act 2004 (WA)* s 26; *Working with Vulnerable People (Background Checking) Act 2011 (ACT)* s 63.

350 Statement of Peter Graham, 15 August 2022, 10.

351 Statement of Peter Graham, 15 August 2022, 10.

352 Statement of Peter Graham, 15 August 2022, 10.

353 Statement of Peter Graham, 15 August 2022, 10.

354 Statement of Peter Graham, 15 August 2022, 10.

355 The existence of such a power, the absence of clear legal test and the lack of appeal mechanism has caused confusion and led to unintended behavioural responses from agencies.

356 *Registration to Work with Vulnerable People Act 2013* ss 2A(c), 25, 49.

357 Refer to the decision of the Federal Circuit and Family Court of Australia in *Isles and Nelissen*, which considered the test relating to unacceptable risk under the related Commonwealth legislation, the *Family Law Act 1975* (Cth). That decision referred to 'two separate questions … on the one hand, whether or not allegations of abuse are proven on the balance of probabilities; and on the other, whether or not an unacceptable risk of harm is demonstrated, regardless of the finding made in respect of the frank allegations of abuse': *Isles and Nelissen* [2022] FedCFamC1A 97 at [83]. That decision further held that the 'tendency rule has no work to do when assessing risk'; *Isles and Nelissen* [2022] FedCFamC1A 97 at [104].

358 Tasmania, *Parliamentary Debates*, House of Assembly, 14 November 2013, 120 (Cassy O'Connor, Minister for Human Services).

359 *Isles and Nelissen* [2022] FedCFamC1A 97. Refer also to the English case of *H & Ors* [1996] AC 563, which concerned the question of whether a particular child was 'likely to suffer significant harm' pursuant to a risk assessment under the *Children Act 1989* (UK). In his dissenting opinion, Lord Browne-Wilkinson concluded that such a risk assessment 'does not require the court to find that such harm is more likely than not: it is enough if the occurrence of such harm is a real possibility': *H & Ors* [1996] AC 563, 572. Lord Browne-Wilkinson went on to state that 'to be satisfied that an event has occurred or is occurring the evidence has to show on balance of probabilities that such event did occur or is occurring. But in order to be satisfied that there is a risk of such an occurrence, the ambit of the relevant facts is in my view wider': *H & Ors* [1996] AC 563, 572.

360 *Isles and Nelissen* [2022] FedCFamC1A 97 at [83].

361 *Isles and Nelissen* [2022] FedCFamC1A 97 at [104].

362 Statement of Peter Graham, 15 August 2022, Annexure D, 5.

363 *Commissioner for Children and Young People Act 2016* s 16(2).

364 *Commissioner for Children and Young People Act 2016* s 16(3).

365 *Children, Young Persons and Their Families Act 1997* s 3.

366 *Commissioner for Children and Young People Act 2016* ss 4, 16(1).

367 *Commissioner for Children and Young People Act 2016* s 16(4).

368 *Ombudsman Act 1978* s 17.

369 *Ombudsman Act 1978* s 26(3)–(3B).

370 *Ombudsman Act 1978* s 33.

371 *Integrity Commission Act 2009* ss 39, 40, 41, 42, 43.

372 *Integrity Commission Act 2009* s 102.

373 *Personal Information Protection Act 2004* s 3; *Right to Information Act 2009 s* 3.

374 *Registration to Work with Vulnerable People Act 2013* ss 52A(1), 52A(3).

375 *Registration to Work with Vulnerable People Act 2013* ss 52B(2)(3).

376 Transcript of Richard Connock, Michael Easton and Leanne McLean, 5 May 2022, 422 [35]–423 [45].

377 Transcript of Richard Connock and Michael Easton, 5 May 2022, 422 [42–43], 423 [21–27].

378 Transcript of Richard Connock, 5 May 2022, 423 [17–18].

19 A coordinated approach

1 Introduction

An effective approach to preventing, identifying and responding to child sexual abuse in institutions requires a coordinated and sustained commitment across government and government funded agencies and statutory bodies. In this chapter, we outline what we consider is needed to ensure there is a united approach to child safety issues across the Tasmanian Government. We recommend developing a child sexual abuse reform strategy and action plan to:

- bring together an extensive reform agenda
- hold government, government funded agencies and statutory bodies to account for their responsibilities in implementing child sexual abuse reforms
- help victim-survivors and their families, the community, and government and non-government agencies understand what is being done to address child sexual abuse in Tasmania.

We also recommend strengthened leadership, accountability and governance mechanisms to oversee this strategy and action plan, which, among other things, will ensure children and young people and adult victim-survivors of child sexual abuse can inform government policy and reform work.

We also discuss the challenge of sharing information and coordination between agencies relating to child safety issues in Tasmania. We recommend any legislative barriers that hinder the sharing of information to protect the safety and wellbeing of children be identified and removed. To address cultural barriers to information sharing and further support responses to child safety issues, we also recommend the development of child safety information sharing, coordination and response guidelines that clearly set out the roles and responsibilities of agencies in responding to child safety concerns.

2 A fragmented system

As part of our inquiries, we asked the Tasmanian Government to describe its current service system—including services, initiatives, policies and procedures—related to preventing, identifying, reporting and responding to allegations or incidents of child sexual abuse in institutional contexts.[1] Rather than receiving one coordinated response to this request that described the system across the whole of government, we received separate and varied responses from individual government departments including the:

- former Department of Communities, which produced a summary document and 109 attachments[2]
- former Department of Education (now the Department for Education, Children and Young People), which produced a summary document and 35 attachments[3]
- Department of Health, which produced a summary document and no attachments[4]
- Department of Justice, which produced a summary document and one attachment[5]
- Department of Police, Fire and Emergency Management, which produced a summary document and 18 attachments.[6]

Our observations following a review of these responses were that:

- they listed or summarised policy documents and initiatives without explaining how they intersected or operated in practice, which made it difficult for us to understand the linkages between policies or to situate initiatives within the Government's broader system response to child sexual abuse[7]
- most material referred to in the responses appeared to be directed towards child abuse and neglect more broadly, particularly familial abuse, and there was limited material within the responses that specifically contemplated child sexual abuse in institutional contexts

- a proportion of the material supplied as part of the responses, particularly policies, was past its stated review date or did not have a review date, so it was not clear whether the material remained operational, had been superseded by new material, or was no longer in use[8]
- some source material supplied as part of the responses was not signed or dated, which made it difficult for us to know whether particular documents had been executed and when they came into operation.[9]

Our concern extends beyond the format in which the information was provided. Our overall conclusion after reviewing the responses is that the Government could not clearly articulate a cohesive system for preventing, identifying, reporting and responding to allegations and incidents of child sexual abuse in institutions. Instead, it described elements of a service system without setting out how the system is intended to operate across the whole of government and intersect with other service systems, recognising the issues affecting children and young people do not occur in a silo and often cut across several portfolios.[10] We acknowledge that many of the policies Tasmanian Government departments initially produced to our Commission of Inquiry have since been or are being updated.

Leanne McLean, Commissioner for Children and Young People, expressed a similar view to ours, describing the features of Tasmania's current system response to institutional child sexual abuse as:

> … a disconnected patchwork of systems and processes which, despite their good intent, fail to provide an integrated and systemic approach to keeping children safer from abuse in institutional settings. The flow on effects of the current system are that navigation by the public and agencies is difficult, there is little to no coordination or communication between regulatory agencies and there is no central body with responsibility for systemic oversight.[11]

Similarly, in consultations where we asked what was working well in the system that responds to child sexual abuse, participants expressed frustration that there was no system, or that the system was not well coordinated.[12]

We outline in Chapter 2 what we understand to be the current system for responding to child sexual abuse in institutional contexts. It took considerable work on our part to decipher this system. As described in that chapter, we understand the system covers:

- organisations, including:
    - the Child Safety Service
    - Tasmania Police
    - Registration to Work with Vulnerable People Scheme

- professional registration bodies, including:
    - Australian Health Practitioner Regulation Agency ('Ahpra')
    - Teachers Registration Board
- oversight bodies, including:
    - Commissioner for Children and Young People
    - Ombudsman
    - Integrity Commission
    - Auditor-General.

The system for responding to child sexual abuse in institutional contexts also encompasses sexual assault support services, the criminal justice system and the civil justice system, which includes the National Redress Scheme. Lastly, the system includes the processes through which specific government institutions—such as schools, out of home care, youth detention and health services—prevent, identify and respond to child sexual abuse.

3 Developing a child sexual abuse reform strategy and action plan

In Chapter 2, we discussed several national strategies and frameworks relevant to child safety and child sexual abuse. We also identified Tasmanian strategies, frameworks and action plans that outline whole of government approaches to issues affecting children and young people, including their safety and wellbeing. These national and local strategies and frameworks should inform Tasmania's approach to child sexual abuse, including in government institutions. In this section, we outline the Tasmanian Government's current policy approach to child sexual abuse. We recommend a child sexual abuse reform strategy and action plan be developed to bring together an extensive reform agenda, provide information and guidance to victim-survivors and their families and the community about what is being done by the Government to specifically address child sexual abuse in Tasmania, and to hold government and government funded agencies and statutory bodies to account for their responsibilities in implementing child sexual abuse reforms. As Kathrine Morgan-Wicks, Secretary, Department of Health, told us:

> Successful reform will require a multi-faceted and integrated response across Government, strong leadership, and clear governance and accountability on a whole of government level. Clear and consistent information and advice must be provided across government.[13]

These sentiments were echoed by Jan Shuard PSM, Family Violence Reform Implementation Monitor for the Victorian Royal Commission into Family Violence:

> I consider that, to avoid reliance on a single person for change, responsibility for reform needs to go beyond ministers and portfolios or agencies and be driven by a 'whole of government' approach across institutional settings, culture, procedure and policy.[14]

As we have acknowledged elsewhere in our report, cultural change is central to protecting children from child sexual abuse in institutions and ensuring that if it occurs, it is responded to appropriately.

3.1 Tasmania's Family and Sexual Violence Action Plan

The Tasmanian Government's primary policy approach to child sexual abuse and harmful sexual behaviours is its Family and Sexual Violence Action Plan. There have been three iterations of this plan since 2015:

- *Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015–2020*[15]
- *Safe Homes, Families, Communities: Tasmania's Action Plan for Family and Sexual Violence 2019–2022*[16]
- *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* ('Survivors at the Centre').[17]

The first plan focused solely on family violence. However, the second and third iterations have included 'sexual violence', which is broadly defined in the following way:

> Sexual violence is a behaviour of a sexual nature directed towards a person that makes them feel uncomfortable, distressed or threatened, and to which they have not consented. Sexual violence includes a wide range of unwanted, non-consensual, traumatic and harmful sexual behaviours.
>
> Sexual violence includes sexual harassment, technology facilitated abuse, unwanted kissing or sexual touching, coercion, sexual assault including rape, child sexual abuse and child sexual exploitation, and stealthing (removal of a condom without consent).[18]

The family and sexual violence plans are accompanied by annual 'responding and reporting' reports, which outline key achievements under the plans.[19] There is also a practice guide, which primarily focuses on adult victim-survivors and perpetrators of family and sexual violence. The guide provides some information about support pathways for children and young people, mostly in relation to family violence.[20]

The Government has indicated the family and sexual violence plans address the implementation of many of the National Royal Commission's recommendations about responding to child sexual abuse in institutions and harmful sexual behaviours.[21]

The most recent plan, Survivors at the Centre, was released in November 2022. It represents the Government's response to the *National Plan to End Violence Against Women and Children 2022–2032* ('National Family Violence Plan').[22]

3.2 Developing a strategy for child sexual abuse

Survivors at the Centre states it 'has been developed in the context of the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings' and that the 'Tasmanian Government is deeply committed to learning from the past, hearing the stories of victim-survivors, and ensuring that children and young people are safeguarded now and into the future'. However, our review of the plan and earlier iterations reveals that many of its actions do not specifically respond to or address child sexual abuse, child sexual abuse in institutional settings or harmful sexual behaviours.[23] Of the 38 actions in Survivors at the Centre, only the following actions appear to directly relate to child sexual abuse:

- Pilot the establishment of two Multidisciplinary Centres in the North and South of the State to provide survivor-centred, holistic and integrated responses to family and sexual violence.[24]
- Provide historic increased core funding to Tasmania's specialist family and sexual violence services with five-year contracts to enable funding certainty.[25]
- Effectively embed Respectful Relationships and Consent Education in Tasmanian schools and develop a suite of resources informed by key stakeholders and children and young people that builds understanding of consent, coercive control and grooming in the Tasmanian community.[26]
- Continue to deliver the Harmful Sexual Behaviours Program for children and young people.[27]
- Establish Tasmania's first victim-survivor advisory council, which will include victim-survivors of family and sexual violence and adults who may have experienced child sexual abuse as well as family and friends of victims who have lost their lives to family and sexual violence.[28]

Other actions that could affect the response to child sexual abuse, depending on how the action is interpreted, include:

- Expand the scope of the Safe Families Coordination Unit to undertake whole of government data coordination and integration for family and sexual violence.[29]
- Provide next generation technology and instruments for forensic scientists to ensure higher quality evidence for court proceedings, and increase capacity for storage of evidence, including sexual evidence kits.[30]
- Establish a family and sexual violence liaison service within the Tasmanian Health Service, which will provide Family Violence Liaison Officers statewide to support clients who identify as experiencing family and sexual violence to access services.[31]

- Investigate the establishment of a Tasmanian Family and Sexual Violence Peak to improve coordination of family and sexual violence services and advice on policy development and service design.[32]
- Continue to provide legal assistance to people experiencing family and sexual violence.[33]
- Deliver funding for community-based projects to support inclusion, access and equity to support diverse Tasmanians who experience barriers for accessing support for family and sexual violence.[34]
- Continue the Hearing Lived Experience 2022 Survey of Victim-Survivors of Family and Sexual Violence to inform implementation of the action plan and provide a comprehensive data set of victim-survivor experiences.[35]

Survivors at the Centre also commits to a program of measurement, evaluation and learning, which will be formalised into an Outcomes Framework that will be 'co-designed with victim-survivors, the family and sexual violence service system and community members, and will be delivered in the second year of [the] Action Plan'.[36] The current plan does not outline the governance arrangements in place to oversee the implementation of actions in the plan, despite such arrangements having appeared in an earlier iteration.[37]

In our view, Survivors at the Centre, in its current form, is not sufficiently targeted towards child sexual abuse, child sexual abuse in institutions and harmful sexual behaviours. It does not contemplate reform work the Government announced in response to our Commission of Inquiry, including:

- the Premier's priorities for action to keep children safe (also known as the *Keeping Children Safer Actions* that are summarised in Chapter 2)
- establishing the Child and Youth Safe Standards
- establishing the Reportable Conduct Scheme

These are key elements of a response to child sexual abuse in institutions.[38]

The plan also does not align with a contemporary understanding of child sexual abuse and family violence. The National Family Violence Plan acknowledged that 'many of the risk factors and experiences of child abuse and neglect align closely with violence against women and children'.[39] However, the National Family Violence Plan recognised the need for two distinct approaches to family violence and child sexual abuse because:

> Sexual violence perpetrated against children below the age of consent is child sexual abuse. Although these issues are interrelated, the Commonwealth's child sexual abuse response is covered by the National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030. *The drivers and impacts of child sexual abuse can be vastly different to those of adult sexual abuse, and they require different responses* [emphasis is ours].[40]

As a result, the Australian Government has two separate approaches to these issues that sit side-by-side:

- *National Plan to End Violence Against Women and Children 2022–2032*
- *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030.*[41]

This latter strategy encompasses all child sexual abuse, regardless of the context in which it occurs. We consider Tasmania should take a similar approach and develop its own child sexual abuse reform strategy. The Australian Childhood Maltreatment Study has shown the scale of the problem of child sexual abuse (including child sexual abuse in institutions) in Australia. This study found an overall national prevalence of child sexual abuse in Australia of 28.5 per cent, and a prevalence of child sexual abuse in Australia of 25.7 per cent among those surveyed who were aged 16–24.[42] We consider a standalone strategy is not only justified but warranted. We note that in developing a separate reform strategy to respond to child sexual abuse, Tasmania would model a best practice whole of government response to child sexual abuse for other states and territories in Australia.

Tasmania's child sexual abuse reform strategy should align with the National Strategy to Prevent and Respond to Child Sexual Abuse and existing strategies and frameworks relating to children and young people that the Government has already developed. Taking this approach will provide information and guidance to victim-survivors and their families, the community and government and government funded agencies and statutory bodies on what is being done to address and respond to child sexual abuse, child sexual abuse in institutions and harmful sexual behaviours in Tasmania. It will ensure these agencies and statutory bodies meet their obligations. It will also ensure the different drivers associated with child sexual abuse (including in institutional settings) and harmful sexual behaviours are being appropriately addressed and are not lost within a much broader approach to family and sexual violence. Importantly, it will act as a safety net for the Government to be self-assured it has a coordinated whole of government approach to creating, monitoring and improving its response to child sexual abuse.

The Government has committed to an extensive reform agenda in relation to child sexual abuse in institutions. This reform agenda includes implementing:

- recommendations from the *National Royal Commission*
- recommendations from the *Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse*
- *Keeping Children Safer Actions*
- recommendations from the *Child Safe Governance Review of the Launceston General Hospital and Human Resources* and the *Launceston General Hospital Community Recovery Initiative*
- recommendations from our Commission of Inquiry.[43]

These reforms should be captured in the child sexual abuse reform strategy.

This strategy should outline a 'theory of change', that is, the system for preventing, identifying and responding to child sexual abuse that Tasmania is seeking to achieve, including the component parts of that system, how Tasmanians will know it is working, and the role of different reforms and recommendations in achieving the intended outcomes.

The strategy should address many of the matters we raise across our report or that are essential elements of a whole of government strategy. These elements include:

- identifying guiding principles
- ensuring empowerment of children
- defining key concepts
- addressing diversity
- outlining key reform agendas.

The development of the child sexual abuse reform strategy and action plan will benefit from consultation. In Chapter 21, we recommend establishing a peak body for the sexual assault service system. In developing the strategy and action plan, the Government should consult with the:

- peak body
- Premier's Youth Advisory Council
- adult victim-survivors of child sexual abuse advisory group we recommend be established later in this chapter.

3.3 Developing an action plan for child sexual abuse reform

Implementing an extensive reform agenda requires coordinated planning and prioritisation across the whole of government.

Tim Cartwright APM, inaugural Family Violence Reform Implementation Monitor for the Victorian Royal Commission into Family Violence from August 2016 until August 2019, told us that although there is often a degree of urgency to implementing recommendations after a royal commission, implementation must be undertaken in a way that is designed to 'build a path to sustainable change'.[44] A key step in this process is developing a detailed implementation plan.[45]

Mr Cartwright told us, in relation to implementing royal commission recommendations, it was important for an implementation plan to identify:

- intended completion dates for each recommendation
- the agency or government department responsible for each recommendation
- any milestones, dependencies and priority actions.[46]

Mr Cartwright said that in his role as the inaugural Family Violence Reform Implementation Monitor, '[t]he absence of this information made it very difficult to report on progress against individual recommendations'.[47] We consider similar principles also apply to implementing a reform strategy.

Ms Shuard emphasised the importance of understanding the intended outcomes of proposed reforms and the various roles that many departments play in achieving those reforms:

> Reform requires the involvement of multiple agencies and departments. Implementing change is about everybody understanding how new elements fit into the overall existing system to achieve the desired outcomes. A whole lot of actions are required to make a specific recommendation work beyond just the specific reform. So there is a need to clearly identify and understand the intended outcomes.[48]

Mr Cartwright told us that responsibility for implementation 'is best given to agencies that have a track record in program delivery and implementation'.[49] Agencies allocated responsibility for implementing recommendations must have a track record for engaging stakeholders and the community, and be open to receiving scrutiny and criticism, including from an implementation monitor.[50]

In our view, the Tasmanian Government should develop a well-considered action plan that outlines how all the individual reforms comprising key reform initiatives identified in the child sexual abuse reform strategy, are to be prioritised for implementation over the short-, medium- and long-term. The action plan should consider the timeframes we propose for the implementation of our recommendations is Chapter 22. It should also assign responsibility for implementing the reforms to an agency and role holder, and include a transparent process for reporting against the implementation of recommendations. While we recognise the action plan may need to evolve over time due to changes in factors affecting the successful implementation of reform, at the outset, we consider it should contain several elements that we identify in Recommendation 19.1.

The child sexual abuse reform strategy and action plan should be overseen and reviewed under a strong governance structure, which includes representation from children and young people and victim-survivors of child sexual abuse (refer to Recommendation 19.5). The Child Sexual Abuse Reform Implementation Monitor we recommend in Chapter 22 (refer to Recommendation 22.1) should monitor the Government's progress against the strategy and action plan.

Recommendation 19.1

1. The Tasmanian Government should develop a whole of government child sexual abuse reform strategy for preventing, identifying and responding to child sexual abuse, including child sexual abuse in institutions and harmful sexual behaviours. The strategy should:

    a. describe the system that Tasmania seeks to achieve, including the component parts of that system, how Tasmanians will know it is working, and the role of key initiatives, reforms and recommendations in achieving the intended outcomes

    b. be separate from, but complement, the Government's Family and Sexual Violence Action Plan

    c. be informed by the voices of children and young people and adult victim-survivors of child sexual abuse (Recommendation 19.5)

    d. include agreed definitions of child sexual abuse, institutional child sexual abuse and harmful sexual behaviours

    e. set out guiding principles and objectives to inform preventing, identifying and responding to child sexual abuse

    f. identify the agencies, including statutory bodies and non-government organisations, involved in preventing, identifying and responding to child sexual abuse

    g. set out processes through which government agencies, statutory bodies and non-government organisations can consult on child sexual abuse reform

    h. set out considerations relevant to particular cohorts of children and young people, including Aboriginal children, children with disability, children with mental illness, children who identify as LGBTQIA+ and children from culturally and linguistically diverse communities

    i. outline the sources of funding for key initiatives and reforms set out in the strategy

    j. outline the governance, monitoring, review and evaluation arrangements for child sexual abuse reform, including that the Secretary of the Department of Premier and Cabinet, as Chair of the Secretaries Board, is responsible for endorsing, overseeing, coordinating and reporting on the strategy and action plan (Recommendation 19.3).

2. The Tasmanian Government should develop an action plan for the implementation of the child sexual abuse reform strategy. The action plan should:
    a. prioritise all recommendations and reforms for implementation over the short, medium and long term and include expected timeframes for implementing each recommendation
    b. identify the role holders and agencies that have responsibility for implementation of each recommendation and reform
    c. describe the actions to be taken to implement the recommendations and reforms, including any milestones, sequencing and dependencies
    d. identify the status of each recommendation and reform (that is, complete, under way or not commenced) and whether it is progressing on time
    e. be endorsed and overseen by the governance structure identified in the strategy.
3. The child sexual abuse reform strategy and action plan should be:
    a. tabled in each House of Parliament
    b. published on a dedicated website
    c. supported by a communication plan that seeks to inform and provide visibility of reform work to stakeholders and the community
    d. periodically reviewed and updated by the Secretaries Board through the Department of Premier and Cabinet.

3.4 Ensuring the system for preventing, identifying and responding to child sexual abuse is trauma-informed

The National Royal Commission identified that all human services should respond to the needs of victim-survivors of child sexual abuse and 'should be trauma-informed and have an understanding of institutional child sexual abuse'.[51] It recommended:

> The Australian Government and state and territory government agencies responsible for the delivery of human services should ensure relevant policy frameworks and strategies recognise the needs of victims and survivors and the benefits of implementing trauma-informed approaches.[52]

Research commissioned by the National Royal Commission defined trauma-informed approaches as:

- recognising the impact of trauma on a victim-survivor
- understanding their behaviour in the context of their past trauma
- interacting in a way that supports recovery and reduces the possibility of re-traumatisation.[53]

The term 'trauma-informed' refers specifically to 'the *context* in which services are offered' (emphasis in original), as distinguished from 'trauma-specific treatment services', which refers to clinical treatments for the trauma itself.[54] Both are essential.

In Tasmania, several victim-survivors and those who worked with them told us how their experiences with government services—such as the Child Safety Service, Tasmania Police, Director of Public Prosecutions, the Teachers Registration Board and hospitals—had not been trauma-informed. In some cases, we heard these services increased the harm caused by the abuse.[55] Kathryn Fordyce, Chief Executive Officer, Laurel House, observed that first contact with services is a particular challenge for victim-survivors of institutional abuse because their confidence that an institution will act in their best interests has already been 'damaged'.[56] Jillian Maxwell, Chief Executive Officer, Sexual Assault Support Service, said victim-survivors report that they have often tried to disclose their abuse and seek help and 'either feel not heard, believed or silenced'.[57] She expressed concern that there was 'a lack of or sufficient trauma-informed training about child sexual assault in some government settings and facilities'.[58]

The child sexual abuse reform strategy we recommend the Tasmanian Government develops (refer to Recommendation 19.1) should require all relevant staff to undertake regular professional development in responding to trauma.

We note that 'relevant staff' is a broad category and includes:

- many government and government funded staff of human service organisations including employees, volunteers, contractors and sub-contractors
- staff involved in direct responses to child sexual abuse such as the police, health workers and counsellors
- staff working in services in which child sexual abuse survivors are disproportionately represented, such as drug and alcohol, health, housing, legal services and prisons
- staff who are tasked with developing policy and are empowered to make decisions about people affected by trauma
- staff working within statutory bodies (such as the Commissioner for Children and Young People) who may have contact with child sexual abuse victim-survivors.

We note that as part of the *Keeping Children Safer Actions*, the Government made the following commitments:

- investigate rolling out trauma-informed training across the State Service with those in leadership positions, including Heads of Agencies[59]
- review the structure and processes across civil litigation to ensure the approach is trauma-informed and that legal practitioners recognise evidence-based understandings of the nature and impact of child sexual abuse[60]
- require mandatory professional development for all Department for Education, Children and Young People staff[61]
- make trauma-informed practice training mandatory for investigators and other state servants involved in misconduct investigation processes.[62]

These commitments have been marked as complete, except for the third, which has an expected delivery date of September 2023.[63]

In several other volumes and chapters of our report we have also made context-specific recommendations regarding mandatory minimum knowledge about child sexual abuse, grooming, professional boundary breaches, harmful sexual behaviours, reporting and responding. Regarding mandatory education, the Government's overall aim should be to ensure the delivery of appropriate mandatory education to as many people as possible in the most cost-effective way. Some roles will require a more advanced level of knowledge and skill (for example, child safety officers), or professional development tailored to elevated risks in a specific context, such as residential care, youth detention or policing. However, there will also be a minimum level of knowledge in child sexual abuse, grooming, professional boundary breaches and harmful sexual behaviours that is common across sectors. We recognise the Department of Health and the Department for Education, Children and Young People have recently developed and started rolling out mandatory reporter training. To help in cost efficiency and consistency of understanding, we suggest that state-owned and developed child sexual abuse professional development materials be collated and made available when new training is being developed by state agencies. In the future, consideration should also be given to whether any of these training offerings can be consolidated.

Recommendation 19.2

The Tasmanian Government should develop a whole of government approach to professional development on responding to trauma within government and government funded services, as well as statutory bodies, that provide services to children and young people or adult victim-survivors of child sexual abuse.

4 Establishing leadership, accountability and governance for child safety

The successful implementation of reform requires strong and sustainable leadership, accountability and governance mechanisms. The Tasmanian Government will need to establish these mechanisms before starting the reform work included in the child sexual abuse reform strategy and accompanying action plan.

4.1 Leadership and accountability for child safety

At the beginning of our Inquiry, we were concerned there was an absence of clear leadership, responsibility or accountability for child safety across the Tasmanian Government.

In week one of our hearings, Jenny Gale, Secretary, Department of Premier and Cabinet and Head of the State Service, and Ginna Webster, Secretary, Department of Justice, gave evidence on system responses, accountability and the implementation of the National Royal Commission recommendations.[64] Secretary Webster is responsible for the Child Abuse Royal Commission Response Unit, which coordinates the Government's response to, and implementation of, the National Royal Commission's recommendations. This Unit also develops the annual progress reports and action plans that indicate Tasmania's progress against these recommendations.[65] Responsibility for implementing specific recommendations has also been allocated to the Department of Justice and other government departments and agencies, including the:

- former Department of Communities
- former Department of Education (now the Department for Education, Children and Young People)
- Department of Police, Fire and Emergency Management
- Department of Premier and Cabinet
- Office of the Director of Public Prosecutions.[66]

The Department of Health does not have responsibility for implementing any recommendations, although we note it is now leading the response to the *Child Safe Governance Review of the Launceston General Hospital and Human Resources* and the *Launceston General Hospital Community Recovery Initiative* (which we discuss in Chapter 15).

We had anticipated that both Secretaries would jointly or individually be able to outline the cross-government system for preventing, identifying and responding to child sexual abuse and the role and responsibilities of the various government agencies within this system.

Secretary Gale gave evidence that the prevention and detection of child sexual abuse in institutions was a priority for the State of Tasmania but did not articulate how this prioritisation was being achieved in practice. She deferred to Secretary Webster on the question of implementing the National Royal Commission's recommendations.[67] Secretary Gale conceded that child safety had not previously been a focus of her department under her leadership.[68]

Secretary Webster explained that the Department of Justice was responsible for compiling information about other departments' progress in implementing reforms but not for holding them to account:

> … the department leads the whole of government response to those recommendations, and whilst we wouldn't be responsible for other agencies and their implementation, we would certainly be responsible for getting information about how progressed they are; assisting in terms of any barriers that might exist in its implementation, and compiling the report, the reporting process that's required.[69]

Secretary Webster indicated she did not have capacity to direct other Heads of Agencies or government departments in relation to implementing the recommendations.[70] However, she clarified that, as the Chair of the interdepartmental committee established in relation to implementing the National Royal Commission recommendations, she could raise the progress of a recommendation with the relevant agency member on the committee, Head of Agency or Deputy Secretary.[71]

Secretary Webster agreed she had accountability and oversight regarding the implementation of some of the National Royal Commission's recommendations but limited power to actually influence the progression of recommendations that sat outside of her own department.[72] When asked by Counsel Assisting our Inquiry whether she was satisfied with the progress of implementing the National Royal Commission's recommendations, Secretary Webster said she was 'very comfortable that it is a priority for our department and that we are taking the action we need to take; of course, I'd always like things to move a lot faster than they do in lots of areas'.[73]

We also learned during our Commission of Inquiry that Heads of Agencies across the Government, including those with responsibility for direct service provision to children, did not have any direct or specific accountability for safeguarding children or accountability regarding child sexual abuse as part of their performance agreements.[74]

4.2 Efforts to improve leadership and accountability for child safety and reform

Through the course of our Inquiry, we saw significant improvement in whole of government leadership, including in relation to reform regarding child sexual abuse in institutions.

4.2.1 Establishment of the Secretaries Board

The *Independent Review of the Tasmanian State Service* ('State Service Review') (published in July 2021) considered whether the governing framework for the State Service was fit for purpose. The review made 77 recommendations to improve the overall operation of the State Service.[75]

The Secretaries Board was established in early 2022 in response to the State Service Review.[76] It comprises 'every departmental Secretary'.[77] Secretary Gale chairs the Secretaries Board and meets on a monthly basis.[78] Secretary Gale told us the Secretaries Board is guided by terms of reference that require the identification of priorities for the Tasmanian State Service. It is also guided by regular updates and discussion on whole of government implementation of these priorities.[79] This reflects a significant shift in whole of government accountability, noting that Tasmania's previous arrangements for Heads of Agencies meetings were informal and not subject to terms of reference or formalised reporting requirements.[80]

Secretary Gale told us the Secretaries Board would provide improved governance and accountability for reforms relating to preventing, identifying, reporting and responding to child sexual abuse in institutional contexts. Secretary Gale explained that the Secretaries Board now has collective oversight of the *Keeping Children Safer Actions*.[81] She said the Premier had tasked the Department of Premier and Cabinet with responsibility for leading reporting to Cabinet on implementation progress in relation to these actions.[82] Although specific actions have been tasked to different government agencies for implementation, as Chair of the Secretaries Board, Secretary Gale is accountable for this work.[83] We consider this responsibility should extend to the oversight and accountability for the child sexual abuse reform strategy and action plan (refer to Recommendation 19.1).

4.2.2 Changes to Head of Agency Performance Agreements

During our Inquiry, Heads of Agency Performance Agreements have been changed to 'clarify expectations and improve accountability [for] making sure child safety and wellbeing is embedded in organisational leadership, governance and culture'.[84]

This was made possible due to changes in response to the State Service Review. The review observed that for the Tasmanian State Service to 'function well' the 'reporting and decision-making responsibilities between ministers, ministerial staff, Heads of Agencies and senior executives must be clearly stated' and that 'all parties must understand their role and their accountabilities, particularly in the case of statutory and legislative responsibilities'.[85] The review observed that the:

- existing performance management process did not always effectively hold departmental secretaries to account for whole of government initiatives[86]
- performance assessment processes for Heads of Agencies should be reshaped to ensure that whole of government outcomes feature alongside portfolio-based accountabilities, and that the Premier is more centrally involved in the process[87]
- performance agreement for Heads of Agencies should explicitly set out the responsibility of Heads of Agencies to contribute to cross-portfolio programs (including whole of government priorities) and whole of government capability development as well as that of their own agencies.[88]

The review made three recommendations to improve performance agreements and assessments for departmental secretaries:

> **Recommendation 7**
>
> That the Secretary of the Department of Premier and Cabinet, in full consultation with relevant portfolio ministers and the Premier, develop and undertake departmental secretaries' annual performance agreements and assessments.[89]
>
> **Recommendation 8**
>
> That the Premier undertake the annual performance agreement and assessment of the Secretary of the Department of Premier and Cabinet, informed by discussions with ministers (as the Premier sees appropriate) and consolidated advice from other departmental secretaries.[90]
>
> **Recommendation 9**
>
> Consider [Heads of Agencies] contribution to developing the [Tasmanian State Service] as a genuinely single state service, including the delivery of cross-portfolio outcomes (such as whole-of-government priorities) and whole-of-government capability development, in agency heads' performance assessments.[91]

Secretary Gale told us this new approach to developing departmental secretaries' annual performance agreements and assessments enables common themes to be included in performance agreements. These themes include shared accountability for the safety of Tasmanian children in government institutions, particularly for secretaries whose departments engage in child-related work.[92]

Secretary Gale spoke about what these changes mean in relation to departmental secretaries' performance agreements and her own performance agreement:

> Every Head of Agency's performance agreement with the Premier will commit them to identify and take action within their own department and across the service that will keep children safer. This commitment applies regardless of whether that agency engages directly in child-related work.
>
> In my own performance agreement I commit to being accountable for facilitation and coordination of the suite of actions known as, Keeping Children Safer Actions....

> I also commit to continuing to roll out more trauma-informed training across the [State Service] and to supporting improvements that will see trauma-informed complaints handling processes across the [State Service].[93]

4.2.3 Our observations

We consider the reforms we recommend regarding child sexual abuse in institutions should be a whole of government priority. As such, the Secretary of the Department of Premier and Cabinet, as Chair of the Secretaries Board, should be responsible for endorsing, overseeing, coordinating and reporting on the child sexual abuse reform strategy and action plan.

All relevant secretaries, as members of the Secretaries Board, should be responsible for actioning particular reforms under the child sexual abuse reform strategy and action plan within their portfolio responsibilities. These responsibilities should be included in their performance agreements and reviewed annually.

We also consider that accountability for implementing the child sexual abuse reform strategy and action plan should be extended to the performance agreements of other relevant State Service executives. Over time, the statements of duties for relevant departmental staff, particularly those who provide services to children and young people, should also reflect their responsibilities in relation to the strategy and action plan. This signifies that everyone has a responsibility for keeping children and young people safe within government institutions.

Recommendation 19.3

The Secretary of the Department of Premier and Cabinet, as Chair of the Secretaries Board, should be responsible for endorsing, overseeing, coordinating and reporting on the child sexual abuse reform strategy and action plan.

Recommendation 19.4

1. The Premier should, through their performance agreements, ensure Heads of Agencies are responsible for reforms under the child sexual abuse reform strategy and action plan within their portfolio responsibilities.
2. Heads of Agencies should ensure relevant State Service executives are also responsible for implementing the strategy and action plan.
3. The statements of duties for relevant departmental staff should refer to their responsibilities in relation to the strategy and action plan.

4.3 Existing governance structures for child safety reform

At our hearings, Ms Shuard told us that a governance structure must be inclusive of a 'whole range of agencies' to ensure coordination and that no one is left behind in relation to reform work.[94] Ms Shuard said reporting mechanisms are also important for ensuring there is a shared understanding of what's happening across all the reforms.[95] She was of the view that system-wide risks should be brought to the attention of the Secretaries Board.[96] She also emphasised the importance of hearing the voices of children and young people:

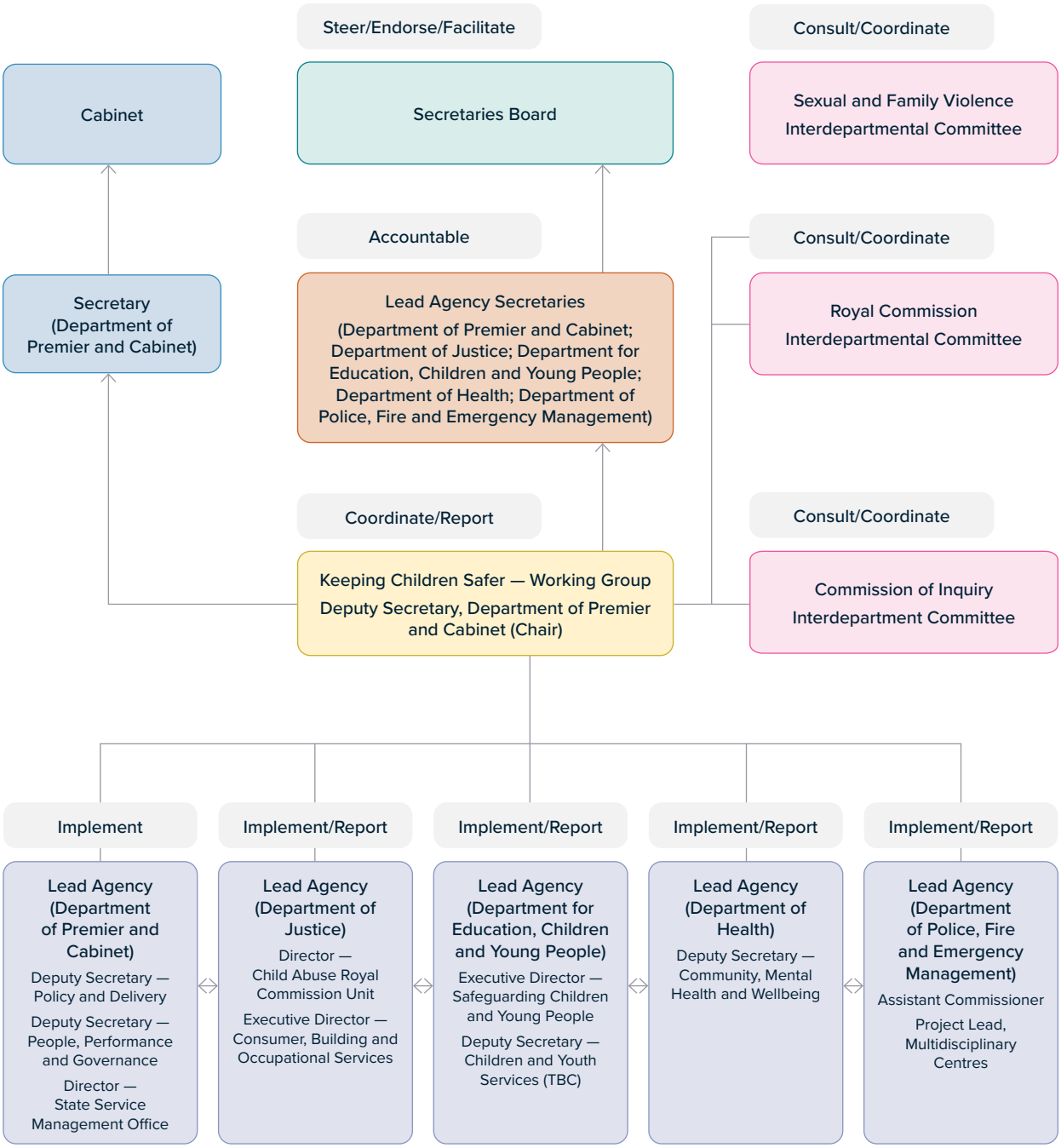
> Their voice must be heard in these arrangements, otherwise we design around our old constructs and forget what that might mean for children and young people, so the peak bodies or advocates for children and young people are essential voices to be heard ...[97]

The Tasmanian Government has established a governance structure for overseeing and implementing the *Keeping Children Safer Actions*. This structure comprises:

- **Department of Premier and Cabinet**, which is responsible for coordinating, monitoring and reporting on the *Keeping Children Safer Actions*.[98] The Department drafts monthly briefings and implementation status reports for Cabinet.[99]
- **Departmental secretaries and Heads of Agencies**, who have been allocated responsibility for implementing the *Keeping Children Safer Actions* by the Premier (either as a sole agency or with another agency or agencies).[100] Departmental secretaries are accountable to the Premier for implementing the *Keeping Children Safer Actions* under performance management instruments.[101] Department leads prepare fortnightly reports for the *Keeping Children Safer Working Group*.[102]
- ***Keeping Children Safer Working Group***, which comprises Deputy Secretaries and Directors from across government and has been established to coordinate and oversee implementation activity regarding the *Keeping Children Safer* actions, provide authoritative advice and endorse fortnightly implementation status reports and reports to Cabinet.[103] The Working Group is guided by terms of reference and meets fortnightly.[104] It also has access to advice and consultation from subject matter experts as needed.[105] The Working Group reports to the Secretaries Board through written reports after each meeting.[106] The Working Group is supported by a Secretariat from the Policy Branch within the Department of Premier and Cabinet.[107]
- **Secretaries Board**, which steers implementation activity, helps resolve barriers to implementation and endorses implementation plans and status reports.[108]
- **Cabinet**, which receives and endorses monthly implementation status reports prepared by the Department of Premier and Cabinet.[109]

The governance structure for the *Keeping Children Safer Actions* is shown in the following figure.

Figure 19.1: Governance structure for the Keeping Children Safer Actions[110]



Source: Statement of Jenny Gale, 23 November 2022.

Secretary Gale also told us:

- The Children, Young People and Families Safety and Wellbeing Cabinet Committee oversees policies and programs that focus on family and sexual violence and the safety and wellbeing of children, young people and their families in Tasmania.[111] Their work includes overseeing the implementation of the *Safe Homes, Families, Communities* initiative, *Strong Families Safe Kids* initiative and the *Child and Youth Wellbeing Strategy*.[112] The Committee is supported by a 'senior officials' committee', which is chaired by Secretary Gale.[113]
- The Department of Premier and Cabinet has responsibility for developing and delivering whole of government policies relating to child safety and wellbeing, including stewardship of the *It Takes a Tasmanian Village: Tasmania's Child and Youth Wellbeing Strategy* and the *Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015–2020*.[114]

We consider this governance structure provides a strong foundation for overseeing and implementing the child sexual abuse reform strategy and action plan. In the following sections, we discuss how this governance structure could be strengthened by providing a mechanism for children and young people and adult victim-survivors of child sexual abuse to influence the system designed to benefit them.

We also consider this governance structure could be strengthened by ongoing sector engagement with agencies outside of government. Throughout our report, we have identified the key role of non-government agencies, including in relation to providing out of home care services and sexual assault counselling. These entities will be a good measure of the success of reforms and should be consulted when developing the strategy and action plan.

We also observe that there does not appear to be any governance arrangements in place to provide an ongoing voice to government from children and young people, such as through the Premier's Youth Advisory Council, or from adult victim-survivors of child sexual abuse. There are no arrangements to ensure representation from diverse communities in Tasmania, including the Aboriginal community, people with disability, people with mental illness, LGBTQIA+ people, and culturally and linguistically diverse communities. We discuss the inclusion of these voices in the following section of this chapter.

4.4 Empowering children and young people and adult victim-survivors of child sexual abuse

Children and young people and adult victim-survivors of child sexual abuse should be empowered to participate in regular discussion on issues that directly affect them and contribute to change and reform. They should also be able to advise the Tasmanian Government on the best ways to coordinate and implement reform work.[115] The participation of children and young people and adult victim-survivors of child sexual abuse ensures the voices of service users and affected populations can contribute to designing and implementing a system that meets the needs of service users, service providers and the Government.[116]

The Australian Human Rights Commission report *Keeping Kids Safe and Well—Your Voices* (released on 6 April 2022) was based on consultations led by Anne Hollonds, National Children's Commissioner, Australian Human Rights Commission, to inform the Australian Government's Actions Plans on *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031.*[117] In relation to the consultations that informed the report, Ms Hollonds said:

> Overwhelmingly, children, young people and families told us how important it is that governments and service providers listen to them when making decisions that affect them.[118]

At our hearings, Ms Hollonds also said:

> … my experience has been that actually when kids are at the table they're surprisingly insightful and refreshing in all of their wisdom, and they actually bring something that adults don't bring to the conversation …[119]

We note that steps to involve children and young people as well as adult victim-survivors of child sexual abuse have already been taken by some government agencies regarding child sexual abuse reform activity.

For example, children and young people and adult victim-survivors of child sexual abuse were engaged when developing the Child and Youth Safe Organisation Framework—comprising the Child and Youth Safe Standards and Reportable Conduct Scheme—being implemented by the Department of Justice.[120] Secretary Webster told us advisory panels were established relating to developing the framework and included a Lived Experience Advisory Panel comprising adult victim-survivors of child sexual abuse in institutional settings and family and friends of victim-survivors.[121]

A suite of consultation methods was also used to capture the views and opinions of children and young people in the community, including children and young people with experience of the out of home care system.[122]

Secretary Webster also told us:

> People with lived experience of child sexual abuse in institutional settings and children and young people are critical stakeholders in the project to develop and implement the Framework. Their expertise gained through lived experience will be a valuable contribution to the policy development and implementation planning for the Framework. Genuine engagement with children and young people and victim-survivor advocates through the project cycle also reflects the Government's commitment to the Child Safe Standards.[123]

As noted above, the Government is also establishing its first Victim-Survivor Advisory Council as an action under its most recent Family and Sexual Violence Action Plan—Survivors at the Centre.[124] The Council will include victim-survivors of family and sexual violence, including adults who may have experienced child sexual abuse, and family and friends of victims who lost their lives to family and sexual violence. It will provide an ongoing voice to government.[125] However, it is not clear how many members will have lived experience of child sexual abuse, or whether the Council will be consulted about reform work falling outside the actions identified in Survivors at the Centre, including reforms relating to child sexual abuse in institutions. We consider victim-survivors of child sexual abuse to have distinct experiences and needs that differentiate them from adult victim-survivors of family and sexual violence.

In our view, the Government must show an ongoing preparedness to hear the voices of children and young people and adult victim-survivors of child sexual abuse, including child sexual abuse in institutions, at a broader whole of government level and across all reforms. We recommend the governance structures for the child sexual abuse reform strategy and action plan incorporate the voices of children and young people and adult victim-survivors of child sexual abuse, including child sexual abuse in institutions. Sustained and ongoing engagement of children and young people and adult victim-survivors of child sexual abuse is crucial to building an understanding of issues relating to child safety, child sexual abuse (including child sexual abuse in institutions) and harmful sexual behaviours. It is also crucial for ensuring policy and reform work meets service user needs. We consider the Government can achieve this governance structure through the already established Premier's Youth Advisory Council and through the establishment of an adult-victim survivors of child sexual abuse advisory group.

The Premier's Youth Advisory Council comprises a group of young people aged between 12 and 25 years. It provides an opportunity for 'young people to inform the Tasmanian Government on issues and policies that affect them and their peers' through meetings with the Premier and the Minister for Education, Children and Youth 'several times a year'.[126]

We consider the adult victim-survivors of child sexual abuse advisory group should comprise some members who have experienced child sexual abuse in institutions.

These groups should be representative of the diverse communities in Tasmania, including the Aboriginal community, people with disability, people with mental illness, LGBTQIA+ people and culturally and linguistically diverse communities.

The issues we consider each advisory group can contribute to include:

- the therapeutic service system that supports victim-survivors and their families and carers
- whole of government policies relating to child safety
- strategies to raise awareness about child safety, including in government institutions
- resources for children and young people in relation to the prevention, identification and response to child sexual abuse
- forms of engagement with children and young people and adult victim-survivors of child sexual abuse
- initiatives designed to improve and respond to the safety of children and young people and harmful sexual behaviours, including initiatives designed for particular cohorts of children
- professional development initiatives to promote trauma-informed practices across government
- recruiting senior leadership roles focused on children and safety (for example, the Commissioner for Children and Young People).

Each advisory group should be promoted across government as a key mechanism through which to test ideas, policies and reform initiatives relating to child safety.

In other chapters of our report, we also recommend establishing advisory groups for specific institutional contexts, such as out of home care, Ashley Youth Detention Centre and health services (refer to Recommendations 9.6, 12.8 and 15.7). We considered whether, for efficiency, there could be one advisory group to meet these different purposes. However, in our view, these specific institutional contexts require specialist knowledge, gained through lived experience, about those systems. We consider these institution-specific advisory groups should also be consulted on policy and reform work when this is appropriate. In contrast, given the lower level of vulnerability of most children and young people in schools, we consider the Premier's Youth Advisory Council, and other existing broad student representative voice mechanisms, should be engaged regarding policy and reform work in schools.

We also recommend that the mechanisms for engaging with children and young people and adult victim-survivors of child sexual abuse, including child sexual abuse in institutions, be set out in the child sexual abuse reform strategy (Recommendation 19.1).

Promoting these mechanisms through the strategy will build awareness of the mechanisms and ensure they are consistently and regularly engaged in policy design and reform work as standard practice across government.

Recommendation 19.5

1. The Tasmanian Government should ensure, in setting out the governance structure for the child sexual abuse reform strategy and action plan, that children and young people and adult victim-survivors of child sexual abuse are part of this governance structure through:
    a. the Premier's Youth Advisory Council
    b. the establishment of an advisory group comprising adult victim-survivors of child sexual abuse, including child sexual abuse in institutions, of different ages, backgrounds, cultures, gender identities and geographical locations and parents of child victim-survivors.
2. The Department of Premier and Cabinet should report on the activities of these advisory groups in its annual report.
3. These advisory groups should:
    a. be guided by clear terms of reference that have been developed in consultation with the advisory groups
    b. have a clear purpose and objectives in terms of how they can contribute across the whole of government
    c. receive secretarial support and be adequately funded and resourced
    d. ensure trauma-informed processes apply in their interactions
    e. support and enable members' attendance by covering the costs of travel and expenses, and providing honorariums where appropriate.

5 Improving information sharing and cross-agency coordination for child safety

To prevent, identify, report and respond to child sexual abuse in institutions, it is essential government and government funded agencies and statutory bodies work effectively with one another. As outlined, many agencies have a role in addressing child sexual abuse in institutions. However, to achieve an effective response, agencies must be clear on the scope of their role and responsibilities and maintain strong communication.[127]

In this section, we summarise some problems we heard about information sharing and coordination across agencies relating to child safety issues, and the steps the Tasmanian Government is taking to address these issues. We recommend that any legislative barriers that hinder the sharing of information to protect the safety and wellbeing of children in Tasmania's legislation be identified and removed.

To further support effective responses to child safety issues, we also recommend the development of child safety information sharing, coordination and response for government and government provided agencies and statutory bodies. These guidelines should clearly articulate the roles and responsibilities of collaborating agencies in responding to child safety issues, including their information sharing obligations.

5.1 The National Royal Commission

The National Royal Commission defined 'information sharing' or 'information exchange' in the following way:

> 'Information sharing' and 'information exchange' refers to the sharing or exchange of information, including personal information, about, or related to, child sexual abuse in institutional contexts. The terms refer to the sharing of information between (and, in some cases, within) institutions, including non-government institutions, government and law enforcement agencies, and independent regulatory or oversight bodies. They also refer to the sharing of information by and with professionals who operate as individuals to provide key services to or for children.[128]

The National Royal Commission considered that information sharing between institutions with responsibilities for the safety of children is important to 'identify, prevent and respond to incidents and risks of child sexual abuse'.[129] It also considered the exchange of information to be important in ensuring the 'proper functioning of reportable conduct and Working With Children Check schemes'.[130] It noted that no single institution collects all the relevant information that can protect children, which is why information must be shared across institutions to enable effective responses to incidents and risks of child sexual abuse.[131]

As a matter of principle, we consider information sharing should occur when there is a concern about a risk of harm (including of child sexual abuse) to a child or a group of children, such as those in a particular institutional context. We also consider information should be shared with any entity that could act to address this risk now or in the future.

5.1.1 Recommendations on information sharing

The National Royal Commission observed the exchange of information relating to child safety often involves personal and sensitive information (such as information about a child's harmful sexual behaviours or information about adults who pose a potential risk to children), which is often protected by legislation.[132] It noted that even where legislation permits the exchange of this information for child safety, there may be a reluctance to share such personal and sensitive information due to concerns about privacy, confidentiality, defamation and confusion about the application of complex and inconsistent laws.[133] It also observed the exchange of information may be inhibited due to institutional cultures, poor leadership and weak or unclear governance arrangements.[134]

The National Royal Commission recommended a nationally consistent information sharing scheme between key agencies and institutions be developed and implemented to improve information sharing in relation to the safety and wellbeing of children within and across jurisdictions and sectors.[135] It said the scheme should:

a. enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing

b. permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts

c. require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes relating to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions

d. explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts

e. provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme

f. require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.[136]

The National Royal Commission considered the core group of institutions that should be considered to include in the information exchange scheme to be:

- accommodation and residential services for children
- childcare services
- child protection and out of home care services
- disability services and supports for children with disability
- education services for children
- health services for children
- justice and detention services for children
- state and territory government agencies and public authorities
- law enforcement agencies
- Working With Children Check screening agencies
- regulatory and oversight agencies (including, for example, teacher registration authorities)
- Australian Government agencies that may hold information relating to the safety and wellbeing of children
- professionals who provide key services and supports to children as individual service providers, rather than through agencies or organisations (such as medical practitioners and psychologists)
- professional and disciplinary bodies that oversee professional practice in the institutions set out above.[137]

It also indicated that religious institutions, sport and recreation institutions and non-government organisations that provide particular services to adults (such as drug, alcohol and mental health services) be considered for inclusion.[138]

The National Royal Commission also recommended strengthening information sharing in the education and out of home care sectors. These recommendations provide for the sharing of information about:

- teachers regarding teacher registration across jurisdictions
- students who move schools and may, for example, have exhibited harmful sexual behaviours
- carers as part of introducing carers' registers across jurisdictions to collect information about carers who have applied to work or do work at various out of home care agencies.[139]

Work has commenced to implement some of these recommendations in Tasmania, and some have already been implemented.[140] However, as we outline in the following section, we still heard of problems relating to sharing child safety information.

Secretary Webster told us reform that related to improving access to and the sharing of information to protect children is a difficult area.[141] She said although the National Royal Commission undertook significant work on the issue, it 'fell short of providing definitive guidance about balancing privacy and risk to children'.[142]

5.2 Legislation governing the sharing of information about child safety in Tasmania

Legislation governing the exchange of information regarding the safety of children includes general privacy legislation and specific legislative schemes. In Tasmania, specific legislative schemes that govern the exchange of information between agencies about the safety of children in particular situations include:

- *Children, Young Persons and Their Families Act 1997* ('Children, Young Persons and Their Families Act')
- *Youth Justice Act 1997* ('Youth Justice Act')
- *Registration to Work with Vulnerable People Act 2013* ('Registration to Work with Vulnerable People Act').

The *Personal Information Protection Act 2004* ('Personal Information Protection Act') regulates general information sharing between government agencies that falls outside of a legislative scheme. We discuss key pieces of legislation in the following sub-sections.

5.2.1 Personal Information Protection Act

The Personal Information Protection Act regulates the collection, maintenance, use, correction and disclosure of personal information relating to individuals. 'Personal information' encompasses any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion. That individual must be alive or not have been dead for more than 25 years.[143]

A 'personal information custodian', which includes a government department, must comply with the Personal Information Protection Principles.[144] These Principles state that a personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless, among other things:

- the personal information custodian reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare, or a serious threat to public health or public safety
- the personal information custodian has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities
- the use or disclosure is required or authorised by or under law
- the personal information custodian reasonably believes the use or disclosure is reasonably necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction by or on behalf of a law enforcement agency
- the personal information is to be used as employee information in relation to the suitability of the individual for appointment or the suitability of the individual for employment held by the individual
- the personal information is employee information that is being transferred from one personal information custodian to another personal information custodian for use as employee information relating to the individual.[145]

When a provision in the Personal Information Protection Act is inconsistent with a provision in another piece of legislation, the provision in the other legislation prevails.[146]

5.2.2 Children, Young Persons and Their Families Act

The Children, Young Persons and Their Families Act provides for the care and protection of children in Tasmania. It sets out responsibilities and obligations regarding reporting concerns to the Child Safety Service about the abuse or neglect of children.[147] It 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 act to prevent the abuse. This action includes informing the relevant Secretary or the Strong Families Safe Kids Advice and Referral Line.[148]

Specific professionals, including state servants, also have mandatory reporting obligations. They must inform the relevant Secretary or the Strong Families Safe Kids Advice and Referral Line if, in carrying out official duties or in the course of their work, they know or believe or suspect on reasonable grounds that a child has been or is being abused.[149] While there has been some confusion across the Tasmanian Government about whether mandatory reporting obligations arise when information suggests a potential risk to children generally, rather than a risk to a specifically identified child, we consider it best practice to make a report even when this uncertainty exists.

The Children, Young Persons and Their Families Act also provides for information exchange between the Child Safety Service and an 'information-sharing entity' for the safety, welfare or wellbeing of a person who is the subject of a notification to, or under an order of, the Child Safety Service (a relevant person).[150] An 'information-sharing entity' includes a:

- mandatory reporter
- state servant
- person in charge of specified health and disability services
- person in charge of an organisation that receives a referral from the Child Safety Service.[151]

The Secretary may provide information to, or require information from, any of these entities.[152] The information-sharing entity may, if satisfied that information in its possession relates to the safety, welfare or wellbeing of a relevant person, provide the Secretary with this information as well as another information-sharing entity if they are involved with, or are likely to be involved with, the relevant person or a significant person to the relevant person.[153]

The Children, Young Persons and Their Families Act provides that a person who receives a report from a notifier, or who becomes aware of the identity of a notifier of a report, as a result of administering the Act must not disclose the notifier's identity to another person unless the disclosure is made:

- in the course of their official duties under the Act to another person who is acting in the course of their official duties
- with the consent of the notifier
- by way of evidence adduced with leave granted by the court
- to a law enforcement agency (since 2 October 2019).[154]

Although an individual engaged in administering the Act is obliged to maintain confidentiality, they may divulge information where, among other things, it is necessary or appropriate for the proper administration of the Act or they are legally authorised or required to do so.[155] Individuals are protected from liability when performing or exercising functions and powers under the Act, including the disclosure of information.[156] A similar protection is provided to the police.[157]

Since 1 March 2021, there have also been exceptions to the duty to maintain confidentiality for providing:

- relevant personal information for criminal and civil actions against alleged perpetrators who are the subject of the personal information

- information to agencies undertaking an employment screening or review process, or disciplinary investigations or proceedings, against a current or prospective employee or a volunteer.[158]

These 1 March 2021 exceptions apply if sharing the information does not disclose the identity of, or lead to the identification of, a person other than the person who is the subject of the civil or criminal proceedings or employment screening or disciplinary investigation or proceeding.[159] Using this information is subject to the rules of procedural fairness.[160]

5.2.3 Youth Justice Act

The Youth Justice Act provides for the treatment and sanctioning of young people who have offended. It contains provisions relating to confidentiality. Specifically, the Youth Justice Act provides that, subject to some exceptions, a person must not publish any information regarding any action or proceeding that is to be, is being or has been taken against a young person and may lead to the identification of the youth, victim or another person involved who has not consented to publishing the information.[161]

5.2.4 Registration to Work with Vulnerable People Act

The Registration to Work with Vulnerable People Act establishes a screening and monitoring system for people who work with vulnerable people, including children and young people.[162] A 'reporting body', which includes a State Service agency and the police service, that becomes aware by any means, or suspects on reasonable grounds that a person registered under the Act has engaged, or may have engaged, in reportable behaviour, must notify the Registrar of the Registration to Work with Vulnerable People Scheme, as soon as practicable, of the name and other identifying details of the person and the behaviour.[163] 'Reportable behaviour' is behaviour that poses a risk of harm to vulnerable persons, whether by neglect, abuse or other conduct.[164]

The Registration to Work with Vulnerable People Act also contemplates the Registrar receiving information about reportable behaviour other than through the duty that a reporting body has to notify the Registrar. However, there is no specific legislative provision for receiving this information.[165] There is nothing in the Registration to Work with Vulnerable People Act preventing an entity, including a government department or any individual, from notifying the Registrar of concerning behaviour involving any person. However, they would need to ensure they are not in breach of the general prohibition on the use or disclosure of personal information under the Personal Information Protection Act. Sharing relevant information with the Registrar would generally be for determining whether the person is suitable to:

- be registered under the Registration to Work with Vulnerable People Scheme (through a risk assessment)
- stay registered under the Scheme (through an additional risk assessment).

These purposes are for the broader purpose of protecting public safety or for the assessment of the suitability of the person for employment. Both purposes are exceptions to the general prohibition on the use or disclosure of personal information in the Personal Information Protection Act. Our view is that the Registration to Work with Vulnerable People Act should be amended to clarify that any person can notify reportable behaviour to the Registrar of the Registration to Work with Vulnerable People Scheme.

When the Registrar of the Registration to Work with Vulnerable People Scheme reasonably considers that an 'entity', which includes an individual, public authority or another body, may have information relevant to their functions and powers under the Registration to Work with Vulnerable People Act, they may require the entity to provide this information.[166] The entity must comply with the request or provide a reasonable excuse for its failure to comply.[167] Information the Registrar obtains arising from a request may only be used to administer the Registration to Work with Vulnerable People Act.[168]

Peter Graham, former Registrar of the Registration to Work with Vulnerable People Scheme, described the obligation to notify the Registrar of 'reportable behaviour' as the 'backbone of the scheme' because 'it forms the basis of information available to the Registrar to consider when conducting a risk assessment [of a person applying for registration] or additional risk assessment [of a person who is already registered]' under the Scheme.[169]

Mr Graham said notifications made under this obligation give the Registrar of the Registration to Work with Vulnerable People Scheme 'significantly more information' when undertaking risk assessments than is contemplated by the National Standards for Working with Children Checks. The information available to the Registrar includes criminal intelligence and other information provided by reporting bodies, including allegations that have not been tested by an investigation (unsubstantiated allegations).[170]

The Registrar of the Registration to Work with Vulnerable People Scheme and their staff must not use or disclose information about a person that has been disclosed or obtained as part of the performance or exercise of a function or power under the Registration to Work with Vulnerable People Act, unless it is divulged under the Act, another Act or corresponding law, or with the person's consent.[171] The Registrar may disclose the result of a risk assessment, that the registration of a person has been suspended or cancelled, or other information relating to a registered person to another registering authority that has similar functions under another corresponding law.[172]

The Registrar of the Registration to Work with Vulnerable People Scheme may also disclose this information to specified bodies or a person if they consider it appropriate to protect vulnerable persons or a class of vulnerable person from a risk of harm.[173] We were told it is 'typical' for the Registrar to advise a State Service agency of a negative risk assessment regarding an individual, but not share the underlying information or grounds for the assessment. This is because it will generally have been informed by information that is available to the Registrar but not available to the State Service agency (that is, through criminal intelligence information).[174]

Recommendation 19.6

The Tasmanian Government should introduce legislation to amend the *Registration to Work with Vulnerable People Act 2013* to clarify that, in addition to the duty to report in certain circumstances, any person can notify reportable behaviour to the Registrar of the Registration to Work with Vulnerable People Scheme.

5.3 Barriers to information sharing and coordination in Tasmania

During our Inquiry, we heard information sharing and coordination between agencies is not always done in a way that prioritises the safety and wellbeing of children and young people. We also heard it does not always support the needs of victim-survivors of child sexual abuse in institutions. While some of these barriers were explained to us in terms of legislative barriers, we consider culture to be the main barrier to appropriate information sharing and a coordinated response to child safety concerns.

Regarding mandatory reporting to the Child Safety Service and the Registrar of the Registration to Work with Vulnerable People Scheme, we make findings in relation to or heard about the following barriers to information sharing:

- We find in Chapter 14, Case study 3, relating to James Griffin that Launceston General Hospital had no clear system or process in place to support complaints to external agencies and, as a result, staff were not aware of their reporting obligations, including to the Child Safety Service and Ahpra. We also highlighted in Chapter 15 that the Tasmanian Health Service Protocol – Complaint or Concern about Health Professional Conduct (November 2020) included an expectation that staff would not make a mandatory report without executive leadership approval.
- In Chapter 11, Case study 7, we find the Department of Justice does not have an appropriate process to ensure that information in National Redress Scheme applications is shared in a timely manner to protect children. We also discuss how

poor information sharing between agencies increased the risk of child sexual abuse at Ashley Youth Detention Centre.

- Tasmania Police told us in its submission that 'because different classes of people are required to report different types of conduct to different departments, the system is vulnerable to information exchange breakdown and consequent delays in investigation'.[175]
- Mr Graham told us it is clear there is a varied understanding of the reporting obligations under the Registration to Work with Vulnerable People Act across the State Service.[176] Previously, legal advice provided to the Department of Justice was based on a narrow interpretation of the use of the word 'finds' regarding the reporting of reportable behaviour under the Act. This advice influenced agencies to not report to the Registrar until after a misconduct investigation had made a 'finding' of misconduct against a staff member.[177] Since 1 February 2021, the wording in the Registration to Work with Vulnerable People Act in relation to this point has been clarified.[178]
- Secretary Webster told us that outside of Tasmania Police and the Child Safety Service, it has taken longer for other agencies to understand and meet their obligations of reporting to the Registrar of the Registration to Work with Vulnerable People Scheme.[179]

We also heard the following in relation to the sharing of information between Tasmania Police and the Child Safety Service:

- Until the 2021 *Keeping Children Safe Memorandum of Understanding*, Tasmania Police sometimes had to seek warrants to obtain information from the Child Safety Service.[180] Both the memorandum and accompanying *Keeping Children Safe Handbook* now state: 'Warrants are not required in order to facilitate the release of information relating to the safety of a child from either party and warrants will not be requested by either party in relation to the provision of such information'.[181]

Regarding State Service disciplinary processes, we heard of the following problems:

- Secretary Bullard told us the general prohibition in the Personal Information Protection Act restricted the former Department of Education's ability to share information about a teacher that had been obtained through an investigation into a breach of the State Service Code of Conduct (referred to as an Employment Direction No. 5—Breach of Code of Conduct investigation), including with the Teachers Registration Board.[182] Secretary Bullard said this was based on advice that the purpose the information had been collected for (employee disciplinary processes by the Department) was different from the purpose the information was sought to be disclosed (determining good character and fitness to teach

by the Teachers Registration Board).[183] It is unclear to us why the public safety or employment reasons exceptions in the Personal Information Protection Act would not apply.

- Secretary Bullard and Secretary Gale both indicated the Personal Information Protection Act is a barrier to keeping complainants and victim-survivors informed about how abuse complaints are managed and the status of investigations.[184]
- Based on legal advice about the privacy provisions in the Children, Young People and Their Families Act and Youth Justice Act, the former Department of Communities had not provided un-redacted material (specifically the files of children who had been in Ashley Youth Detention Centre and Unit Diaries from the Centre) to investigators undertaking Employment Direction No. 5—Breach of Code of Conduct investigations.[185] As outlined before, these legislative provisions prevent publishing information about care and protection proceedings as well as court proceedings, formal or informal cautions or community conferences in particular circumstances regarding children and young people.[186]

In our view, these information sharing failures have placed children at risk by not ensuring relevant agencies or entities have the adequate information they need to perform their functions and fulfil their obligations to protect children. We agree with Secretary Bullard's observation that information sharing is critical to assessing risk and ensuring the necessary supports are in place for the safety and wellbeing of children and young people.[187]

We acknowledge that some told us information sharing problems stem from legislative barriers. For example, Mr Graham told us a general exemption should be included in the Personal Information Protection Act that enables information about the safety of children to be shared, noting it would combat the reluctance some people have in sharing information because the Personal Information Protection Act is often used as a barrier to information exchange.[188]

Similarly, Secretary Bullard embraced including such a legislative provision in the Personal Information Protection Act. He queried whether such a provision should be mandatory or permissive.[189] Secretary Bullard said making it mandatory would likely be easier because this removes the need for deliberation and judgment.[190]

In our view, the Personal Information Protection Act already contains sufficient exemptions which would, if interpreted in a way that seeks to promote the safety and wellbeing of children and young people, enable information about the safety of children to be shared, particularly where:

> … the personal information custodian reasonably believes that the use or disclosure [of personal information] is necessary to lessen or prevent … a serious threat to an individual's life, health, safety or welfare; or a serious threat to public health or public safety.[191]

These provisions reflect provisions in other jurisdictions, including the Australian Privacy Principles.[192]

As noted, Secretary Webster told us it was her belief that one of the most difficult areas of reform will be improving access to and sharing information.[193] Secretary Webster explained this particularly in relation to any legislative changes required:

> These reforms impinge on the existing privacy rights of individuals. Legislative reforms to information sharing and erosion of privacy protections can be fraught and controversial. I fully support the need to significantly increase the rights of children to be safe and understand the processes that have affected them, but I note that these reforms will need to be carefully considered and balanced. I also note that these reforms will be complex drafting exercises because of the numerous Tasmanian statutes that contain confidentiality provisions for a [sic] various policy reasons.[194]

Secretary Bullard said changing information sharing practices requires 'sustained change management' including clarity about what information agencies hold, what information can and should be shared, purposes for which it can be shared and with whom.[195] He said it then requires a concerted effort to understand and address underlying beliefs or assumptions about what information should or should not be shared.[196] He said it also requires an understanding of legal and other barriers to change and a willingness to make legislative amendments as required.[197] Despite this challenge, Secretary Bullard said information sharing between departments, independent statutory bodies and with victim-survivors needs to be improved within the bounds of what is legally permissible.[198]

Where there are legislative barriers, these should be removed. We recommend confidentiality and secrecy provisions in Tasmanian legislation be reviewed. Where these provisions create specific legislative barriers to the sharing of information to protect the safety and wellbeing of children and young people, these barriers should be removed.

We consider, however, that many failures to share information stem from a culture within parts of the State Service, including those providing advice. This advice preferences a person's right to privacy over the protection of the safety and wellbeing of children. There is also a lack of understanding of mandatory reporting obligations and staff ability to share information to protect children. These cultural barriers must be addressed. We discuss measures to address cultural barriers to information sharing in the following section.

Recommendation 19.7

The Tasmanian Government should review confidentiality and secrecy provisions in Tasmanian legislation, including the *Personal Information Protection Act 2004*, to identify any specific legislative barriers that hinder the sharing of information necessary to protect the safety and wellbeing of children and young people and remove these barriers.

5.4 Existing guidance on information sharing, coordination and responses for child safety

Given the cultural resistance to sharing information, it is fundamental that there is clear guidance about how information can and should be shared to protect children, and to facilitate a coordinated response to child safety concerns. Further, it is critical that information affecting children's safety is purposefully shared and leads to action by appropriate entities and services.

Darren Hine AO APM, former Commissioner, Tasmania Police, told us several formal documents guide Tasmania Police on information sharing and coordinating investigations and responding to child sexual abuse. These documents include:

- ***Tasmania Police Manual***, which provides guidance to police officers on performing their duties, including in relation to child sexual abuse, and the types of notifications they must make to external agencies, including (but not limited to) the Strong Families Safe Kids Advice and Referral Line, Registrar of the Registration to Work With Vulnerable People Scheme, Ahpra and the Teachers Registration Board.[199]
- ***Tasmania Police Initial Investigation and Notification of Child Sexual Abuse Guidelines***, which provide 'policy and practice guidance to Tasmania Police officers in responding to children and young people who have, or may have been, sexually abused'.[200] The guidelines outline objectives, procedures (including reporting), roles and responsibilities (including initial response, interviews, forensics and information sharing requirements) and relevant legislation and policy documents.
- ***Registration to Work with Vulnerable People Information Sharing Protocol between the Department of Justice and Tasmania Police***, which outlines the process for Tasmania Police to share information with the Registration to Work with Vulnerable People Unit in the Department of Justice.[201] Since 2016, an interface between both agencies has supported the exchange of information under the protocol where information is shared daily with the Registration to Work with Vulnerable People Unit from Tasmania Police's information systems.[202] A similar information-sharing arrangement has also been in place for the Child Safety Service to share information daily with the Registration to Work with Vulnerable People Unit since 2017.[203]

- **Memorandums of Understanding** between Tasmania Police and various government departments, which includes the *Keeping Children Safe Memorandum of Understanding* that guides the relationship between Tasmania Police and the Child Safety Service regarding statutory responses to suspected child abuse and neglect.[204] This Memorandum designates Tasmania Police as the lead agency in all child safety matters when an offence is disclosed and the Child Safety Service as the lead agency in matters relating to the care and protection of a child.[205] Joint responses under the Memorandum are to be coordinated in a way that ensures the interests and safety of a child are paramount.[206] The Memorandum is accompanied by the *Keeping Children Safe Handbook*, which provides additional context and guidance to staff about fulfilling their roles and responsibilities under the Memorandum.[207] It also includes forms and templates for use in cross-agency coordination to ensure there is consistent practice between both agencies.[208] Both documents explicitly state: 'Information will be exchanged freely as requested between the parties in relation to the protection of children, facilitating the complete picture of a child's experience, enabling decisive and effective action'.[209]

We do not consider that the Memorandum or the Handbook responds specifically to the issue of information sharing or coordination of responses to child sexual abuse in institutions.

During our Commission of Inquiry, some government agencies also developed memorandums of understanding with Tasmania Police to clarify their roles and responsibilities in preventing and responding to child sexual abuse in institutions.[210] These memorandums are similar and address the following topics:

- purpose
- shared operating principles
- management of incidents or disclosures of child sexual abuse in education and health settings, including reporting, investigation, communication and information sharing
- governance.[211]

We received no evidence that any formal documents had been developed to specifically guide government or government funded agencies or statutory bodies regarding responses to child sexual abuse in institutions. This includes when a staff member is the subject of an allegation or incident of child sexual abuse.

5.5 Efforts to improve information sharing and coordination of responses to child sexual abuse in institutions

During our Commission of Inquiry, the Tasmanian Government started or committed to undertake several projects to improve information sharing across agencies. We summarise this work in the following sub-sections.

5.5.1 Keeping Children Safer Actions

As part of the *Keeping Children Safer Actions*, the Tasmanian Government is considering 'legislative solutions and other initiatives that will make it easier to share information about risks to children, including looking at whether issues of custom, practice and culture are creating unnecessary barriers'.[212] The Department of Premier and Cabinet is leading this work. The Government has indicated that legislative options will be developed for it to consider.[213] This action has an expected delivery date of March 2024.[214]

In the final week of our hearings, Secretary Gale told us the Department of Premier and Cabinet is planning reforms to facilitate government-wide information sharing, in the form of 'overarching legislation that would be superior to … all other … legislation in relation to that information'.[215] When asked whether a positive obligation to share information about child safety needed to be considered as part of the Department's work, Secretary Gale said: 'if we need to make it absolutely clear by making it mandatory that we share information, then we will certainly consider that strongly'.[216] Secretary Webster told us the Department of Justice is helping with this work and information was prepared for Cabinet at the end of 2022.[217]

When questioned in the final week of our hearings about professional development for staff to ensure they understand their child safety information sharing obligations, Secretary Gale said information sharing is 'largely driven by custom and practice':[218]

> … even though we know that there is no barrier to sharing that information between agencies, it has been difficult. And I think this gets to the cultural piece that will need to be a very significant part of the work that we do … it's one thing to enable through processes, legislation, and so on, but it is another to change the way in which people behave.[219]

Also related to this work is the *Keeping Children Safer* action of developing clear information about the circumstances in which agencies can and should share information about the status of investigations and/or investigative material.[220] We understand this work forms part of a broader project to build shared capability across government agencies for serious disciplinary investigations and is expected to be completed in October 2023.[221] We support this work and encourage the Government to develop a plan to ensure this information is known and accessible to relevant staff across agencies.

In the final week of our hearings, Secretary Gale also told us the Department is working on developing procedures to keep complainants informed about Employment Direction No. 5—Breach of Code of Conduct investigations within the parameters of the Personal Information Protection Act.[222] She said this will involve exploring how the Act can be changed to enable complainants to be kept better informed about these types of investigations.[223] We have not received further information about this initiative but support its continuation.

5.5.2 Child and Youth Safe Organisations Act

One of the *Keeping Children Safer Actions* is to develop a Child and Youth Safe Organisations Framework including Child and Youth Safe Standards and a Reportable Conduct Scheme.[224] Introducing child safe standards and a reportable conduct scheme were recommendations the National Royal Commission made in December 2017.[225]

On 22 November 2022, the Child and Youth Safe Organisations Bill 2022 was introduced into the Tasmanian Parliament. The Bill received Royal Assent and commenced as the *Child and Youth Safe Organisations Act 2023* ('Child and Youth Safe Organisations Act') on 1 July 2023. Implementation of the Child and Youth Safe Organisations Framework, which comprises the Child and Youth Safe Standards and Reportable Conduct Scheme, is now underway and has an expected delivery date of July 2024.[226]

We discuss the Child and Youth Safe Organisations Act in detail in Chapter 18 but, for current purposes, Part 5 of the Act provides for information sharing. In addition to giving the Independent Regulator under the Child and Youth Safe Organisations Act broad information-sharing powers (described further in this chapter and in Chapter 18), the Act also provides for sharing information between specified individuals and organisations. This includes powers to share information between:

- the Independent Regulator (of the Child and Youth Safe Standards and Reportable Conduct Scheme)
- an entity regulator (this can include government agencies or other bodies that assume regulatory functions related to the Reportable Conduct Scheme—the Independent Regulator is to determine these)
- the head of an entity (which would include a Secretary of a Department) (including in relation to contractors)
- the Commissioner of Police, a police officer, or police from other Australian jurisdictions
- an independent investigator, in some situations
- the Registrar of the Registration to Work with Vulnerable People Scheme

- the Integrity Commissioner
- a Minister
- any other roles prescribed by regulations.[227]

In Chapter 18, we recommend the Ombudsman be included in the entities required to share information (refer to Recommendation 18.3). Information that can be shared by and between these bodies relates to information or documents relating to the Child and Youth Safe Standards and Reportable Conduct Scheme (noting that the Standards are broad in scope). This includes:

- information or documents relating to concerns about compliance with the Standards and Universal Principle
- information relating to reportable allegations and associated investigations, including findings and outcomes relating to reportable conduct.[228]

The disclosure of information relating to these matters must relate to:

- the purposes of the Child and Youth Safe Organisations Act
- the promotion of the safety and wellbeing of children
- a prescribed purpose.[229]

If there is any inconsistency with other legislation (for example, restrictions imposed by the Personal Information Protection Act or the *Right to Information Act 2009* ('Right to Information Act')) the permissive information sharing powers of the Child and Youth Safe Organisations Act are intended to apply and override them.[230]

The Independent Regulator can also obtain information, make a record of information, disclose information to *any* person, and otherwise use information in situations where such an action is taken:

- to protect and promote the safety and wellbeing of children
- to enable the investigation or the enforcement of a law
- for investigatory, disciplinary or employment-related purposes related to the safety and wellbeing of children
- to share information with other jurisdictions and child safety oversight bodies to collect, publish and analyse data on approaches to child safety
- to perform a function or exercise a power in the Act
- for a prescribed purpose.[231]

The Child and Youth Safe Organisations Act also allows the Independent Regulator to disclose information relating to the administration of the Reportable Conduct Scheme, including:

- the details of an allegation, investigation and findings to a worker the subject of an allegation
- children and young people involved in an allegation and their guardian in particular situations.[232]

The Independent Regulator must also notify the Registrar of the Registration to Work with Vulnerable People Scheme of information relating to a 'relevant finding' made regarding reportable conduct. This includes:

- the fact that a finding has been made
- an outline of the finding and the reasons for it
- the name (including former names or aliases, if known) of the worker who is the subject of the finding
- the worker's date of birth (if known).[233]

The Act also offers protections relating to disclosing information that would identify a child or a person who has disclosed reportable conduct.[234]

Secretary Webster told us that allowing the flow of information between the Independent Regulator and a range of entities by overriding elements of the Right to Information Act and Personal Information Protection Act helps to ensure the safety of children is at the centre of information sharing.[235] We discuss the Right to Information Act in more detail in Chapter 17.

5.5.3 Department for Education, Children and Young People

We were also told that merging the former Department of Communities and the Department of Education into the Department for Education, Children and Young People on 1 October 2022 may help overcome some barriers to information sharing. We discuss the structure of the new Department in Chapter 7.

Secretary Bullard said that he saw this change as:

> … an opportunity to build closer links across all areas working to safeguard and protect Tasmania's children and young people; thereby building a more effective process for sharing information and taking a holistic approach to the prevention, identification and response to child sexual abuse in an institutional context.[236]

Secretary Gale also told us that 'putting the key functions relating to children in the one Agency will help to breakdown cultural and systems-based barriers to information

sharing that could keep children safe'.[237] These views were echoed by Secretary Webster who indicated the new department would help ensure a more coordinated and consistent approach to child safety across key child services provided by government.[238]

The Department for Education, Children and Young People has established an oversight committee and advisory group comprising departmental staff to identify and advise about opportunities to, among other things:

- build mechanisms for coordinated decision-making, action and accountability
- improve the information staff have available to make better decisions about the safety, wellbeing and learning of children and young people.[239]

We support these efforts.

5.5.4 Our observations and recommendations

We consider, if successfully implemented, the work already underway across Tasmanian Government departments will go some way to improving information sharing and coordination of responses to child safety issues in Tasmania, including to child sexual abuse in institutions. However, we consider a key element missing from this work across government is the existence of clear and concise information about child safety information sharing obligations and the roles and responsibilities of staff in coordinating responses to child safety issues. We were told there is no publicly available memorandums or statements that set out how the Government manages information sharing internally (including as it relates to child safety).[240]

To address this gap, we recommend government and government funded agencies and statutory bodies work together to develop child safety information sharing, coordination and response guidelines. These guidelines must provide clear direction on the roles and responsibilities of agencies and staff in responding to child safety issues. The guidelines should be drafted to give effect to the guiding principle that the safety and wellbeing of children is paramount.

Aspects of a response we consider should be covered by the guidelines include:

- clarifying the lead agency in responses to child safety issues and their role and responsibilities
- clarifying the role and responsibilities of supporting agencies, including how to ensure the ongoing safety of children within the care of an agency, that any risks to children have been addressed, and that there has been timely fulfilment of relevant reporting and notification obligations and information sharing requirements
- clarifying the role and responsibilities of receiving agencies when information is shared

- developing processes for keeping affected children, families, carers and the community informed about responses to child safety issues
- developing processes for providing support to affected children and their immediate family and carers
- considering the use of disciplinary processes in parallel with any investigations undertaken by police and other regulators and professional bodies such as the Registrar of the Registration to Work with Vulnerable People Scheme, Ahpra or the Teachers Registration Board
- developing processes for responding to reports of child safety issues when they are connected to another government or government funded agency or statutory body, including alerting the relevant agency of the report
- developing escalation and dispute resolution processes to resolve disagreements that may arise between agencies in responses to child safety issues.

Where necessary, the guidelines can be further supplemented with agency-specific information and resources. For example, in Chapter 21 we recommend that the Tasmanian Government, in collaboration with key stakeholders, should develop a statewide framework and plan for preventing, identifying and responding to harmful sexual behaviours (refer to Recommendation 21.8).

We also consider it important that agencies and statutory bodies examine the professional development needs of staff in relation to responding to child safety issues and the scope of their reporting and information sharing obligations. In a submission to our Commission of Inquiry, Laurel House said:

> There is a need for training and capacity building opportunities to be provided to institutions to ensure that all employees, regardless of their position, understand their role in keeping children safe. All employees and decision makers who work within services that support children should be required to undergo mandatory training that alerts them to the warning signs of childhood sexual abuse, to make them vigilant to grooming behaviours and other sexual misconduct, and to understand their reporting obligations and the risks that failing to act places on children, the employee, the workplace and the community.[241]

We note that one of the *Keeping Children Safer Actions* is to '[e]ncourage and support staff to raise child safety concerns'.[242] We also note the *Keeping Children Safer Working Group* (discussed in Section 4.3) has started mapping government agency resources relating to child safety so they can be tailored to departmental needs and support staff training and wider cultural change across the State Service.[243] This work is expected to be delivered in December 2023.[244] We are also aware that individual government departments (particularly the Department for Education, Children and Young People and the Department of Health) have made additional training available to staff on

these issues.[245] We consider the guidelines should also identify relevant resources and professional development opportunities available to staff regarding responding to child safety issues.

As a whole of government initiative, the Department of Premier and Cabinet should lead the development of the child safety information sharing, coordination and response guidelines. It should also lead efforts to promote their use across government and government funded agencies and statutory bodies. This work will require a large culture change element, which the Government should fund.

Recommendation 19.8

1. The Department of Premier and Cabinet should lead the development of child safety information sharing, coordination and response guidelines to support government and government funded agencies and statutory bodies to respond to child safety issues. The guidelines should:
    a. set out the principles which guide information sharing, cross-agency coordination and the roles of different services and entities in responding to child safety issues, and require that staff are trained on these issues
    b. identify a process for nominating a lead agency for cross-agency responses to individual child safety issues and set out the lead agency's role and responsibilities
    c. identify a process for setting out the roles and responsibilities of collaborating agencies in responding to child safety issues
    d. explain child safety information-sharing obligations and responsibilities and how staff can fulfil them
    e. set out an escalation and dispute resolution process to resolve disagreements that may arise across agencies
    f. identify resources and professional development opportunities for staff in relation to responding to child safety issues
    g. be subject to periodic review to ensure they remain up to date and accurately reflect best practice cross-agency information sharing and coordination arrangements.
2. The Tasmanian Government should fund the culture change work required to achieve good information-sharing practices.

The Tasmanian Government should fund the culture change work required to achieve good information sharing practices.

6 Conclusion

An effective approach to preventing, identifying, reporting and responding to child sexual abuse in institutions requires a coordinated and sustained commitment across government and government funded agencies and statutory bodies. This starts with developing a clear strategy that directs how Tasmania intends to respond to child safety issues, including child sexual abuse in institutions. This strategy should be accompanied by an action plan to implement child sexual abuse reform over the short, medium, and long-term. The strategy and action plan should be supported by strong governance structures, including input from children and young people and adult victim-survivors of child sexual abuse.

Staff working within government and government funded agencies and statutory bodies must also be empowered and supported to respond to child safety issues. This requires that they are clear on how they are expected to act when information is received and can confidently share information to protect the safety and wellbeing of children and young people. Legislation must be clear on when this can occur and should not hinder information sharing when it is necessary to address risks to child safety. Staff within government and government funded agencies and statutory bodies must also understand their broader roles and responsibilities to safeguard children, including how to:

- address risks to other children
- support victim-survivors
- escalate disagreements in relation to responses across agencies.

We consider the recommendations that we make in this chapter will help to create a united and coordinated whole of government approach to child sexual abuse that prioritises the safety and wellbeing of children in Tasmania.

Notes

1 Notice to produce served on the State of Tasmania, 20 July 2021, 5 [4].

2 Department of Communities, 'Tasmanian Government's Current Service System', 22 September 2021, produced by the Tasmanian Government in response to a Commission notice to produce.

3 Department of Education, 'Policies and Procedures: Tasmanian Government's Current Service System', 16 September 2021, produced by the Tasmanian Government in response to a Commission notice to produce.

4 Department of Health, Department of Justice, 'Policies and Procedures', 9 September 2021, produced by the Tasmanian Government in response to a Commission notice to produce.

5 Department of Justice, 'Policies and Procedures', 9 September 2021, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Justice, 'RWVP Year to Date Stats as at 17/09/2021', 17 September 2021, produced by the Tasmanian Government in response to a Commission notice to produce.

6 Department of Police, Fire and Emergency Management, 'Tasmanian Government's Current Service System', 3 August 2021, produced by the Tasmanian Government in response to a Commission notice to produce.

7 Refer to, for example, Department of Education, 'Policies and Procedures', 9 September 2021, 1-3, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'Policies and Procedures', 9 September 2021, 4–5 [g], produced by the Tasmanian Government in response to a Commission notice to produce.

8 Refer to, for example, Children and Youth Services, 'Practice Advice – Identifying and Assessing Risk and Protective Factors in cases of Reported Child Abuse and Neglect', 29 August 2016, produced by the Tasmanian Government in response to a Commission notice to produce; Child Safety Service, 'Procedure – Assessing and Responding to Sexual Abuse', 4 November 2016, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health and Human Services, 'Investigations of Severe Abuse or Neglect of a Child in Out of Home Care (Schedule 2)', 1 June 2013, produced by the Tasmanian Government in response to a Commission notice to produce.

9 Refer to, for example, Department of Communities, 'Complaint Factsheet: How to Resolve Your Concern', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

10 Transcript of Anne Hollonds, 2 May 2022, 60 [3–12].

11 Submission 074 Commissioner for Children and Young People, 8.

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20 State Service disciplinary processes

1 Introduction

A key element of an institution's response to child sexual abuse is the action they can take when there is an allegation of child sexual abuse or related conduct (such as boundary breaches or grooming behaviour) against a staff member within their organisation, including any disciplinary action. Within the State Service, the *State Service Act 2000* ('State Service Act'), the State Service Code of Conduct and the Employment Directions that relate to suspensions, misconduct investigations and the ability of an employee to perform their role, form the central components of the State Service disciplinary system.[1]

Throughout our Inquiry, we heard there were significant problems with the Tasmanian State Service disciplinary system, particularly as it relates to matters involving child sexual abuse or related conduct. Problems with the disciplinary system resulted in slow or inadequate responses to concerning staff behaviour, leaving children to be cared for or supervised by people who posed a potential threat to their safety. To address these problems, we make recommendations in this chapter to:

- clarify and strengthen the articulation of expected and acceptable behaviour of state servants, including conduct outside of their employment
- improve the disciplinary processes that Heads of Agencies can follow in response to concerning staff behaviour, including considering child safety and a complainant's needs

- encourage the Tasmanian Industrial Commission to consider the special requirements that should apply when addressing child sexual abuse in relation to employment matters.

We also make observations about the role of unions in promoting child safety and invite their support in reforming the disciplinary process.

In this chapter, we set out how State Service disciplinary processes fit within the broader institutional response to allegations and concerns about child sexual abuse and related conduct.

We explain how the main mechanisms of the State Service disciplinary system—including unions and the industrial system—operate. We discuss the problems and failures we heard about the disciplinary system when it is used to address matters involving child sexual abuse, and recommend improvements.

In this chapter, while the focus is on the disciplinary provisions within the State Service Act and associated policies and procedures (the 'State Service disciplinary system'), we acknowledge obligations on the State arising from the broader employment framework. This framework includes the *Industrial Relations Act 1984* and registered awards and agreements. While we do not explicitly refer to these broader frameworks in this chapter, we tested our recommendations with relevant stakeholders and experts. We understand the delicate and, at times, difficult balance incumbent on the State between exercising a duty of care to ensure the safety of children and complying with obligations to an employee in matters relevant to child sexual abuse.

We consider that, in exercising this balance, the duty of care to children has too often been compromised because of barriers within the existing disciplinary framework and its practical application. In this chapter, we seek to identify and address these barriers.

Our proposed reforms require a significant shift in how the State approaches this process and may require changes to awards and agreements. We consider that prioritising child safety justifies this approach.

2 Institutional responses to child sexual abuse

In Chapter 18, we discuss the obligation of Tasmanian Government departments that provide services to children to become child-safe organisations. This includes having child-focused processes for complaints and concerns. The National Royal Commission noted that responses to complaints of child sexual abuse encompass a range of actions that institutions should take. These actions include:

- Identifying complaints—child or adult victim-survivors who disclose possible child sexual abuse should be taken seriously.
- Assessing risk—potential safety issues for victim-survivors and other parties should be identified and action taken to ensure their safety (including for the subject of the complaint where necessary).
- Reporting—all relevant bodies and institutions should be informed of the complaint, including, for example, the police, the Registrar of the Registration to Work with Vulnerable People Scheme, the Strong Families, Safe Kids Advice and Referral Line, and any relevant professional oversight body.
- Communicating and providing support—departments may be required to communicate with all affected parties and must assess the need for, and be able to provide, support for those involved, including complainants, parents, employees and other affected children.
- Investigating—this process should begin after a complaint is received and risk assessment completed. Some actions, for example, ensuring the integrity of a location as soon as possible after a complaint is received, can be crucial to an investigation.
- Maintaining records—institutions should maintain relevant records, including of investigation processes.
- Completing a root cause analysis—where required, review the circumstances of the complaint to identify possible systemic factors that may have contributed to the incident.
- Monitoring and reviewing—have policies and procedures to help continually improve the 'protection of children for whom the institution has responsibility'.[2]

In Chapter 6, we recommend establishing a Child-Related Incident Management Directorate. This Directorate would support agencies to meet the requirements outlined by the National Royal Commission, as would our recommendations for improved complaints policies and processes in each of our focus institutions: education, out of home care, youth detention and health (refer to Recommendations 6.6, 6.7, 6.8, 9.31, 9.32, 12.35, 15.16, 15.17). The Directorate would be responsible for three core functions comprising:

- support for local-level responses through case management
- investigations
- legal review of the investigation, and recommendations to the Secretary.

The State Service's disciplinary system would control management of child sexual abuse-related misconduct matters by the Directorate, including procedures for an investigation and the recommendations made at the end of an investigation.

3 State Service disciplinary system

The State Service disciplinary system has remained largely unchanged for more than 20 years. This section provides a brief outline of the system's main features, key elements of which we discuss in more detail throughout this chapter.

If an allegation of child sexual abuse is made against a staff member, a preliminary assessment is conducted to decide whether the matter should be investigated to determine if there has been a breach of the State Service Code of Conduct. We understand preliminary assessments are sometimes carried out before the Head of Agency is aware of the allegation.[3]

Once the preliminary assessment is complete, the information is transmitted to the Head of Agency who then decides how to respond to the allegations. The response may include:

- suspension
- investigation for a breach of the State Service Code of Conduct
- terminating employment when an employee no longer holds minimum requirements for employment (such as a loss of Registration to Work with Vulnerable People).

These processes are guided by Employment Directions issued by the Premier.

If the Head of Agency has reasonable grounds to believe a breach of the State Service Code of Conduct may have occurred, then the Head of Agency is required to appoint an investigator to investigate and determine whether the employee has breached the State Service Code of Conduct.[4]

At the end of the investigation, if the Head of Agency determines there has been a breach of the State Service Code of Conduct, they may apply sanctions, including counselling, a reprimand, reassignment of duties or termination of employment.[5]

We note the State has a continued duty of care to an employee who is alleged to have breached the Code the Conduct during the relevant Employment Direction process.

Unions play a role in this process by:

- providing information and support to their members
- ensuring procedures are adhered to throughout the disciplinary process.

Unions can also support members to appeal to the Tasmanian Industrial Commission against adverse decisions.

4 Problems with disciplinary processes

In this section, we outline the problems we heard that relate to disciplinary processes in the State Service.

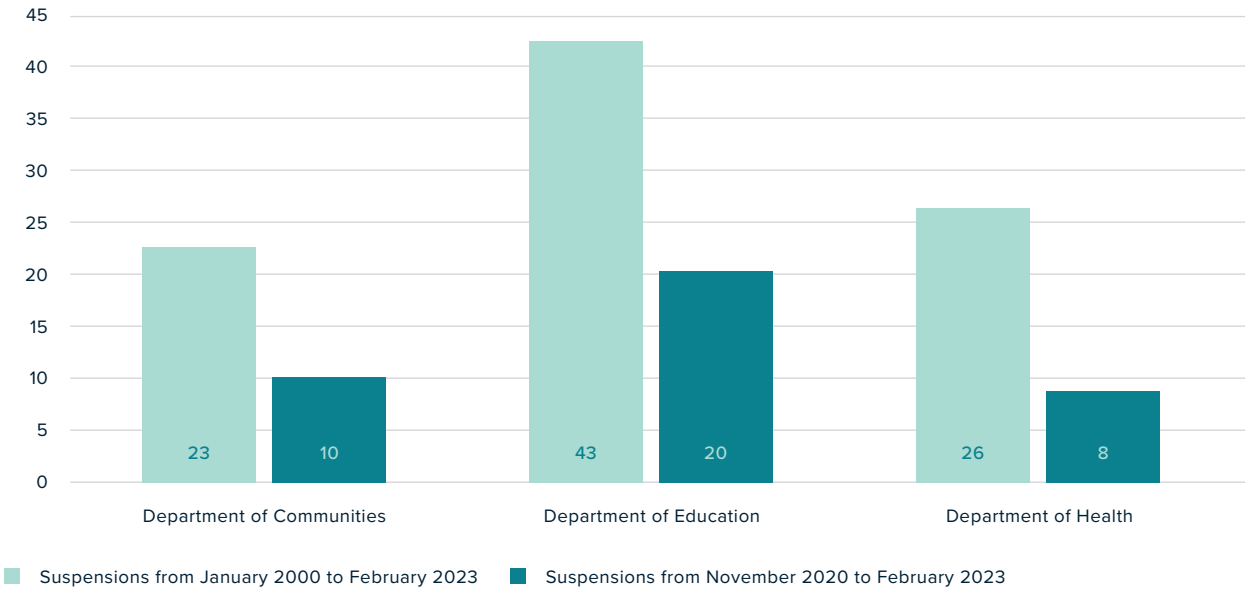
We examine the sudden increase in the number of state servant suspensions by respective departments, which was one factor that instigated the establishment of our Inquiry. It is possible such disciplinary action had been avoided previously because of the inadequacy of the disciplinary processes we heard about and the difficulties in terminating the employment of staff in matters pertaining to child sexual abuse.

4.1 Suspensions in the State Service

As discussed in Chapter 1, an increasing number of state servant suspensions due to concerns about child sexual abuse contributed to establishing our Commission of Inquiry.

By February 2023, we were aware there had been 92 state servants suspended from their employment since 1 January 2000 in relation to allegations of child sexual abuse or related conduct in the then Department of Communities, the then Department of Education and the Department of Health. These are outlined in Figure 20.1 and in more detail below.[6]

Figure 20.1: Suspensions by department for the period January 2000 to February 2023 and for the period November 2020 to February 2023[7]



Source: Tasmanian Government, *ED trackers* produced by the Tasmanian Government in response to Commission notices to produce, 2023.

4.1.1 Department of Communities

Of the 23 suspensions reported by the former Department of Communities (now the Department for Education, Children and Young People), 10 occurred since or just before the announcement of our Inquiry in November 2020.[8] Nineteen suspensions related to employees staff at Ashley Youth Detention Centre.[9] In Chapter 11, Case study 7, we consider the Department's response to allegations of child sexual abuse made against staff at Ashley Youth Detention Centre. In that case study, we describe instances where employees remained on site despite the Department being aware of allegations through redress claims, civil litigation and other complaints.

Within the 23 suspensions, there were four suspensions in relation to Child Safety Services since 2000.[10] Two of these suspensions occurred during our Inquiry. We discuss this concerningly low number of suspensions in Chapter 8.

The Department acknowledged that poor record keeping and inaccurate data collection affected the reliability of the data the Department provided in relation to Ashley Youth Detention Centre and out of home care.[11] Some staff were suspended multiple times without being dismissed. The Department did not routinely report matters to the Registrar of the Registration to Work with Vulnerable People Scheme, Child Safety Services and Tasmania Police.

4.1.2 Department of Education

In the former Department of Education, records provided to us indicate there had been 43 suspensions relating to allegations of child sexual abuse or related conduct between January 2000 and February 2023, with 20 of these occurring since the announcement of our Inquiry.[12] In Chapter 5, we discuss some of these cases and the effects of the Department's initial investigations on victim-survivors. In this chapter, we discuss some problems with disciplinary processes highlighted by these case studies. The Department's record keeping in the period set by our terms of reference was much better than that of other departments, although we were told of issues with its record keeping outside this period.

4.1.3 Department of Health

There were 26 suspensions in the Department of Health since January 2000 to February 2023, with eight of these occurring since the announcement of our Inquiry.[13] Our review of the information on suspensions the Department provided suggest the Department routinely notified the Registrar of the Registration to Work with Vulnerable People Scheme when it suspended employees in relation to alleged child sexual abuse. However, the Department was not consistent in how it reported matters to police or other regulatory bodies such as the Australian Health Practitioner Regulation Agency ('Ahpra') or the Strong Families, Safe Kids Advice and Referral Line.[14]

4.2 Inadequacy of disciplinary processes

Through submissions, sessions with a Commissioner, stakeholder consultations, roundtable discussions and public hearings, we identified difficulties with State Service disciplinary processes and procedures. Criticisms and concerns about disciplinary processes as they relate to allegations of child sexual abuse came not only from victim-survivors and their families and supporters but, also, government officials tasked with administering disciplinary processes—from human resources staff to departmental secretaries.

In summary, these problems included:

- A one-size-fits-all approach under the disciplinary system means the investigative processes used in cases of serious misconduct, such as child sexual abuse, are the same as those used for lower-level misconduct.
- There is no ability to immediately terminate employees in cases of serious misconduct where it is overwhelmingly clear the misconduct occurred or the employee admits to the misconduct.
- The basis for, and timing of, suspending employees is unclear following an allegation or incident of child sexual abuse.
- The process for terminating employment is unnecessarily difficult in situations where an employee no longer possesses the certification or accreditation necessary to perform their role.
- The State Service provides insufficient guidance on issues and considerations regarding disciplinary processes.

More specifically, we heard wide-ranging criticisms of and concerns about disciplinary processes regarding each of the institutions we examined.

In the context of children in schools, we received evidence that:

- Narrow and legalistic interpretations of the State Service Code of Conduct meant that despite information suggesting that children might be at risk, the behaviour did not result in disciplinary action. This was particularly the case when behaviour occurred outside school grounds.[15]
- Investigations tended to consider each individual allegation in a complaint separately rather than assessing whether the allegations reflected a pattern of behaviour consistent with sexual abuse or boundary breaches such as grooming.[16]
- Investigation processes were slow, not trauma-informed, did not reflect good practice when interviewing children (where this occurred), and did not appear to understand grooming behaviours.[17]

- Some departmental responses lacked an understanding of child sexual abuse and related concerns.[18]
- Investigations ended if a teacher resigned.[19]
- There was not enough support, care and communication with children, parents, staff and the school community.[20]
- Preliminary assessments appear to have been treated as mini-investigations and developed as a way to deal with disciplinary matters before engaging with the more involved Employment Direction No. 5—Breach of Code of Conduct process.[21]

Regarding children in out of home care, we observed:

- Low numbers of disciplinary processes. Because of poor record keeping, it was difficult to determine whether there had been more disciplinary action than that reported to us or whether the Department had been slow to take action against staff for concerning behaviour.[22]

Regarding children in youth detention, we make the following findings and observations in Chapter 11:

- The State Service disciplinary framework was not suited to managing risks associated with child sexual abuse.[23]
- There were problems with the preliminary assessment process, including:
    - applying a high threshold to the initiation of a disciplinary investigation and, instead, conducting a proxy investigation through preliminary assessment processes
    - a lack of clarity in the process for initiating a preliminary assessment regarding a conflict of interest, including identifying a suitable decision maker
    - unacceptable delays in the process risked exposing children to ongoing harm.[24]
- The Department adopted informal practices of 'putting allegations' to alleged perpetrators for response.[25]
- The Department showed a reluctance to consider the cumulative impact of multiple allegations.[26]
- At times, serious complaints were being investigated by staff at Ashley Youth Detention Centre and not being appropriately escalated.[27]
- At times, the Department did not adequately and appropriately investigate complaints in a timely manner, including complaints made by staff and detainees, and allegations made through redress schemes.[28]

- There were real or perceived challenges in responding to allegations of child sexual abuse against staff due to industrial pressures.[29]
- One of the limitations on the Department's ability to investigate complaints or take disciplinary action regarding allegations of child sexual abuse or related conduct by staff was the absence of provisions in the State Service Code of Conduct relating directly to child safety or child abuse.[30]
- At least until late 2020, due to legal advice or a practice that had developed, no disciplinary action was taken regarding allegations about staff from redress schemes without the Department seeking a sworn statement from a complainant.[31]
- In late 2020, the Department changed its approach to taking disciplinary action against staff who had allegations of child sexual abuse against them and started to place appropriate weight on public interest considerations.[32]
- Despite improvements over the last few years, there continues to be significant delays in taking disciplinary action against staff with allegations of child sexual abuse against them.[33]
- There appeared over time to be a tension or 'push-pull' between the prioritisation of risks to child safety and risks to staff morale and wellbeing. We saw periods where concerns about child safety appeared to be dominant, but over time as the Department attempted to respond to safety concerns emerging from staff culture and conduct, the wellbeing of staff would reemerge as a dominant consideration.[34]

Regarding children in health services, we make the following findings or observations in Chapter 14:

- Investigators examining child sexual abuse allegations in health services should have access to relevant expertise and provide victim-survivors with the option to take part in an investigation.[35]
- There were perceived limitations on taking disciplinary action against a staff member under the State Service Code of Conduct because the requirement that employees abide by Australian law was assumed to require evidence that a person has been convicted of a crime.[36]
- There is a need to apply independent and rigorous investigatory and disciplinary processes to complaints in health settings and for these processes to use trauma-informed practices to minimise trauma for complainants.[37]
- Launceston General Hospital failed to consider the cumulative effect of complaints about James Griffin.[38]
- None of the many concerns raised with Mr Griffin were responded to with a disciplinary response harsher than a letter, education and direction. A disciplinary

process was only recommended when there was no other option but to do so, namely, when Mr Griffin was unable to perform his duties when his Registration to Work with Vulnerable People was suspended on 31 July 2019.[39]

- Launceston General Hospital's response to Will Gordon's 2017 Safety Reporting and Learning System complaint did not comply with the requirements of a State Service Code of Conduct investigation.[40]
- Standards of behaviour for staff working in child-facing roles should have been in place, so Mr Griffin's conduct could be transparently assessed and disciplinary action triggered in response to his repeated failures to comply with the standards. The State Service Code of Conduct is not sufficient to assess child safety complaints given its general nature.[41]
- The disciplinary process into Mr Griffin was aborted when he resigned. This practice means the institution does not have the opportunity to learn from any systemic issues that may arise by examining the alleged conduct. Once such a process stops, there is no record preventing the ex-employee from being re-employed to the State Service at a later date.

4.3 Difficulties with terminating employment

Terminating the employment of an employee from the Tasmanian State Service is difficult. We were told this difficulty stems from the provisions of the State Service Code of Conduct and the processes for terminating employment such as Employment Direction No. 5—Breach of Code of Conduct.

According to the interim report of the *Independent Review of the Tasmanian State Service*, terminations of employment from the State Service for breaches of the State Service Code of Conduct are difficult and, therefore, rare.[42] The Independent Review's final report, published in 2021, examined (among other things) the Tasmanian State Service's misconduct and disciplinary framework. The Independent Review's remit was all types of breaches of the State Service Code of Conduct, not only matters involving child sexual abuse. It reported 320 allegations of breaches of the State Service Code of Conduct in the five years before the report's publication. Of these allegations, just over half, 165 (52 per cent), were confirmed breaches, of which only 11 (about 4 per cent) resulted in termination of employment.[43] Stakeholders told the Independent Review that 'the overly prescriptive nature of procedures associated with separations in the [Tasmanian State Service] may be impacting on rates at which employees are terminated for breaches of the Code of Conduct or underperformance'.[44] The Independent Review found, compared with the proportion of terminations of employment for misconduct in the Australian Public Service, terminations of employment for Code of Conduct violations in the Tasmanian State Service were much lower.[45]

Similarly, a 2021 report for the Department of Premier and Cabinet, *Critical Analysis Report on Termination in the State Service,* noted the disciplinary system in Tasmania was heavily prescriptive compared with other states and territories, and that this resulted in lower resolution rates for misconduct matters and longer times to resolve such matters.[46] The report concluded that the low turnover rate in the Tasmanian State Service was:

> caused by the prescriptive nature of procedures in the [Tasmanian State Service]. Because a failure to strictly adhere to each step could result in the termination being alleged to have been mismanaged, extensive time is taken to ensure everything is covered and every step is taken.
>
> This focus, internally, on form over substance then unduly narrows the focus of the [Tasmanian Industrial Commission]. The [Tasmanian Industrial Commission] is reviewing strict procedures which already burden the [Tasmanian State Service] system and is not empowered, through legislation, to take a more practical or discretionary view of matters.[47]

The Independent Review's interim report observed that stakeholders had expressed concerns that 'employer-initiated terminations are rarely used in the [Tasmanian State Service] … termination is very difficult, even for very clear examples of underperformance or misconduct'.[48] Stakeholders noted that the reasons for this included:

- misconduct procedures were difficult
- natural justice requirements could be overly burdensome
- there are 'general sensitivities around terminations'.[49]

Some people who engaged with our Commission of Inquiry made similar observations about difficulties associated with misconduct and disciplinary procedures. For example, Michael Easton, Chief Executive Officer, Integrity Commission, said public sector agencies in Tasmania were generally 'overly risk averse' when contemplating taking action against employees.[50] In Mr Easton's view, this stemmed from an approach in government agencies that over-emphasised privacy and confidentiality, and agencies' desire to 'avoid employees being reinstated by the Tasmanian Industrial Commission'.[51]

Likewise, Eric Daniels, former Chief Executive, Hospitals North/North West in the Department of Health, told us he thought there was a 'conservative industrial environment' in the Tasmanian State Service.[52] Mr Daniels said, in his experience:

> [n]ot associated with child sexual abuse but associated with other what I consider to be reasonably significant matters in relation to the practice of individuals, are treated with quite significant delicacy, for want of a better word, to ensure procedural fairness.[53]

When asked whether it was fair to say there was a focus on industrial relations rather than on child safety when managing concerns about employees, Mr Daniels hypothesised that he believed this was the case.[54]

A further general observation about the nature of employment in the Tasmanian State Service is that Tasmania's relatively small population may contribute to the 'general sensitivities' about terminations of employment. For example, Professor Richard Eccleston, University of Tasmania, told us that '[g]iven 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'.[55] Professor Eccleston went on to say:

> [t]here are strong social and professional connections among the population and among many employees of the [Tasmanian State Service]. These interdependencies make it particularly difficult to maintain integrity and a commitment to process and ethical conduct.[56]

We are concerned that a culture of not addressing poor professional conduct, of any nature, may embolden child sexual abuse offenders in the workplace.

5 Amending the State Service Code of Conduct

5.1 State Service Code of Conduct

The State Service Act governs the conduct of Tasmanian State Service employees. The Act's provisions set out the standards and conduct expected of State Service employees and the consequences for engaging in misconduct. Relevant to employee misconduct, the Act includes:

- the State Service Code of Conduct[57]
- sanctions for breaches of the State Service Code of Conduct[58]
- provisions regarding the termination of employment.[59]

Section 9 of the State Service Act outlines the State Service Code of Conduct. The State Service Code of Conduct outlines the required behaviour of all state servants. It is broad in nature, which means it does not contain specific provisions about child sexual abuse. This reflects a similar approach across most Australian states and territories.[60] Still, depending on the situation, child sexual abuse and related conduct could constitute a breach of several provisions of the State Service Code of Conduct.

Relevant to matters that involve child sexual abuse and related conduct, several provisions in the State Service Code of Conduct require that all State Service employees conduct themselves in particular ways 'in the course of State Service employment'. For example, employees must, in the course of their employment:

- behave honestly and with integrity[61]
- act with care and diligence[62]
- treat everyone with respect and without harassment, victimisation or discrimination[63]
- comply with the law[64]
- behave in a way that upholds the State Service Principles.[65] (These principles include that the State Service performs its functions 'in an impartial, ethical and professional manner'.)[66]

State Service employees also 'must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service'.[67] This requirement captures conduct that does not occur in the course of employment but has a sufficient nexus between the conduct and the employee's State Service employment (this is discussed in Section 5.3).

State Service employees must also comply with any lawful and reasonable direction given by a person having authority to give the direction.[68]

Depending on the situation, child sexual abuse and related conduct (including boundary breaches and grooming behaviours) may contravene the State Service Code of Conduct by:

- breaching the State Service Principle of ethical and professional behaviour
- being a breach of applicable law
- victimising children
- adversely affecting the integrity and good reputation of the State Service.

A finding that an employee has breached the State Service Code of Conduct can result in sanctions, including:

- counselling
- a reprimand
- reassignment of duties
- termination.[69]

However, as explained, we understand that termination of employment is seldom used in relation to sanctions imposed for breaches of the State Service Code of Conduct and that it can be difficult to terminate employees from the Tasmanian State Service.

5.2 Suitability for child safety

Several people told us the State Service Code of Conduct is not suitable for taking disciplinary action in relation to child sexual abuse or related conduct. Timothy Bullard, Secretary of the Department for Education, Children and Young People, said the State Service Code of Conduct 'is not a framework well suited to the determination of allegations of child abuse'.[70]

Kathrine Morgan-Wicks, Secretary of the Department of Health, considered the State Service Code of Conduct should be amended to include a specific provision aimed at prohibiting specific behaviours.[71] Michael Pervan, then Secretary of the former Department of Communities, said the State Service Code of Conduct was ill-suited to investigating evidence from redress applications and allegations of child sexual abuse in general.[72]

Professors Stephen Smallbone and Tim McCormack, who conducted the Independent Education Review, observed that the generic nature of the Code's provisions meant it was 'ill-suited to the particular contexts of schools' in that it could not 'adequately deal with allegations of child sexual abuse made against Department of Education employees'.[73]

These comments about the general unsuitability of the State Service Code of Conduct to deal with matters involving child sexual abuse or child safety were affirmed by Ginna Webster, Secretary, Department of Justice, and Jenny Gale, Secretary, Department of Premier and Cabinet and Head of the State Service, both of whom indicated that the State is considering reforms to the State Service Code of Conduct.[74]

5.3 A Code of Conduct that responds to risks of child sexual abuse

It is apparent there are deficiencies and problems with the application or interpretation of the State Service Code of Conduct, particularly when it is used to address matters involving child sexual abuse. These problems contribute to the difficulty in taking disciplinary action against employees. They include the fact the State Service Code of Conduct and/or its narrow interpretation gives insufficient weight to the risk that a state servant's behaviour may place children in danger of sexual or other forms of abuse. These problems arise from the interpretation of the following requirements of the State Service Code of Conduct that:

- an employee must comply with all applicable Australian law
- an employee must at all times uphold the integrity and good reputation of the State Service
- conduct must be 'in the course of employment' or have a 'nexus' to employment.

These interpretations are discussed in the following sections.

The application of these provisions is guided by advice from the Office of the Solicitor-General. As discussed in Chapter 17, there are limits to a government department's ability to seek legal advice from external lawyers. Heads of departments are required to follow the advice of the Solicitor-General.

5.3.1 Comply with Australian law

As noted, State Service employees must comply with all applicable Australian law in the course of their employment.[75] Child sexual abuse is a breach of the law and, if the perpetrator was found guilty in a court, this would constitute a breach of this provision of the State Service Code of Conduct. Further, given that disciplinary processes attract a lower standard of proof, if it was determined on the balance of probabilities that an employee was likely to have committed a criminal act of sexual abuse, the employee would have contravened the Code requirement to comply with all applicable Australian law.[76]

However, there appears to be a 'historical and cultural' application which means this provision has not been applied unless there has been a proven breach of an Australian law (to the criminal standard).[77]

Secretary Morgan-Wicks told us that the Australian law requirement:

> is considered to be applicable only where the relevant offending of child sexual abuse has been proven in an Australian court of law (i.e. an offender has been found not to have complied with an applicable Australian law) and not where there is only an investigation, or charges only have been laid, or court proceedings are pending or underway.[78]

Similarly, Secretary Bullard observed that 'where a prosecution does not proceed or is unsuccessful', the Head of Agency will rely on other provisions of the Code of Conduct to take disciplinary action, which are normally those relating to behaving with honesty and with integrity, acting with care and diligence, or acting with respect and without harassment, victimisation or discrimination.[79] These provisions relate to conduct that is in the course of employment.

The Tasmanian State Service Code of Conduct is based on the Australian Public Service Code of Conduct.[80] The latter's guidance for the equivalent provision—must comply with all applicable Australian law—makes it clear that the decision maker does not need to wait until a breach of the law has been proven in a court for the provision to apply.[81]

Noting that criminal prosecutions often do not proceed for reasons unrelated to whether the perpetrator committed the offence (including, for example, when the alleged victim is very young or is unwilling to give evidence in a criminal trial), we suggest the broader interpretation, based on the balance of probabilities that criminal conduct has occurred, would allow for a focus on child safety. As a matter of principle, we assume the Government would wish to be able to ensure that state servants who are likely to have committed a child sexual abuse offence can be removed from the State Service.

5.3.2 Uphold the integrity and good reputation of the State Service

Section 9(14) of the State Service Code of Conduct requires an employee to 'at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service'. This provision appears to be broad and allow the Head of Agency to take disciplinary action against an employee who had been involved in sexual activity or related conduct with a child or young person, irrespective of where that conduct occurred. Unlike many of the other relevant requirements in the State Service Code of Conduct, it does not state that the conduct must be in the 'course of employment'.

The Office of the Solicitor-General has provided advice on the interpretation of the integrity and good reputation provision, suggesting 'integrity' or 'good reputation' in this section are not concerned with:

> ...general considerations relating to the private behaviour, morality or fitness of character of a particular employee, unless there can be said to be a nexus between the behaviour and employment in the [Tasmanian State Service], in the context of accountability to the government, the parliament and the public. Whether there is a nexus requires an evaluative judgement, in the particular circumstances of the case.[82]

Under this interpretation of section 9(14), there is still a requirement for there to be a nexus between the employee's behaviour and their employment in the State Service (in the context of accountability to the Government, the Parliament and the public) for the provision to apply. Presumably, this limitation reflects the view that some aspects of private behaviour should not attract a disciplinary sanction. For example, historically, this could have protected state servants from sanctions simply because they were living with a person outside marriage or had unusual political opinions.

In the context of child sexual abuse, we consider that a better approach is to specifically deal with behaviour that places children at risk, rather than relying on value judgments about whether there is a nexus between the conduct complained of and its propensity to adversely affect the integrity and good reputation of the State Service. In other words, where a state servant works with children or young people and the alleged conduct involves a child or young person, this should supply the necessary nexus or link between that conduct and the disciplinary processes that apply under the State Service Code of Conduct.

In other jurisdictions, similar requirements that state servants not behave in ways that can adversely affect the State Service are defined in ways that may avoid this issue. For example, in Queensland, misconduct is defined in section 187 of the *Public Service Act 2008* (Qld) as:

> (a) inappropriate or improper conduct in an official capacity; or (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.

The Code of Conduct for the public service in Queensland also states that state servants will 'ensure our private conduct maintains the integrity of the public service and our ability to perform our duties'.[83]

Further, we note that in the Australian Public Service ('APS') Code of Conduct, employees are required to behave in a way that upholds 'the integrity and good reputation of the employees' Agency and the APS' *at all times*.[84] This requirement is explained as follows:

> 2.28. Under s.13(11), employees must at all times uphold the Values and Employment Principles and behave in a way that upholds the integrity and good reputation of their agency and the APS. This means that APS employees' behaviour outside work is subject to the Code to the extent that:
>
> - it could reasonably be viewed as failing to uphold the integrity and good reputation of the employee's agency or the APS, or
> - it could reasonably call into question the employee's capacity to comply with the Values and Employment Principles in their work—for example, their ability to be impartial or respectful.[85]

This requirement of the Australian Public Service Code of Conduct is interpreted as applying to an employee's conduct 'outside normal work hours and at non-work premises'.[86] The Australian Public Service advice on interpreting section 13(11) of the Code of Conduct further states that while there is no explicit requirement for conduct to be connected to the employee's employment, in practice, however, a finding that conduct has breached the code 'will generally require some degree of connection to the employee's employment'.[87]

The Tasmanian legislation should make clear that the requirement that employees are to behave in a way that does not 'adversely affect the integrity and good reputation of the State Service' in section 9(14) includes employee conduct outside work where the relevant behaviour means that children and young people are at risk of harm.

5.3.3 Conduct in the course of employment

The term 'in the course of State Service employment' is used in several subsections of the State Service Code of Conduct. Based on evidence at our hearings and the materials provided to us, we consider that the term does not adequately protect children from sexual abuse.[88] The present application of 'in the course of employment' can result in conduct such as grooming behaviour that occurs outside of work situations not being regarded as misconduct under the State Service Code of Conduct, when it should. Secretary Bullard told us:

> It's important to note that these subsections directly relate to conduct that is 'in the course of State Service employment'. In other words, misconduct that occurs outside the work context (e.g. at a weekend social event or after a young person has left the school where the alleged perpetrator is teaching), would not naturally invoke

> the [disciplinary] process [to investigate whether the Code of Conduct has been breached] as it would not amount to 'in the course of State Service employment'.[89]

Secretary Webster made similar observations about these restrictions in the State Service Code of Conduct:

> The current Code of Conduct is largely limited to investigations within 'the course of employment' or 'in connection with employment'. There are limitations on investigations under [the Code of Conduct] where the alleged conduct occurs outside the workplace, and where the threshold for a criminal investigation or prosecution is not reached.[90]

In 2021, the State Service Management Office provided the Department of Health with an interpretation of the meaning of the phrase 'in the course of State Service employment' in relation to the State Service Code of Conduct, stating that this would include conduct 'directly associated with and expected of an employee at work and in the course of their duties and can include travelling for work purposes'.[91] This interpretation is based on workers compensation law cases that have discussed the meaning of 'in the course of employment' in an industrial relations context.[92] We consider the test for a connection to employment in the context of workers compensation should differ from that applied in connection with disciplinary matters related to the conduct of state servants towards children.

The Office of the Solicitor-General has also provided advice to Department of Health staff on the meaning of 'in the course of employment', arriving at an equally narrow interpretation, but based on High Court authority on vicarious liability, not workers compensation law.[93] The meaning of the words 'in the course of employment' in the context of a civil compensation claim, in which it is argued the State should be held vicariously liable for the behaviour of a state servant, may differ from the way it should be interpreted in deciding whether a state servant should be disciplined for their behaviour that places children at risk of harm.[94]

This narrow interpretation of 'in the course of employment' has meant that, in some cases, inappropriate behaviours towards children and young people were deemed not to have occurred in the course of employment. For example, we heard in victim-survivor Rachel's (a pseudonym) case, the 2006 investigation into the conduct of her teacher, Wayne (a pseudonym), which included saying she had 'a nice arse', drawing a penis with a pen on her ankle and providing her with alcohol, found that he had not breached the State Service Code of Conduct as the relevant conduct had occurred during a non-school sports trip.[95] (Rachel's case is discussed in Case study 'Wayne' in Chapter 5.) The investigation concluded that although these incidents had occurred, they did not occur in the course of Wayne's employment with the Department of Education.[96] This conclusion was based on advice from the Office of the Solicitor-General.[97] When asked about this advice, Sarah Kay SC, the Solicitor-General, told us:

> I wasn't asked there about whether action could be taken or what action could be taken, it was a question about the construction of a phrase in the statute. And, they are the words of the statute, so whether something might be considered inappropriate or not objectively is a separate matter to considering the scope of the words that we're dealing with in section 9 of the State Service Act.[98]

We acknowledge that if the situation that arose in Rachel's case were to arise in 2023, it would most likely be handled differently. Secretary Bullard explained that, in 2022, a sufficient nexus would be drawn between Wayne's conduct and his employment for the purpose of the State Service Code of Conduct:

> Ongoing conduct, even outside of school hours, can be held to account and therefore included in the [disciplinary] process where the conduct occurred because of a relationship that had developed out of the employee/student relationship.
>
> ...
>
> If allegations such as those raised by Rachel were raised today, the Department would review all allegations in light of there being such a nexus between the allegations and being 'in the course of employment'.[99]

Secretary Bullard told us that, in 2022, the student-teacher relationship would be relevant *at all times*, not just while on school grounds or during school hours. [Emphasis added.][100]

However, we note that the State Service Code of Conduct has not changed. Secretary Bullard acknowledged that the requirement for conduct to be 'in the course of employment' is an ongoing issue: '[t]he need to establish a nexus between the alleged conduct and it being "in the course of employment" means that the Department remains exposed to failings and criticism'.[101] The Solicitor-General also told us she had not observed any change in the way her Office views 'course of employment'.[102]

Regarding the Department of Health, Secretary Morgan-Wicks told us she had been notified of matters involving allegations against Department employees where there were questions about the nexus between the conduct and the employee's employment.[103] Secretary Morgan-Wicks told us, in these cases, she had applied a low threshold and had suspended employees while an investigation was undertaken despite the conduct in question having occurred outside the workplace.[104] She said this was done to place 'child safety absolutely at the centre'.[105] We support this approach.

In our view, the requirement that there be a nexus between conduct and employment will continue to compromise the safety of children in government institutions. To ensure their safety, the State Service Code of Conduct should be able to hold state servants accountable for behaviours associated with child sexual abuse, wherever those behaviours occur, including outside of the workplace or after working hours. Where an employee has contact with children or young people through their work, and an allegation is made against that employee, the fact that the connection between the employee and the child or young person is through the employee's work should be enough to warrant disciplinary action to ensure all children and young people in that workplace are protected.

We considered other Australian jurisdictions to determine if there was guidance for the Tasmanian Government on how to address the issue of a nexus to employment. In the Northern Territory, an employee will commit a breach of discipline if the employee 'in the course of employment or in circumstances having a relevant connection to his or her employment, conducts himself or herself in an improper manner'.[106] The meaning of 'relevant connection' in this context is not defined, but it may capture a broader range of behaviour as being connected to employment.

In the Australian Capital Territory, section 9 of the *Public Sector Management Act 1994* (ACT) sets out conduct requirements for public servants, some of which relate to conduct 'when acting in connection with the public servant's job'.[107] While 'acting in connection with' is not defined, the Australian Capital Territory Public Sector Standards Commissioner guidelines state that, in relation to the definition of misconduct, '[t]here is no restriction on where or when this conduct occurs and [it] may relate to behaviour that occurs outside of the workplace'. The guidance then notes this may particularly be the case where 'there is a clear connection between the employee's out-of-hours conduct and their employment'.[108]

However, without access to legal advice such as that obtained through our inquiries in relation to the Tasmanian State Service Code of Conduct, it is difficult to draw conclusions about other jurisdictions. As a general observation, other jurisdictions appear to emphasise the need to always uphold the ethical standards of the public sector at all times, although they also make reference to 'in the course of employment'.[109]

We note that professional bodies such as Ahpra and the Teachers Registration Board, which regulate the conduct of health professionals and teachers respectively, have provisions in their legislation that allow them to consider the behaviour of these professionals outside a work setting. Ahpra can take immediate action against a registered health professional based on a 'public interest test' for conduct that may occur outside the practice of a health practitioner's profession (which could include child sexual abuse occurring outside the work environment).[110]

The Teachers Registration Board assesses a teacher's suitability against a good-character test and fitness-to-teach test. The Board can immediately suspend a teacher's registration if it reasonably believes they may pose a risk of harm to students for any reason.[111] The decisions of the Board affect a person's employment, and we consider they could be used as examples for the basis of a similar test in the State Service Code of Conduct.

In relation to police, there are provisions in Western Australia and Tasmania relating to 'loss of confidence'.[112] This enables a Head of Agency to terminate an employee's employment where they have lost confidence in the suitability of an employee to continue in their position having regard to competence, integrity, performance, conduct, or loss of community confidence.[113]

Recommendation 20.1

1. The Tasmanian Government should, by introducing legislation or through other means, ensure that the State Service Code of Conduct includes the following binding obligations:

    a. if a state servant's conduct creates an unacceptable risk to the safety and wellbeing of children or young people accessing government and government funded services, the State Service disciplinary framework should apply, and termination, suspension or sanction should be available (including being able to terminate employment based on a loss of confidence)

    b. in relation to child sexual abuse and related conduct, the requirement that state servants must comply with all applicable Australian law is determined on the basis of a balance of probabilities test and does not require a breach of the law to be determined by a court

    c. where a state servant has contact with a child or young person through their work, and an allegation is made of child sexual abuse or related conduct in relation to that child, this contact is sufficient to establish the conduct occurred 'in the course of employment' or, in the case of section 9(14), has a nexus to employment regardless of whether the conduct complained of occurred outside the workplace or outside working hours.

2. The Tasmanian Government should develop policy documents or guidance on the interpretation of the State Service Code of Conduct explaining (among other things):

    a. how the required connection between a state servant's employment and a child and young person should be interpreted in matters that involve child sexual abuse or related conduct

    b. explain that all provisions of the Code of Conduct should be interpreted to prioritise the protection of children.

5.4 Professional conduct policies

The broad application of the State Service Code of Conduct means it does not contain specific provisions about child sexual abuse. This has led some to call for a separate code of conduct for state servants working in organisational contexts that serve children, particularly in education.[114]

For example, in their evidence to our Inquiry, Professors Stephen Smallbone and Tim McCormack, authors of the *Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse*, told us the State Service Code

of Conduct was 'generic' and inadequate for the specific context of schools.[115] As we note in Chapter 4, in their report, Professors Smallbone and McCormack recommended a separate code of conduct for schools.[116]

While we agree with the problem identified by Professors Smallbone and McCormack, we are reluctant to recommend a specific code of conduct for each institutional area that serves children. In his evidence, Secretary Bullard was also hesitant to endorse the idea of an education-specific code of conduct due to the current drafting of the State Service Act:

> … if I could reflect on the professors' report, they came back with a recommendation that we should have an education-specific code of conduct, they called it. Our advice is that that would be difficult under the current drafting of the Act because you're going to end up with duelling codes, but the closer that we can get to describing behaviours that are or aren't acceptable in a context, the better.[117]

We are also conscious that developing an institution-specific code of conduct would not be in line with the approach in most Australian jurisdictions, which have one code of conduct applying across the public sector.[118]

To meet the intent of Professors Smallbone and McCormack's proposal, we recommend professional conduct policies be instituted in all child-serving government institutions.

These departmental policies should address child sexual abuse, including related conduct such as boundary breaches, grooming and other inappropriate behaviours of a sexual nature, for example, voyeurism, and inappropriate speech and other forms of communication, including electronic communication.[119]

To ensure disciplinary action can be taken for conduct that breaches these professional conduct policies, the State Service Code of Conduct should be amended to include a provision that stipulates that when a breach of a specified departmental policy occurs, this breach may amount to a breach of the State Service Code of Conduct. This would avoid the situation that currently exists; for example, in education, where a breach of a departmental policy must be shown to amount to a direct breach of one or another of the provisions of the State Service Code of Conduct, such as a failure to act with due care or diligence in section 9(2) or the requirement that employees must behave in a way that does not adversely affect the integrity and good reputation of the State Service in section 9(14).[120]

We understand that, at the time our hearings concluded in September 2022, the State Service was exploring changes to its Code of Conduct and to disciplinary processes.[121] One such potential change was the use of standing orders made under the State Service Act to link specific prohibited behaviours to breaches of the State Service Code of Conduct. Section 34(2) of the Act provides that a Head of Agency can make standing orders for administration and operation of the agency. It is a requirement of the State Service Code of Conduct that an 'employee must comply with any standing orders *and* with any lawful and reasonable direction given by a person having authority to give the

direction' [emphasis added] (section 9(6)). However, it appears that, in practice, in the event of a failure to follow a lawful and reasonable direction there does not need to also be a standing order to establish a breach of the State Service Code of Conduct.[122]

Secretary Gale told us she had asked the State Service Management Office, which is in the Department of Premier and Cabinet and advises Secretary Gale on State Service employment matters, to:

> ... investigate the use of standing orders for departments which may then make clear the link between certain behaviours that must or must not occur through a standing order that then would make the link between that behaviour and the Code of Conduct quite explicit.[123]

The standing orders could allow specific behaviours to be proscribed in the particular settings in which they are likely to occur, for example, health, education, out of home care or youth justice. They could allow for specific behaviours to be described and prohibited.

However, we note this approach to regulating misconduct in the State Service was previously attempted in the Department of Education. Documents provided to us show that the Department's policy document, *Professional Standards for Staff,* was initially intended to be in the form of a standing order. It was drafted and internally approved as such in 2013 after comprehensive consultation. Before the document could receive final approval from the Premier, the Solicitor-General advised the Department that standing orders could not be used for this purpose.[124] We are unclear why this was the case. The consequence of that advice was that *Professional Standards for Staff* (and its associated guidelines) became a policy document.[125]

Even if standing orders can now be used for this purpose, we do not consider there should also have to be a lawful and reasonable direction, in addition to the requirements set out in a professional conduct policy, before there can be a breach of the State Service Code of Conduct. We understand this may reflect current practice.[126]

To improve how State Service disciplinary processes operate in respect of child sexual abuse allegations and related conduct, we recommend the State Service Code of Conduct be amended to include a provision that a breach of a specified departmental professional conduct policy may be taken to be a breach of the Code, without needing to assess whether a separate provision of the State Service Code of Conduct has been breached.

5.4.1 Content of professional conduct policies

The relevant departmental professional conduct policy should specify what behaviours are, or are not, acceptable regarding the behaviour of their employees towards children and young people. Following the National Royal Commission's advice on codes

of conduct and observations we have made throughout our report (refer especially to Chapters 6, 9, and 12), these departmental professional conduct policies should:

- explain what behaviours are unacceptable, including concerning conduct, misconduct or criminal conduct
- define and prohibit child sexual abuse, grooming and boundary violations. These definitions should be consistent across departments and should align with the Tasmanian Government's Child and Youth Safe Organisations Framework established by the *Child and Youth Safe Organisations Act 2023* ('Child and Youth Safe Organisations Act') and avoid vague terms such as 'appropriate' and 'inappropriate', unless they are further defined and examples provided
- acknowledge the challenge of maintaining professional boundaries in small communities and provide clear identification of, instructions about and examples of how to manage conflicts of interest and professional boundaries in small communities
- provide guidance on identifying behaviours that are indicative of child sexual abuse, grooming and boundary violations relevant to the particular context of the organisation
- outline the types of behaviours that must be reported to authorities, including what behaviours should be reported to police, child protection authorities, the Registrar of the Registration to Work with Vulnerable People Scheme and the Independent Regulator of the Reportable Conduct Scheme or other relevant agencies
- outline the protections available to individuals who make complaints or reports in good faith
- provide and clearly outline response mechanisms for alleged breaches of the policy
- specify the penalties for breach, including that a breach of the policy may be taken to be a breach of the State Service Code of Conduct, without needing to assess whether a separate provision of the Code has been breached, and may result in disciplinary action
- include a statement that the failure to report a breach or suspected breach of the policy may be taken to be a breach of the policy
- cross-reference any other policies, procedures and guidelines that support, inform or otherwise relate to the professional conduct policy, for example, complaints-handling or child protection policies or other codes of conduct relevant to particular professions.

The professional conduct policies should be:

- easily accessible to everyone in the department and communicated by a range of mechanisms
- explained to, acknowledged and signed by all employees
- accompanied by a mandatory initial training session and regular refresher training, including as part of professional development training
- communicated to children and young people and their families through a range of mechanisms, including publication on the department's public facing website.[127]

We consider that professional conduct policies should also outline that sexual relationships between State Service employees and young people are prohibited for a period of two years in certain situations. We note the Teachers Registration Board's *Professional Boundaries: Guidelines for Tasmanian Teachers* cautions that a sexual relationship between a teacher and a recent student that occurs within two years of the student turning 18 or finishing compulsory education (whichever is later) will likely result in an investigation by the Board that could result in disciplinary action, regardless of whether the teacher taught that student.[128] In assessing the appropriateness of the teacher's conduct in such cases, the Teachers Registration Board will consider a range of other factors in addition to the time that has passed since the former student ceased to be a student or turned 18. These include:

- the age difference between the teacher and the recent student
- the emotional and social maturity of the recent student
- the vulnerability of the recent student
- evidence regarding the nature of the past teacher-student relationship, including the closeness, dependence, significance, and length of the relationship in the educational setting
- any other conduct that may impact on the teacher's good character and/or fitness to teach during the professional relationship with the student.[129]

Similar imbalances of power and authority may also exist in other contexts where an adult is in a position of authority, care or protection of a child or young person because of the adult's employment or work. For example, child protection workers, doctors and nurses can have relationships with children and young people that are characterised by authority, care and protection. To guard against the possibility that a relationship between an employee and a young person has developed as a result of a breach of professional boundaries (including through grooming behaviours), we recommend that departmental professional conduct policies include a prohibition on romantic or sexual relationships between an employee and a young person where the employee is in

a position of authority, care and protection of the young person for two years after the employee's position of authority, care or protection has ended or the young person turns 18, whichever is later. This requirement does not displace any other professional and ethical obligations.

In Chapter 16, we discuss the recent introduction of a criminal offence of penetrative sexual abuse of a child or young person by a person in a position of authority. We also consider it important to include provisions regarding the position of authority in the professional conduct policies.

We also consider that a professional conduct policy should make it clear that repeatedly not following reasonable directions is a breach of professional standards (refer to Chapter 14, Case study 3 for an example of Mr Griffin repeatedly failing to follow direction).

Further to these considerations, useful guidance to help protect children and young people in government institutions may be provided by professional conduct policies in other Australian jurisdictions. Tasmanian Government departments should draw on relevant codes of conduct (and any related guidance) in other Australian jurisdictions in drafting professional conduct policies.

Departments should also ensure the professional conduct policy spells out expected standards of behaviour for volunteers, contractors, sub-contractors and other adults where relevant to the specific organisation, and use appropriate mechanisms to ensure volunteers, contractors and sub-contractors comply with the policy.

5.4.2 Professional conduct policies and the State Service Code of Conduct

The approach we recommend—that a breach of a specified departmental professional conduct policy may be taken to be a breach of the State Service Code of Conduct—will allow child and young people-facing government departments to have specific policies tailored to the requirements of their areas of responsibility that can directly ground a breach of the State Service Code of Conduct. In our volumes and chapters on education, health, youth justice and out of home care, we recommend that specific 'professional conduct policies' be developed that will ground a breach of the State Service Code of Conduct.

This approach avoids the need to align a breach of a departmental policy with one of the general provisions of the State Service Code of Conduct. If an employee is found, after an investigation conducted in line with disciplinary processes, to have breached the relevant departmental professional conduct policy, then this may be taken to be a breach of the State Service Code of Conduct.

We have heard suggestions that the responsiveness of the State Service Code of Conduct to child sexual abuse matters could be improved by including a specific reference to child sexual abuse or a provision relating to serious misconduct in the Code itself. For example, Secretary Morgan-Wicks wrote that:

> In my respectful view the Code of Conduct could be strengthened to include a specific subsection to prohibit violence or abuse against a vulnerable person, grooming behaviours or other behaviours leading to an investigation or charge for the commission of an indictable offence. Suspension with pay could automatically apply and any investigation would depend on the outcome of a police investigation or court proceeding.[130]

While there is merit in this, and in similar suggestions to amend the State Service Code of Conduct, we consider our recommended approach would provide more flexibility in that it would allow government departments to tailor their professional conduct policies to their institutional contexts but still ground a breach of the State Service Code of Conduct to suit their specific needs and circumstances. And, if required, the departmental policy in question could be amended relatively quickly to account for unanticipated behaviours or consequences, for example, in response to changes in technology-facilitated abuse.

Recommendation 20.2

1. All Heads of Agencies whose agencies provide services to children should develop a professional conduct policy for the agency's employees that:
    a. explains what behaviours are unacceptable, including concerning conduct, misconduct or criminal conduct
    b. defines and prohibits child sexual abuse, grooming and boundary violations, in language consistent with the *Child and Youth Safe Organisations Act 2023.*
2. The professional conduct policy should:
    a. acknowledge the challenge of maintaining professional boundaries in small communities and provide clear identification of, instructions about and examples of how to manage conflicts of interest and professional boundaries in small communities
    b. provide guidance on identifying behaviours indicative of child sexual abuse, grooming and boundary violations relevant to the particular organisation
    c. outline behaviours that must be reported to authorities, including what behaviours should be reported to Tasmania Police, Child Safety Services, the Registrar of the Registration to Work with Vulnerable People Scheme and the Independent Regulator under the *Child and Youth Safe Organisations Act 2023*, or other relevant agencies
    d. provide that not following reasonable directions is a breach of professional standards

e. provide that a failure to report a breach or suspected breach of the policy may be taken to be a breach of the policy

f. outline the protections available to individuals who make complaints or reports in good faith

g. provide and clearly outline response mechanisms for alleged breaches of the policy

h. specify the penalties for a breach, including that a breach of the policy may be taken to be a breach of the State Service Code of Conduct without needing to assess whether a separate provision of the Code has been breached, and may result in disciplinary action

i. cross-reference any other policies, procedures and guidelines that support, inform or otherwise relate to the professional conduct policy, for example, complaints handling or child protection policies or other codes of conduct relevant to particular professions.

3. The professional conduct policies should be:

   a. easily accessible to everyone in the agency and communicated by a range of mechanisms

   b. explained to and acknowledged and signed by all employees

   c. accompanied by a mandatory initial training session and regular refresher training, including as part of professional development training

   d. communicated to children and young people and their families through a range of mechanisms, including publication on the agency's public-facing website.

4. The professional conduct policies should include a specific prohibition on romantic or sexual relationships between an employee and a young person where that employee has been in a position of authority, care or protection with the young person for two years after the young person turns 18 or the employee's position of authority, care or protection has ended, whichever is later. This requirement should operate in addition to any other professional and ethical obligations.

5. Heads of Agencies should ensure the professional conduct policy spells out expected standards of behaviour for volunteers, contractors and sub-contractors, and other adults where relevant to the specific organisation and use appropriate mechanisms to ensure their compliance with the policy.

6. The Tasmanian Government should introduce legislation, or other binding mechanisms, to ensure:

    a. a breach of a departmental professional conduct policy may be taken to be a breach of the State Service Code of Conduct, without needing to assess whether a separate provision of the Code has been breached

    b. such a breach does not have to be accompanied by a lawful and reasonable direction for there to be a breach of the Code of Conduct.

5.5 Intersection with the Reportable Conduct Scheme

The Child and Youth Safe Organisations Act came into effect on 1 July 2023. As discussed in Chapter 18, the Act introduces the Government's Child and Youth Safe Organisations Framework, which comprises the Child and Youth Safe Standards and a Reportable Conduct Scheme. In section 7 of the Act, 'reportable conduct' is defined broadly, as including:

- a relevant offence (these offences are defined in the Act and relate to child sexual offences in the *Criminal Code Act 1924*)
- sexual misconduct, which includes inappropriate behaviour, physical contact, voyeurism and speech or other communication including electronic communication when performed in a sexual manner or with a sexual intention
- grooming of a child
- conduct that causes or is likely to cause emotional or psychological harm to a child.[131]

Under the Reportable Conduct Scheme, it is the responsibility of government departments to investigate whether an employee has committed reportable conduct.[132] It should be clear that where an employee is found to have committed reportable conduct, this is a breach of the State Service Act. To achieve this, there should be a mechanism to ensure that reportable conduct, as defined in the Child and Youth Safe Organisations Act, is a breach of the State Service Code of Conduct in section 9 of the State Service Act.

Recommendation 20.3

The Tasmanian Government should introduce legislation to ensure that where a finding is made that a State Service employee has committed reportable conduct under the Reportable Conduct Scheme, this also constitutes a breach of the State Service Code of Conduct under section 9 of the *State Service Act 2000*.

5.6 Contractors, volunteers and temporary staff

The State Service Act applies to 'employees', who are defined as permanent employees or fixed-term employees.[133] This means certain people who perform duties for the State Service, for example, foster care volunteers for the Department for Education, Children and Young People, are not subject to the State Service Code of Conduct.

There are specific policies with which contractors, volunteers and temporary staff must comply. For example, relief teachers were previously expected to comply with the Department's Conduct and Behaviour Standards, and a failure to do so resulted in removing them or flagging them on the Fixed Term and Relief Employment Register.[134] However, this also meant the Department was not obligated to conduct a thorough review of any conduct-related matter. As discussed in Case study 'Brad' in Chapter 5, the Department's response to the matter involving a relief teacher was conducted outside the State Service's disciplinary processes through a 'duty of care lens' and further investigation depended on the relief teacher's response.[135] The inability to treat breaches of departmental policies as breaches of the State Service Code of Conduct because of the employment classification of the person who has committed the breach may not be in the interests of child safety. We have been told by the State that relief teachers are now included in the category of employee covered by the State Service Act.[136]

Under the proposed Reportable Conduct Scheme, a reportable allegation against a 'worker' must be investigated.[137] A 'worker' is defined in the Act as including someone who is 'engaged by the entity to provide services, including as a volunteer, contractor … whether or not the person is engaged in connection with any work or activity of the entity that relates to children'.[138] To align the Reportable Conduct Scheme with any disciplinary processes, and to protect children, we encourage the State Service to ensure the obligations and provisions of the State Service Code of Conduct apply to contractors, sub-contractors, volunteers and temporary staff. However, the process for terminating employment or applying other sanctions to contractors, sub-contractors volunteers and temporary staff should remain simpler than for terminating the employment of permanent employees.

Recommendation 20.4

The Tasmanian Government should introduce legislation to ensure the provisions in the professional conduct policies apply to contractors, sub-contractors, volunteers and other adults who have contact with children.

6 Employment Directions

To take disciplinary action against an employee, including for child sexual abuse or related conduct, the Head of Agency must comply with Employment Directions issued by the Premier.[139] Relevant to our Commission of Inquiry, Employment Directions provide instruction on how the State Service must manage matters concerning employee misconduct, including suspensions, investigations of alleged breaches of the State Service Code of Conduct, and considerations relevant to whether an employee no longer has the ability to perform their role. The relevant Employment Directions to our Inquiry are:

- Employment Direction No. 4—Procedures for the suspension of State Service employees with or without pay (Employment Direction No. 4—Suspension)
- Employment Direction No. 5—Procedures for the investigation and determination of whether an employee has breached the Code of Conduct (Employment Direction No. 5—Breach of Code of Conduct)
- Employment Direction No. 6—Procedures for the investigation and determination of whether an employee is able to efficiently and effectively perform their duties (Employment Direction No. 6—Inability). This direction may apply when a person no longer has the capacity to perform their role or does not satisfy the minimum requirements for employment, such as registration to work with vulnerable people or professional registration.

These Employment Directions are dated 4 February 2013, and were to be reviewed one year later, but remain current.[140] These disciplinary processes must be undertaken at the direction of the Head of Agency, who is the ultimate decision maker. Before any disciplinary process for misconduct under Employment Direction No. 5—Breach of Code of Conduct takes place, there is often what is called a preliminary assessment. As we noted, preliminary assessments are sometimes carried out before the Head of Agency is aware of the allegation.[141] Once the preliminary assessment is complete, the information is transmitted to the Head of Agency, who then decides whether the matter should be investigated.

While investigations are initiated and disciplinary measures applied by Heads of Agencies, the Head of the State Service and the State Service Management Office also have a role in the administration of employment-related matters. The Head of the State Service manages employment-related matters in the State Service on behalf of the Minister administering the State Service Act and is responsible for the employment framework and overarching guidelines.[142] The Head of the State Service is supported in this role by the State Service Management Office.[143]

We note that neither the State Service Act nor Employment Direction No. 5—Breach of Code of Conduct mentions 'misconduct'. Rather, they refer to breaches of the State Service Code of Conduct. However, it is standard practice to refer to a breach of the State Service Code of Conduct as misconduct and we have adopted that approach.[144]

Many people who engaged with our Inquiry were critical of the Employment Directions and how they functioned in relation to matters that involve protecting children. We discuss these issues in more detail in this section.

There have been several recommendations to amend aspects of the Employment Directions, particularly Employment Direction No. 5—Breach of Code of Conduct, over the years.[145] Documents provided to us show that amendments to the current Employment Directions were drafted in 2016.[146] However, these amendments were not implemented. It is unclear why the amendments did not result.

In 2021, the final report of the *Independent Review of the Tasmanian State Service* recommended that the Government rewrite all Employment Directions.[147] In relation to disciplinary processes, the Independent Review concluded that the 'overly prescriptive' nature of these processes affected how they were managed, such that 'the risk associated with taking action is often so high that managers elect not to proceed'.[148] Further, the review noted that the 'top heavy' nature of misconduct procedures, requiring the involvement of the Head of Agency in many of the steps, led to delays.[149]

The Government has accepted all the Independent Review's 77 recommendations and set a five-year implementation period. At the time of writing, it was implementing the first stage of those recommendations, which includes several amendments to Employment Directions.[150]

The Independent Review's recommendations about Employment Directions include that:

- all unnecessary Employment Directions be revoked and, where required, converted to practice guides or other suitable instruments
- the remaining Employment Directions be rewritten as 'standards-based directions, with increased flexibility for agency decision making and process design'
- Employment Direction No. 5—Breach of Code of Conduct be rewritten to be standards-based, and to allow for Heads of Agencies to adapt investigations based on the circumstances of the alleged breach
- Employment Direction No. 5—Breach of Code of Conduct be rewritten to allow for 'a simple, local process to be used where the facts are clear and not disputed and the agency seeks to impose a low-level sanction'.[151]

While these recommendations are not specifically aimed at issues associated with child safeguarding, they will undoubtedly help to increase the responsiveness of the State Service misconduct and disciplinary processes by ensuring serious matters take precedence for investigation. We also consider there should be further reforms to improve the State's disciplinary response to allegations of child sexual abuse. The State Service Employment Directions are not well suited to protecting children because they place disproportionate weight on the rights of employees. Under these directions, it is difficult for Heads of Agencies to take action that prioritises the safety of children. To address these concerns, we make several recommendations, including:

- formalising the preliminary assessment process
- improving Employment Direction No. 5—Breach of Code of Conduct, including increasing the rights of complainants and children, increasing the speed of investigations, ensuring investigations are informed about the nature of child sexual abuse and are child/victim centred, and clarifying that all matters relevant to children should be considered potential serious misconduct
- providing for immediate termination of employment in specific situations
- allowing for the immediate suspension of staff when there is a risk to child safety
- simplifying the process for ending the employment of staff who do not hold requisite registration, such as a working with vulnerable people registration.

We also call for the Head of the State Service to play a more active role in leading the State Service in the conduct of disciplinary processes through providing guidance and advice and undertaking active monitoring and reporting.

6.1 Preliminary assessments

Preliminary assessments are not currently part of Employment Directions. However, when misconduct by a state servant is alleged, it is common practice for staff to undertake a preliminary assessment to determine whether to recommend to the decision maker (usually the Head of Agency) to appoint a person to formally investigate the matter under Employment Direction No. 5—Breach of Code of Conduct. Preliminary assessments are used to assess whether the decision maker would be able to form a reasonable belief that there may have been a breach of the State Service Code of Conduct. It is also used to determine the most appropriate way to respond to the conduct in question. A threshold consideration in conducting a preliminary assessment is whether the alleged conduct occurred in the course of the employee's State Service employment.

The government agencies we examined use preliminary assessments. From the period January 2000 to February 2023, the numbers were:

- 24 preliminary assessments by the then Department of Communities
- 48 preliminary assessments by the then Department of Education
- 9 preliminary assessments by the Department of Health.[152]

6.1.1 Problems with preliminary assessments

Preliminary assessments seem to have developed to determine whether the threshold for engaging with the formal investigative processes required by Employment Direction No. 5—Breach of Code of Conduct has been reached. While gathering some information is necessary to confirm basic facts about the alleged misconduct or incident, there is a danger that a preliminary assessment can assume the role of a de facto investigation but without independence, appropriate considerations or safeguards for victims and witnesses, and procedural fairness for alleged perpetrators.[153] Further, because preliminary assessments are generally not subject to formal rules or policy frameworks, they are usually not subject to specific timeframes.

For example, under clause 7.3 of Employment Direction No. 5—Breach of Code of Conduct, where it is likely that an investigation will require interviewing a child or young person, the relevant Head of Agency must ensure the process is 'sensitive and appropriate' to the age, maturity and personal circumstances of the child or young person. Further, before such an interview is conducted, consideration should be given to obtaining appropriate permissions and whether the child or young person should be accompanied by a parent, guardian or other support person.[154] None of these requirements apply to preliminary assessments because they are not part of the Employment Directions.

6.1.2 Guidance (and policies) on preliminary assessments

Most of the government agencies we engaged with did not have a specific policy on preliminary assessments, except for the recent introduction of such a policy in the Department of Health (which we discuss next). However, the Integrity Commission provides guidance on conducting preliminary assessments as part of its *Guide to Managing Misconduct in the Tasmanian Public Sector*.[155]

Integrity Commission guidance

As part of its 2017 own motion investigation into the management of how misconduct is managed in the public sector, the Integrity Commission produced a model preliminary assessment process and guidance on managing misconduct, including on conducting preliminary assessments.[156] It outlines the type of information that might be sought in a preliminary assessment, including time sheets or rosters, emails and personnel files, applicable policies and position descriptions, record access logs, and following up detail with the source of the complaint.[157] The guidance stresses it is important that

preliminary assessments do not turn into 'investigations' and they should be completed quickly: within three working days.[158] The Integrity Commission's guidance also cautions that interviews with anyone other than the source of the complaint should be avoided at the preliminary assessment stage.[159]

In our view, most of the Integrity Commission's guidance provides helpful and clear instruction on conducting preliminary assessments. However, it does not account for specific issues that may be raised in matters involving allegations of inappropriate conduct towards children or young people. Our recommendations in this section build on the Integrity Commission's guidance to ensure that preliminary assessments are conducted in a way that enhances child safety.

We understand the Integrity Commission is currently reviewing the Guide and the associated training module to consider changes in administrative law and good practice, including the need to consider trauma-informed practices and any relevant outcomes of our Inquiry.[160]

Department of Health

A 2019 audit of the Department of Health's conduct and investigation and management processes revealed preliminary assessments were taking the form of investigations. As a result, these preliminary assessments may not have been objective or have involved procedural fairness. This makes the process open to challenge and criticism.[161] Whether in response to the audit or otherwise, the Department developed Guidance Notes for conducting preliminary assessments.[162]

The Guidance Notes emphasise that preliminary assessments are not investigations—their purpose is not to uncover the facts of the matter. Nor should they 'make findings or arrive at conclusions regarding the alleged conduct'.[163] The Guidance Notes specify that preliminary assessments should be completed within three to seven business days. They note that where it is not possible to meet this timeframe, the reasons for the delay may need to be recorded and communicated to the parties.[164] The Guidance Notes also provide brief instruction on collecting information. This includes that, most times, witnesses should not be contacted, but further information may be required from the complainant. They also set out the possible courses of action that can be taken when the preliminary assessment concludes, including recommending the delegate of the Head of Agency initiate an investigation.[165]

While the Guidance Notes do not mention specific considerations relating to children or young people, an attached preliminary assessment form (for the assessor to complete) has a section relating to allegations of inappropriate conduct towards children. This section instructs that where an allegation involving children or young people is made, the assessor should refer to the Department's Internal Checklist—Child Related Allegations. Significantly, it instructs that the assessor should consider relevant

provisions in Employment Direction No. 5—Breach of Code of Conduct, which, as discussed earlier, require contact with a child to be 'sensitive and appropriate'. We have been told that the separate notation relating to children is to reflect 'the Department's position that an investigation will proceed, the employee be stood down and that such requires immediate action through Human Resources'.[166]

The form also sets out that a threshold consideration in conducting a preliminary assessment is whether the alleged conduct occurred in the course of State Service employment. This contrasts with the Integrity Commission's guidance. Their guidance highlights that the State Service Code of Conduct requires conduct 'in connection with' employment 'at all times' and 'in the course of' employment depending on the requirement, including that at all times the employee must act in a way that does not adversely affect the integrity and good reputation of the State Service.[167]

Department for Education, Children and Young People

The Department for Education, Children and Young People did not appear to have a specific policy about preliminary assessments. Relevantly, the Department's flowchart, *Advice for School Staff—Responding to Incidents, Disclosures or Suspicions of Child Sexual Abuse*, advises that, in supporting a child or young person who has suffered sexual abuse, staff should not question or interview the child or young person. The flowchart further states that Workplace Relations can provide advice about recording information and that a 'Concern Notice template' has been developed to help with this process (refer to Chapter 6).[168]

The former Department of Communities also did not appear to have a specific policy on conducting preliminary assessments. However, Michael Pervan, then Secretary of the Department of Communities, told us the Department had adopted the Integrity Commission's *Guide to Managing Misconduct in the Public Sector* when conducting preliminary assessments 'with a focus on the risk of safety to children and young people'.[169] We discuss in more detail in Chapter 11 on Ashley Youth Detention Centre, problems with the preliminary assessment processes in the then Department of Communities. The Department took considerable time to conduct preliminary assessments regarding several employees alleged to have engaged in incidents of child sexual abuse. In some cases, quasi-investigations were conducted, contrary to the Integrity Commission's guidance.[170] In relation to preliminary assessments, in Chapter 11, Case studies 5 and 7, we discuss problems in how the Department approached preliminary assessments, which contributed to delays in responding to serious allegations against staff at Ashley Youth Detention Centre.

6.1.3 Improvements to preliminary assessments

We consider that several improvements should be made to the preliminary assessment process to provide stronger safeguards for children and young people in government

institutions. The process of conducting preliminary assessments should be formalised across the State Service in Employment Direction No. 5—Breach of Code of Conduct (refer to Section 6.3). It should be stipulated that preliminary assessments are to be conducted as quickly as possible: within three to five business days. If more time is required, the reasons for the delay should be documented, a new timeframe set, and the reasons for the delay and the new timeframe communicated to the relevant parties. Preliminary assessments should be confined to a basic assessment of the matter and should not require evidence of wrongdoing. Such evidence should be considered and assessed at the investigative stage. Accordingly, interviews should not be conducted during a preliminary assessment. However, if an interview involving a child or young person is necessary at the preliminary assessment stage, then the interview should be subject to the same considerations as those in clause 7.3 of Employment Direction No. 5—Breach of Code of Conduct, including the matters discussed in Section 6.3 and in Recommendation 20.8.

Child-facing departments should develop policies for conducting preliminary assessments that suit their operating environments. These policies should be developed based on our recommendations and in line with the Integrity Commission guidance, where appropriate. Due to the nature of the preliminary assessment process, any such policies should not require procedural fairness to be accorded to the employee. If the outcome of the preliminary assessment recommends an investigation occurs under an employment direction, then procedural fairness will be accorded to the employee during that investigative process. We recommend the Child-Related Incident Management Directorate conducts preliminary assessments in matters involving child sexual abuse and related conduct.

We also consider that the question of whether the alleged conduct occurred in the course of the employee's State Service employment can involve complex considerations that will not lend themselves to a fast preliminary assessment process. The question of whether conduct occurred in the course of employment is better addressed at the investigative stage in all but the most obvious of cases.[171] We also note that our proposed changes to the State Service Code of Conduct will render the focus on a nexus to employment less central.

Recommendation 20.5

1. The State Service should develop guidance material for conducting preliminary assessments to ensure:
    a. they are conducted quickly (within three to five business days after an allegation is received)

b. the reasons for any delay are documented, a new timeframe set, and the reasons for the delay and the new timeframe are communicated to the parties if applicable in the circumstances

c. they are confined to a basic gathering of information and do not require evidence of wrongdoing

d. they do not assess whether the alleged conduct occurred in the course of the employee's State Service employment.

2. Victim-survivors and child witnesses should not normally be interviewed at the preliminary assessment stage to avoid them being interviewed more than once or being interviewed by a person without special skills. If it is necessary to interview a child or young person at this stage, then this should be done in line with clause 7.3 of Employment Direction No. 5—Breach of Code of Conduct. Any such interview should be conducted by individuals who have been trained in child development, child sexual abuse (including taking a Whole Story approach), and trauma-related behaviours.
3. Any engagement with a child or young person during the preliminary assessment stage should be child-centred and trauma-informed.
4. The Child-Related Incident Management Directorate should conduct preliminary assessments in child sexual abuse or related conduct matters.

6.2 Employment Direction No. 4—Suspension

One way to protect children from potential harm is to suspend staff who may pose a risk to children until a further assessment of risk is determined.

Employment Direction No. 4—Suspension allows a Head of Agency, who believes on reasonable grounds that it is in the public interest to do so, to suspend an employee with full pay if the Head of Agency believes that the employee:

- has, or may have, breached the State Service Code of Conduct in such a manner that the employee should not continue to perform his or her duties; or
- has been charged in or outside Tasmania with an offence punishable by imprisonment for a term exceeding six months; or
- is, or may be, unable to 'efficiently and effectively' perform their duties.[172]

Staff who do not have appropriate professional registration or a working with children registration would satisfy clause (c).

The Head of the State Service may, after considering submissions, suspend an employee without pay.[173] Decisions to suspend employees (either with or without pay) must be made on a case-by-case basis. Decisions should consider several factors, including whether:

- the breach of the State Service Code of Conduct is 'of such a serious nature that it is inappropriate for the employee to continue'; or
- it is in the 'best interests of the public, the Agency, other employees and the employee being investigated'.[174]

In terms of child safety in government institutions, we note two key issues with Employment Direction No. 4:

- There are questions about whether the suspension of an employee under Employment Direction No. 4 may occur *immediately* when misconduct is alleged or suspected; that is, the basis for an employee's immediate removal is uncertain.
- The requirement that the Head of Agency have reasonable grounds to believe that it is in the public interest to suspend an employee is an unnecessary barrier in matters involving child sexual abuse.

These points are discussed next.

6.2.1 Immediate suspension

The immediate removal of an employee from the workplace when there has been an allegation or incident of child sexual abuse is critical. However, there seems to be some uncertainty about the timing of employee suspensions in the State Service and the basis on which an employee is otherwise removed from the workplace.

Employment Direction No. 4 notes that:

> [A s]uspension is not a sanction, it is only to be used where an investigation of an employee is underway and proper investigation requires the employee to be absent or where because of the nature of the alleged offence it is not appropriate that the employee remain in the workplace.[175]

This provision has caused confusion because it appears to suggest that a suspension can only occur once a misconduct investigation has started. For example, it took the former Department of Health and Human Services (which was responsible for child protection and out of home care at the time) 166 days to suspend a rostered carer who was alleged to have sexually abused a 16-year-old girl in care (refer to Chapter 8).[176] This may have been partly due to the presumed requirement to conduct an Employment Direction No. 5 investigation before suspending a person for misconduct.

Secretary Gale told us that once a Head of Agency has formed a reasonable belief

there may have been a breach of the State Service Code of Conduct, they may suspend the employee on full pay. According to Secretary Gale, this allows Heads of Agencies to:

> adopt a zero-tolerance approach to allegations of child sexual abuse and remove employees against whom an allegation has been made from the workplace *immediately*, to avoid risk to the safety of children and young people [emphasis added].[177]

However, as discussed, whether a Head of Agency could form a reasonable belief that the State Service Code of Conduct has been breached is subject to a preliminary assessment process that can take several days at best and, as described in our case studies, several months at worst.

Departmental secretaries have (at least, recently) adopted different justifications for immediately removing employees from the workplace. These practices are welcome if they protect children. For example, Secretary Bullard told us that, as Secretary of the Department of Education, he had a 'duty of care' to children and young people who were under the care of the Department, indicating this justified an employee's immediate removal from a site when there had been an allegation or incident of child sexual abuse. He told us it was the Department's practice that:

> in every case where allegations of child sexual abuse are made against a current employee, the employee is requested, as soon as possible, to leave the workplace prior to service of formal documentation. If after initial examination of the circumstances it is concluded that employees may have breached the State Service Code of Conduct, they are then formally suspended in accordance with Employment Direction No. 4 at the same time as an investigation is commenced pursuant to Employment Direction No. 5.[178]

Regarding the former Department of Communities, then Secretary Pervan and Jacqueline Allen, then Acting Executive Director, People and Culture, told us that Employment Direction No. 4 did not allow them to suspend an employee from duty immediately after an allegation or incident of child sexual abuse was reported or became known.[179] Nor, in their understanding, did it allow for suspension to occur while a preliminary assessment was being conducted.[180]

Secretary Pervan told us that to minimise the risk to children and young people while Employment Directions No. 4 and No. 5 processes are commenced, the employee subject to the allegation was directed to 'remain away from the workplace'.[181] Secretary Pervan told us he had:

> an overriding legislative responsibility to manage and eliminate and/or minimise the health and safety risks to children and young people so far as reasonably practicable in accordance with the *Work Health and Safety Act 2012*.[182]

So, in then Secretary Pervan's view, removing an employee from the workplace in the former Department of Communities was justified based on workplace health and safety laws.[183]

The Department of Health's approach to the timing of suspension under Employment Direction No. 4 is unclear. The State has advised us that suspensions occur immediately.[184] Secretary Morgan-Wicks told us it 'is Department of Health practice that the respondent is formally advised of suspension pursuant to Employment Direction No. 4 pending further notification of actions to be taken'.[185] Secretary Morgan-Wicks further said:

> Where an allegation of child sexual abuse is made it is current practice that the Department Official is stood down, giving consideration to duty of care and the risk of the employee continuing in the workplace. This is considered in line with the considerations in section 6.4 of Employment Direction No. 4.
>
> The Department of Health does not currently have protocols or guidelines which cover the period between standing the Department Official down and the formal notification of suspension in accordance with Employment Direction No. 4.[186]

What is important for the safety of children and young people is that where there has been an allegation or incident of child sexual abuse, the subject employee is immediately removed from the workplace pending the start (or not, as the case may be) of disciplinary processes. We consider the basis on which this can occur should be clear.

We recommend that Employment Direction No. 4 provides for the immediate removal of an employee from the workplace when there is an allegation or incident of child sexual abuse. Suspension should not be contingent on the commencement of disciplinary processes. It should precede them. This will help to keep children safer in government institutions by providing a clear basis for removing employees who are subject to allegations of child sexual abuse from the workplace, while the necessary inquiries are made.

6.2.2 Belief that suspension is in the public interest

As discussed in this chapter, the Head of Agency must have reasonable grounds to believe it is in the public interest to suspend an employee under Employment Direction No. 4.[187] In our view, this requirement is superfluous when the allegation or incident involves child sexual abuse as immediate suspension will almost always be in the public interest. We consider child safety warrants, in matters involving allegations or incidents of child sexual abuse or related conduct, there not being the requirement that the Head of Agency have reasonable grounds to believe it is in the public interest to suspend an employee.

We also note that there are several factors the Head of Agency must consider on a case-by-case basis when deciding to suspend an employee.[188] These include the nature of the 'offence', the attitude of the public towards the breach and the employee, and the repercussions for the State Service.[189] However, there is no requirement to consider the safety of children or young people (or of other employees, for that matter). We consider that child safety should be included as a consideration in making such a decision.

Recommendation 20.6

The Tasmanian Government should amend Employment Direction No. 4—Suspension to:

a. specify that in matters involving complaints or concerns about child sexual abuse or related conduct of an employee, they may be suspended immediately

b. clarify, to avoid any doubt, that suspension can occur before the start of any disciplinary processes, including preliminary assessments

c. exclude, in matters involving complaints or concerns of child sexual abuse or related conduct, the requirement that the Head of Agency must have a reasonable belief that it is in the public interest to suspend the employee

d. include the safety of children and young people among the matters a Head of Agency must take into account when deciding whether to suspend an employee.

6.3 Employment Direction No. 5—Breach of Code of Conduct

Employers must be able to terminate the employment of, or take other disciplinary action against, staff who have harmed or pose a risk to children. Breaches of the State Service Code of Conduct are determined through the investigative processes set out in Employment Direction No. 5—Breach of Code of Conduct, which 'establishes … the procedures for the investigation and determination of whether an employee, senior executive, equivalent specialist or [an employee] has breached the State Service Code of Conduct'.[190]

Employment Direction No. 5 stipulates that the powers and functions it grants must not be delegated, except for the Head of Agency for the Department of Health and the Department for Education, Children and Young People.[191] It also stipulates that the procedures within it 'are to be applied with procedural fairness, natural justice and in a timely manner', noting that 'timely' means 'within a reasonable timeframe and free from unreasonable delay'.[192]

Where a Head of Agency has reasonable grounds to believe there may have been a breach of the State Service Code of Conduct, Employment Direction No. 5 requires them to appoint an investigator to investigate the alleged breach. Employment Direction No. 5 sets out several requirements for the ensuing investigation, including that:

- investigators must be impartial and report to the Head of Agency about the outcome of the investigation
- if the Head of Agency becomes aware that an employee has committed certain crimes, they may determine that the State Service Code of Conduct has been

breached without first conducting an investigation (the employee must be afforded procedural fairness and natural justice)

- if the investigation requires interviewing a child or young person:

> the head of agency must ensure that the processes involving the child are sensitive and appropriate, bearing in mind the age, maturity and personal circumstances of the particular child. Before interviewing a child, consideration must be given to such issues as the permission of the parent or guardian, the child being accompanied by a parent, guardian or support person and, where appropriate, keeping the child informed of the progress of the investigation.[193]

6.3.1 Procedural fairness and the rights of children

Employment Direction No. 5 also sets out other procedural fairness requirements for investigations, such as communicating suspected breaches to employees and informing them of the investigation, their rights regarding the investigation and the possible implications of the investigation.[194] There is no mention of the interests of a complainant in the conduct of an investigation. In the case of alleged child sexual abuse or related conduct, this may mean a child or parent does not have an automatic right of reply once the employee's version of events is presented, although the Head of Agency can request further investigations if new information comes to light.[195]

Employment Directions are focused on providing employees their right to know the allegations made about them and to answer them (often referred to as procedural fairness or natural justice). This focus stems from an 'employment relationship', where the employee is considered to be in the weaker position in relation to the employer: the State. However, this framework poses problems for protecting children in government institutions, who are in a weaker position than an employee within an institution. As explained by Secretary Gale, Employment Direction No. 5:

> exists to provide procedural fairness and natural justice to employees …
>
> It does not directly reference rights of the complainant, for example, to be kept informed of any investigation's progress or outcome.
>
> [Employment Direction No. 5] is not constructed with the primary goal of facilitating a trauma-informed or child-centred investigation process …[196]

Further, as then Secretary Pervan said, '[t]here is a real tension between child protection and natural justice being given to employees and the [Employment Direction] process favours the protection of employees'.[197]

The tension identified by then Secretary Pervan has not been helped by the fact that Employment Direction No. 5 has not substantially changed over the past 20 years, despite increased awareness of the role of behaviours such as boundary breaches and grooming in child sexual abuse. Despite this, the focus of Employment Direction

No. 5 continues to be on providing procedural fairness to employees. In practice, this has been at the expense of protecting children or providing fairness to complainants.

Affording procedural fairness to employees being investigated under State Service disciplinary processes is necessary and a fundamental principle of our legal system. However, it should not come at the expense of pursuing investigations or considerations of child safety, nor should the pursuit of procedural fairness unduly affect complainants or witnesses.

An employee who is the subject of a misconduct determination also has a right of review. Employment Direction No. 5 provides that if an employee wants to dispute a finding that they have breached the State Service Code of Conduct, and the sanction imposed is termination of employment, 'the dispute will be dealt with by the appropriate industrial tribunal', which in this case is the Tasmanian Industrial Commission.[198] If the sanction imposed was other than termination of employment, the employee will have a right of review under the State Service Act, which is also heard by the Tasmanian Industrial Commission but under different procedural requirements.[199] A complainant or other relevant party does not have a right of review, even when they have been directly adversely affected by the conduct. In our view, this is unfairly biased towards the rights of the employee. The correct forum for a right of review for such a complainant is a complex legal question we have not attempted to solve here, focusing instead on the need for the right of review.

Our recommendations that investigations into employee misconduct be conducted by the Child-Related Incident Management Directorate will help to ensure that the 'tension' between procedural fairness and the needs and concerns of complainants and witnesses is appropriately addressed, particularly in matters involving child sexual abuse (refer to Recommendations 6.6, 15.17 and 20.8). This is because we recommend the Directorate conducts investigations that consider child safety as well as disciplinary measures. We have also recommended expanding the State Service Code of Conduct so that if a state servant's conduct creates an unacceptable risk to the safety and wellbeing of children or young people, the State Service disciplinary framework should apply. Termination, suspension or sanction should be available. The disciplinary framework should ensure that departmental professional conduct policies address behaviour that may pose a risk to children.

We have been advised the State is currently reviewing and rewriting Employment Direction No. 5.[200] We consider that the Employment Directions should be amended to protect the rights of children and complainants, particularly to afford children and complainants a right of reply and review.

We also note the importance of conducting investigations, even if an employee has resigned prior to the initiation of an investigation, to ensure the safety of children and young people is prioritised. For example, we heard evidence from Alana Girvin,

the former Director, Incident Management Directorate, Department for Education, South Australia, that in South Australia, if a person resigns, the investigation continues. A determination of their suitability is made on the evidence before the Directorate. A prompt is included on their system, and notifications made to the Catholic or independent systems, public sector, Commissioner of Public Sector and other jurisdictions.[201]

6.3.2 Anonymous complaints

People affected and other employees may be discouraged from making a complaint about an employee's conduct because they are concerned they will be identifiable to that employee. We heard from people who believed they were targeted by an employee because the person making the complaint was revealed to the employee.[202] At our stakeholder consultations in Launceston, we were told one of the problems with Launceston General Hospital's approach to complaints included allowing the identity of the person making a complaint to become known.[203] The State has since advised that the State-wide Complaints Management Overview unit has been established and the identity of complainants is kept strictly confidential.[204]

We do not consider that the complainant's identity must be revealed, although it appears to have been the practice.[205]

It is unclear why this practice has emerged. Employment Direction No. 5 requires a Head of Agency to write to an employee who is the subject of a complaint to inform them of the substance of the complaint. 'Substance', in this context, means 'the essential elements that have given rise to the allegation of the breach of the Code and the specific parts of the Code allegedly breached'.[206] The Employment Direction does not specify that the respondent be informed of the identity of the person making the complaint (or witness). The Integrity Commission's guidance on managing misconduct states that people (complainants) should be told that while confidentiality cannot be guaranteed, it should be maintained as far as possible. In a small jurisdiction such as Tasmania, where 'everyone knows everyone else', maintaining confidentiality, while difficult, can ensure people are not discouraged from coming forward to make a complaint.[207]

It is not intended that all witness statements produced for an investigation must be provided to the respondent in full to ensure procedural fairness. The Integrity Commission's guidance cautions that 'decisions about what to give or show the respondent needs to be balanced against other considerations', including 'confidentiality, privacy, security risks, and legal professional privilege'.[208] Departmental advice about Employment Direction No. 5 to principals and managers in the Department for Education, Children and Young People states that '[c]onfidentiality is critical to maintain the integrity of the process, provide privacy and protect all those involved'.[209]

In this chapter, we recommend that, in any investigation of alleged misconduct, government agencies should ensure they have appropriate measures to protect, where possible, people, including witnesses, who come forward with complaints or concerns. These measures should include the ability to make anonymous complaints in cases of child sexual abuse and related conduct, and clear guidance about maintaining confidentiality. We recognise there may be limitations with progressing an anonymous complaint, for example, where there is insufficient information or details outlined in the complaint to conduct an investigation. We also acknowledge the challenges the State faces where allegations are contained in information not specifically designed for conducting a disciplinary process. However, these difficulties should not prevent the State from pursuing an investigation of the allegations to the extent it is possible to do so.

6.3.3 Timely investigations

Disciplinary processes in relation to child sexual abuse and related conduct matters often take too long to resolve, leaving children or young people exposed to potential risks.[210] We heard of significant delays in starting investigations or where, once started, investigations took too long to complete. For example:

- There have been delays in the initiation of Employment Direction No. 5 investigations of employees at Ashley Youth Detention Centre.
- The original investigation into victim-survivor Rachel's matter by the Department of Education took more than two years to complete. Rachel told us the length of the investigation had a devastating effect on her.[211]

Not only do long investigations leave children other than the particular child affected exposed to risks, but they can be distressing and retraumatising for the person affected and witnesses. Delays can also be distressing for those under investigation.

In our hearings on education, Secretary Bullard told us that timeframes were not placed on Employment Direction No. 5 investigations when independent investigators were appointed.[212] However, Secretary Bullard later advised us that the Department had changed this practice to require the investigator to provide an expected timeframe to be met. Further, the Department now provided guidance on seeking extensions, and required investigators to provide monthly updates.[213]

We commend these changes and consider that the requirement to set timeframes for conducting investigations should be included in Employment Direction No. 5—Breach of Code of Conduct. Instructions for seeking an extension for the investigation should also be incorporated into Employment Direction No. 5. All relevant parties should be kept informed of the progress of the investigation and, in the event of any delays, informed about revised timeframes for its completion. Heads of Agencies should report

to the Head of the State Service on compliance with these timeframes, and the Head of the State Service should monitor and publicly report on this compliance.

6.3.4 Prioritising serious misconduct

Another problem with the State Service disciplinary processes is that Employment Direction No. 5—Breach of Code of Conduct is used for all misconduct matters, regardless of their seriousness. As noted, there is a 'one-size-fits-all' approach to investigations in the State Service. This means that the investigation of minor misconduct matters can use up vital resources and lead to delays in investigations. Secretary Webster told us:

> I think, if some of the lower-level Code of Conduct issues were able to be dealt with more easily, then it would free up time and expertise to be able to focus on the more serious level of Code of Conduct issues that do require trauma-informed practice ...[214]

At the time of writing, the Government was in the process of implementing the recommendations of the *Independent Review of the Tasmanian State Service*. Relevantly, the Independent Review has recommended that Employment Direction No. 5 be rewritten 'to allow for a simple, local process to be used where the facts are clear and not disputed and the agency seeks to impose a low-level sanction (that is, reprimand or that the employee engages in counselling for their behaviour)'.[215] We support this restructuring of Employment Direction No. 5 in this way, as long as there is robust record keeping in any such 'local process', as discussed in the following section.

There is a risk in this approach that grooming and boundary breach behaviour may not be treated as serious. We discuss, in our institution-specific chapters, examples of cases where such behaviours were not taken seriously enough in institutions (such as James Griffin's case study in Chapter 14 and Brad's case study in Chapter 5). To avoid this risk, we recommend that all concerns about a staff member's interactions with a child or young person that could constitute grooming, a boundary breach or other related conduct be treated as potential serious misconduct.

6.3.5 Record keeping and monitoring

A key way to improve responses to child sexual abuse in government institutions is to ensure that accurate and comprehensive records are kept in relation to employee misconduct. In the context of employee misconduct (whether the misconduct be alleged, suspected, substantiated or unsubstantiated), a lack of appropriate record keeping can lead to a failure to identify and, therefore, respond to risks to the safety of children in government institutions, including when there is a pattern of behaviour.[216]

As noted, the Integrity Commission conducted an own motion investigation into misconduct in the State Service.[217] The investigation report recommended that public authorities:

> maintain an appropriately confidential register of all alleged and suspected misconduct committed by public officers.
>
> This is to include all misconduct matters, including those that do not proceed to investigation and those that are not substantiated.[218]

As the Integrity Commission recognised, such a register would help to identify multiple allegations made against an employee over time.[219] Importantly, maintaining a record of all allegations, whether substantiated or not, would also help to identify patterns of behaviour associated with child sexual abuse.

In materials provided to us, it appeared the Government supported this recommendation in principle.[220] However, it noted that a central register would only be supported for concluded investigations—it was suggested that unsubstantiated allegations 'be addressed at an agency level'.[221] Although the status of the document containing this information is unclear, it stated that the revision of Employment Direction No. 5—Breach of Code of Conduct would reference 'maintenance of a central register for defined and proven breaches'. In 2022, the Government introduced a register for breaches of the Code of Conduct. However, the register only includes matters where an investigation under Employment Direction No. 5 has resulted in termination of employment.[222]

We support this development. However, considering state servants move across departments, we consider there should be a cross-government register of misconduct investigations for serious and non-serious misconduct, not just for matters that result in termination of employment, or would have resulted in termination of employment had the employee not resigned. We understand the State Service Management Office considered such a register in response to the Integrity Commission's 2017 own motion investigation report.[223] We consider that this important initiative should be implemented. Any such register should include a record of unsubstantiated matters, including those that did not proceed to any sort of investigation. The Heads of Agency should report quarterly to the Head of the State Service about these matters. The Head of the State Service should report on misconduct across the State Service in their annual report.

6.3.6 Using evidence of past concerns or allegations—substantiated or not

As discussed, keeping a record of all misconduct-related matters is important to help identify patterns of behaviours. When an allegation is made, evidence of allegations of prior misconduct, whether substantiated or not, may lend weight to the assessment of whether misconduct has occurred. However, during our Inquiry, we understood there was concern (and confusion) in some government departments about the ability to use evidence of alleged prior misconduct in any investigation into a new allegation of employee misconduct. The State has since advised us that any relevant prior conduct will either be part of an allegation or be considered when determining the sanction.[224]

Whether evidence of prior concerns or allegations can be used in other misconduct matters does not appear to be well understood in the State Service. Evidence provided to us showed that government departments, and sometimes staff in the same department, took different approaches to this issue (and, consequently, different justifications for the use or non-use of prior conduct).

For example, in relation to Walter (a pseudonym)—a former employee at Ashley Youth Detention Centre who was the subject of at least 19 allegations before his resignation, and subject to disciplinary action on multiple occasions—then Secretary Pervan conceded that the inability to use information about prior disciplinary processes as well as information held by the Department as a result of allegations raised through redress claims was a 'system failure'.[225] He also told us that the wording of Employment Direction No. 5 itself provided the basis for the restriction on using prior allegations:

> it appears that the focus [of Employment Direction No. 5] is on allegations and those particulars, so if we're talking about bringing in other matters, the only way you could bring them in would be to add them as separate allegations, and have the whole lot investigated.[226]

In Chapter 14, we note the views of two former human resources staff members at Launceston General Hospital were that they were unable to consider unsubstantiated complaints or concerns cumulatively in disciplinary proceedings. Mathew Harvey, former Human Resources Consultant with the Department of Health, told us he was unable to use the content of previous unsubstantiated allegations as evidence in misconduct proceedings. He told us that this position had been confirmed by the Tasmanian Industrial Commission in a matter he had attended.[227] On the other hand, James Bellinger, former Human Resource Manager at the Department of Health told us in his statement that previous allegations of misconduct were considered in new matters to establish whether there is a pattern of behaviour.[228] However, Mr Bellinger did not specify whether this included unsubstantiated allegations.

Secretary Morgan-Wicks advised us she was establishing a complaints management oversight unit ('Statewide Complaints Oversight Unit') in the Office of the Secretary.[229] She said the unit will be responsible for recording and tracking the progress of complaints in a document management system, assessing complaints against previous complaints, and allocating the complaint to an appropriate business unit for action after identifying any potential conflicts of interest.[230]

The Solicitor-General's office has advised that, during investigations, procedural fairness to the employee under investigation requires that:

> [c]are must be taken to ensure the investigator does not have reference to any previous complaints with respect to the employee. That information would be irrelevant to the determination of the current investigation and could arguably adversely affect the employee's right to procedural fairness and natural justice.[231]

An approach excluding previous allegations appears to be influenced by the principles relating to the admission of tendency evidence in criminal trials. This approach is ill-suited to disciplinary proceedings and may result in risks of child sexual abuse not being sufficiently addressed. There is, at the least, confusion about whether prior concerns, complaints or allegations about an employee, whether substantiated or unsubstantiated, can be used in future misconduct proceedings. Variation in approaches to investigations is undesirable in and of itself. But it is more concerning that a valuable way to identify patterns of behaviour that may point to child sexual abuse is not being used, or at least is not being uniformly used, in relation to State Service disciplinary matters. We consider the safety of children in government institutions demands more. It requires a consistent approach—one that allows patterns of behaviour to be identified and used, where necessary, as evidence of that behaviour in future disciplinary proceedings.

In our view, where there are allegations of child sexual abuse and related behaviours, it is critical that prior substantiated and unsubstantiated complaints, allegations and disciplinary action, as well as suspected misconduct, can be considered both by the investigator and the Head of Agency. Any weight given to previous unsubstantiated concerns should consider that they have not been substantiated.

The Integrity Commission told us that prior allegations (including unsubstantiated allegations) should be considered at various stages of the disciplinary process, including:

- in determining the process to be used to deal with new allegations
- at the finding stage in determining, on the balance of probabilities, whether the conduct occurred—previous substantiated allegations should have more weight than unsubstantiated allegations
- in determining if misconduct has occurred
- the sanction to apply.[232]

We agree with this approach.

We understand there may be procedural fairness concerns about using prior matters in this way. However, these concerns would be addressed by amending clause 7.4 of Employment Direction No. 5—Breach of Code of Conduct to include a requirement that the Head of Agency notify the employee that any prior complaints, allegations and disciplinary action will be provided to the investigator and by putting the substance of these former complaints to the employee. Further, amending clause 7.9 of Employment Direction No. 5 to require that the investigator's report to the Head of Agency detail any reliance on prior complaints, allegations and disciplinary action would also help to address procedural fairness concerns. In this respect, we note that the investigator's report must be provided to the employee, and the employee is to be afforded an opportunity to respond to the report (refer to clause 7.10 of Employment Direction No. 5).

6.3.7 Summary dismissal

To protect children, it may be appropriate to summarily dismiss an employee for misconduct in some circumstances.

Currently, Employment Direction No. 5—Breach of Code of Conduct allows an employee to be dismissed without investigation where they have been convicted of a crime that is 'punishable by imprisonment for a term of 6 months or more'.[233] Clause 9(d) of the Tasmanian State Service Award enables the summary dismissal of an employee for serious misconduct or serious neglect of duty. The Independent Review of the State Service has recommended that the State Service adopt the Fair Work approach to serious misconduct. Under Fair Work regulations, misconduct is defined as 'wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment'.[234] It is also defined as conduct that causes a serious and imminent risk to the health or safety of a person.[235]

According to the Independent Review, the test for termination of employment based on serious misconduct under the Fair Work framework is:

> whether the reason for the termination was 'sound, defensible or well founded'. The employer must be satisfied on the balance of probabilities that serious misconduct has occurred (a standard lower than criminal charges) and that summary dismissal is not a disproportionate response.[236]

We support this recommendation in principle because it may help to streamline the disciplinary process in uncontested cases of serious misconduct, and free up time and other resources. However, we note that in matters involving child sexual abuse, investigations can uncover important matters that may not otherwise be discovered, including that other children have been harmed or that systemic reform is needed. Even if an employee is summarily dismissed, the Child-Related Incident Management Directorate should still investigate to determine if other children were exposed to risks and if system changes are required.

6.3.8 Interviewing children

As noted, Employment Direction No. 5—Breach of Code of Conduct sets out matters that must be considered when interviewing a child or young person. Chapter 16 sets out the best practice approach to interviewing children and young people in the context of police investigations. In Chapter 6, we discuss how these principles should be extended to the interviewing of children by the Child-Related Incident Management Directorate we recommend. In summary, these principles include that interviewers should have appropriate qualifications and training in dealing with matters involving child sexual abuse and should:

- take a 'whole story' approach to interviewing victim-survivors or witnesses, to allow for a pattern of behaviour to be apparent

- ensure the environment of the interview is comfortable for the child or young person
- minimise multiple interviews through techniques such as video recordings.

These principles should also apply to investigations conducted in the employment disciplinary context for investigating child sexual abuse or related conduct. In addition to the considerations already required by Employment Direction No. 5 clause 7.3, we recommend it be amended to include these principles.

Recommendation 20.7

The Tasmanian Government should ensure investigations into misconduct in relation to child sexual abuse or related conduct by State Service employees of the Department for Education, Children and Young People and the Department of Health under Employment Direction No. 5—Breach of Code of Conduct are conducted by the Child-Related Incident Management Directorate.

Recommendation 20.8

The Tasmanian Government should amend Employment Direction No. 5—Breach of Code of Conduct, as it relates to child sexual abuse or related conduct, to:

a. ensure people making a complaint and children or young people who have been abused have the right to
    i. reply to any factual matters put forward by the alleged abuser
    ii. know the outcome of an investigation
    iii. seek a review of decisions in an appropriate forum
b. clarify timeframes for carrying out investigations, set out the process for seeking an extension of time for an investigation and the considerations involved, and require the granting of, and reasons for, an extension of time be communicated to the parties affected
c. provide that all matters of concern relevant to an employee's conduct with a child or young person pertaining to child sexual abuse or related conduct be treated as potential serious misconduct

d. note the importance, in circumstances where it is appropriate to summarily dismiss an employee for misconduct, of conducting an investigation to identify children who have been harmed and any systemic problems that need to be addressed

e. ensure investigations are conducted by people who have been trained in child development, child sexual abuse (including taking a Whole Story approach) and trauma-related behaviours.

Recommendation 20.9

The Tasmanian Government should maintain a central cross-government register of misconduct concerning complaints and concerns about child sexual abuse and related conduct. This register should contain records of substantiated and unsubstantiated matters, including those that did not proceed to investigation.

Recommendation 20.10

1. The Tasmanian Government should take measures to ensure that misconduct investigations under Employment Direction No. 5—Breach of Code of Conduct in relation to complaints and concerns of child sexual abuse are able to take into account prior substantiated, untested and unsubstantiated complaints, allegations and disciplinary action, in addition to the immediately alleged misconduct.
2. The Tasmanian Government should take measures to ensure that prior allegations (including unsubstantiated allegations) should be considered at various stages of the disciplinary process, including in determining:
    a. the process to be used to deal with new allegations
    b. whether the conduct occurred on the balance of probabilities, with previous substantiated allegations being given more weight than unsubstantiated allegations
    c. if misconduct has occurred
    d. the sanction to be applied.

Recommendation 20.11

1. The Head of the State Service should monitor and publicly report annually on the management of misconduct matters related to child sexual abuse or related conduct.
2. Heads of Agencies should report quarterly to the Head of the State Service on all misconduct matters related to child sexual abuse or related conduct, substantiated and unsubstantiated.

6.4 Employment Direction No. 6—Inability

Another way to help protect children in institutions is to require staff to have a working with vulnerable people registration. In addition, some staff such as teachers and health practitioners are required to have professional registration, which contains suitability requirements related to protecting the public. When staff no longer hold these registrations, employers need to be able to act.

Employment Direction No. 6—Inability allows for investigation of whether an employee can perform their duties, where the Head of Agency has reasonable grounds to believe that an employee may not be able to do so. Government departments can rely on Employment Direction No. 6 where an essential requirement of the employee's role has been suspended or revoked, for example, where their registration to work with vulnerable people or professional registration has been revoked.

Under Employment Direction No. 6—Inability, when the Head of Agency forms the requisite belief, an investigator must be appointed to investigate the alleged inability.[237] If the investigation finds the employee is unable to perform their duties, the employer can take one or more of the following actions:

- direct appropriate counselling
- direct appropriate retraining
- reduce salary within the range of salary applicable to the employee
- reassign duties
- reduce classification
- terminate employment.[238]

Ms Allen, former Acting Executive Director, People and Culture, Department of Communities, explained the Employment Direction No. 6—Inability, as follows:

> For allegations of professional boundary breaches, grooming behaviours or child sexual abuse, an investigation pursuant to [Employment Direction

> No. 6] is usually only appropriate in certain circumstances. For example, if an employee no longer holds one of the Essential Requirements to perform their duties, such as Registration to Work with Vulnerable People. By not holding a legislative requirement, the head of agency could form reason to believe that the … official could not efficiently or effectively perform their duties and therefore commences an investigation.[239]

We understand that, in addition to the former Department of Communities, the Department of Education and the Department of Health have relied on this Employment Direction in matters related to allegations of child sexual abuse or related conduct where an essential requirement of the employee's role has been suspended or revoked.[240]

In our view, appointing an investigator who must then adhere to strict processes is unnecessary if their role is simply to establish that an employee no longer has a certification required for their continued employment. As the Independent Review of the State Service noted, the investigative processes required by Employment Direction No. 6 are more suited to alleged inability due to reasons other than a loss of accreditation, for example, inability due to some form of physical or mental impairment.[241]

We agree with the Independent Review of the State Service that a separate, simplified, process should apply to the loss of an essential employment requirement under Employment Direction No. 6. If the requirement is needed so that the employee can work with children or young people, once it is established that the employee no longer satisfies the requirement (other than for administrative reasons, for example, a failure to pay a fee), then the Head of Agency should be able to terminate the employee.

Recommendation 20.12

The Tasmanian Government should introduce legislation to amend Employment Direction No. 6—Inability to provide for:

a. a simplified process that applies to matters where the employee no longer has an essential employment requirement (for example, no registration under the *Registration to Work with Vulnerable People Act 2013*)

b. powers to immediately terminate a person's employment if the employee no longer meets an employment requirement for working with children or young people

c. any interview with a child or young person in line with Employment Direction No. 6—Inability to be subject to the same considerations as should apply under clause 7.3 of Employment Direction No. 5—Breach of Code of Conduct (Recommendation 20.8).

6.5 Advice and guidance

As is clear, there is confusion about the meaning of some provisions in the Employment Directions. Some people who engaged with our Inquiry suggested a guideline and procedures document should be developed to supplement the Employment Directions with 'overarching principles and specific guidance on approaches, responses and action'.[242]

We consider our recommendation that misconduct matters be investigated by the Child-Related Incident Management Directorate will help to resolve many uncertainties or confusion regarding the application of Employment Directions. However, we also consider that general guidance on the relevant considerations, applications and principles involved in State Service disciplinary processes will help to strengthen the safety of children and young people in government institutions. They will help by providing clear and consistent messages across the State Service about what is expected when misconduct issues arise, particularly for those involving child sexual abuse.

Earlier, we briefly noted the role that the Head of the State Service plays in public sector employment matters. Secretary Gale, Head of the State Service, described her role as being responsible for the employment framework and overarching guidelines with the State Service.[243] We also note that Heads of Agencies can seek advice from the State Service Management Office 'on matters relating to the approach of Employment Direction No. 5, and in relation to previous cases'.[244] Given this, we consider the Head of the State Service and the State Service Management Office are well placed to develop and implement guidelines and advice in relation to State Service disciplinary processes.

As noted, the Integrity Commission's *Guide to Managing Misconduct* provides helpful instruction on conducting preliminary assessments. It also provides useful and instructive information about managing the whole disciplinary process in the State Service. However, we consider the Head of the State Service and State Service Management Office are best placed to know what issues, including those we have identified in our report, require further explanation and guidance.[245]

Therefore, we recommend that guidance is developed on State Service disciplinary processes, containing key principles and procedures to be followed regarding Employment Directions. This guidance should be in line with any relevant child safety considerations, the relevant recommendations in our report and the guidance the Integrity Commission developed.

General principles relevant to handling complaints in government agencies, particularly in relation to complaints involving child sexual abuse and related conduct, could be included in the guidance.

Recommendation 20.13

1. The Head of the State Service should issue guidance on State Service disciplinary processes that contains key principles and procedures to be followed. This guidance should include information on:
    a. the steps involved in the process of dealing with disciplinary matters
    b. maintaining confidentiality
    c. setting timeframes for investigations and communicating timeframes to the parties
    d. preliminary assessments
    e. employee suspensions, in particular where matters are alleged to involve child sexual abuse
    f. considerations when interviewing children
    g. an employee's inability to perform a role due to the loss of employment requirements
    h. the rights of an employee and any complainant.
2. This guidance should be developed in line with relevant child safety considerations, relevant recommendations of this Commission of Inquiry and the Integrity Commission's *Guide to Managing Misconduct in the Tasmanian Public Sector*.

7 Cultural change

We heard evidence from the Head of the State Service Secretary, Jenny Gale, that, particularly regarding Employment Direction No.5—Breach of Code of Conduct, behaviour had largely been driven by custom and practice. She said:

> [I]t's one thing to enable through processes, legislation, and so on, but it is another to change the way in which people behave.[246]

Secretary Gale indicated her belief there was 'a lot more flexibility within it [Employment Direction No. 5] currently than people are using'.[247] She highlighted the importance of cultural and education initiatives in disciplinary process reform to ensure that risks to children were at the centre of State Service thinking.[248] Secretary Gale suggested the need for improvement in areas such as:

- modelling of agency values by senior leaders
- ensuring employees felt supported and encouraged when reporting improper conduct
- having confidence there would be no repercussions for making any reports.[249]

We agree that, besides legislative and policy framework reforms, it is critical to ensure a cultural shift in the State Service's interpretation and application of disciplinary processes. Anyone reporting improper conduct must feel supported, safe and encouraged and should not face repercussions. It is vital for staff to not only understand the disciplinary process and proposed reforms but actively and willingly foster a culture that promotes the safety and protection of children. We recommend funding for cultural change and educational initiatives to promote disciplinary practices that prioritise the safety and wellbeing of children and young people.

Recommendation 20.14

The Tasmanian Government should allocate funding for initiatives aimed at cultural change and awareness raising to promote a shared understanding and application of disciplinary processes across the State Service in a manner that ensures the safety and wellbeing of children at risk of child sexual abuse or related conduct.

8 Role of unions

Unions can have an important and influential effect on child safety matters in government workplaces, through advocacy on behalf of members who are subject to State Service disciplinary processes and by fostering a culture in the union that prioritises the safety of children and young people. In our hearings, Professor Richard Eccleston, University of Tasmania, noted that:

> … in terms of the important work that unions do in protecting and defending employee rights, that they too must be, and I'm sure are willing to be, part of the solution in terms of dealing with some of these issues around conduct and criminal abuse.[250]

To make the proposed changes we recommend to disciplinary processes, the Government will need the support of unions.

Throughout our Inquiry, we received evidence from several unions with membership in the Tasmanian State Service. These unions, and the officials that provided statements and evidence on their behalf, include the:

- Australian Education Union (Tasmanian branch)—Steven Smith, Senior Industrial Advocate
- Australian Nursing and Midwifery Federation (Tasmanian branch)—Emily Shepherd, Branch Secretary
- Health and Community Services Union (Tasmanian branch)—Lucas Digney, Assistant State Secretary
- Community and Public Sector Union (State Public Service Federation Tasmania) Inc—Thirza White, General Secretary.

Their evidence covered union approaches to child sexual abuse generally as well as how matters involving individual members who were subject to allegations were handled (particularly in health). The focus of this section is on how the unions with which we engaged generally approach child sexual abuse matters. Our case study chapters discuss union involvement in individual matters. Nothing in this discussion is intended to undermine the fundamental role of unions in protecting individual and collective employee rights.

8.1 Union policies and approaches to child sexual abuse matters

The materials we received in relation to unions revealed the variability in how they approached matters involving members who were subject to allegations of child sexual abuse. There appeared also to be considerable variance in the general approaches of unions to child sexual abuse. Some were proactive and developed policies and publicly available position statements about child sexual abuse, while others did not provide evidence of any materials that addressed this issue and were primarily focused on advocating in their members' interest, rather than considering issues raised by child sexual abuse matters.

8.1.1 Australian Education Union

Steven Smith, Senior Industrial Advocate with the Australian Education Union (Tasmanian branch) told us that the branch's perception was that child sexual abuse allegations against teachers in Tasmania are a significant issue.[251] Mr Smith told us the branch supported 'roughly one or two members a year' who have been the subject of a Department of Education investigation into allegations relating to child sexual abuse.[252] We were told the support provided in this context was primarily to ensure the members' rights were respected throughout any investigative processes.[253] Mr Smith told us that while providing support to a member would be similar for all matters, where there are allegations of child sexual abuse, the union's 'focus is heightened'.[254] Mr Smith said that this heightened focus was because:

> Firstly, … the potential consequences for the member include termination, loss of career, and criminal prosecution. Secondly, … because we are concerned to ensure that, as we support our member, we do not act in a way that could add to the child or children's trauma. Thirdly, the nature of these matters is that there is a natural desire to not risk letting an abuser to stay at work; this is appropriately part of the pressure on the decision maker.[255]

Mr Smith told us that the branch takes a neutral position in supporting members where allegations of child sexual abuse have been made against its members. He said the support provided is limited to helping the member navigate investigative processes. The focus of the support is on the member's welfare. Mr Smith said that if a member were to admit wrongdoing regarding the allegations, then the branch would cease to support the member.[256] He also told us that, in terms of supporting members, the union had so far never refused to support a member, even where child sexual abuse was alleged.[257]

Counsel Assisting our Commission of Inquiry asked Mr Smith whether he would characterise the union's support for its members in this context as falling short of advocacy, to which Mr Smith replied:

> Most of the time, yes. There are some occasions where we might step into a more advocacy role, but generally speaking we're trying to get them to advocate for themselves.[258]

When asked whether it would be appropriate to assume an advocacy role where there were allegations of child sexual abuse against a member, Mr Smith told us that, in those circumstances, the union's role would be in relation to advocating about deficiencies in the investigative process.[259]

The branch told us that it had developed a set of guidelines in 1999 that broadly outline notification responsibilities in relation to suspected child abuse. The guidelines were updated in 2004 to account for changes to mandatory reporting. This guidance document was not provided to us.

Mr Smith indicated the union is willing to 'be part of the solution' to issues concerning misconduct and child sexual abuse.[260]

8.1.2 Australian Nursing and Midwifery Federation (Tasmanian branch)

Emily Shepherd, Branch Secretary, Australian Nursing and Midwifery Federation (Tasmanian branch), told us the role of the Federation is to protect and promote the interests of its members and to 'provide professional, industrial and political leadership for the nursing and midwifery industries and the health sector'.[261]

In 2007, the Federation developed a National Position Statement on Child Abuse and Neglect that sets out what it considers best practice in protecting children who have

been subject to abuse.[262] This position statement was last reviewed and re-endorsed in 2019.[263] It includes:

- recognition of the harm that is caused by child abuse
- requiring that nurses and midwives are able to assess, identify, report and implement intervention strategies where child abuse is suspected
- recognising the duty of care that nurses and midwives have to children and young people and that they have statutory notification obligations
- requiring employers to have in place policies, protocols and reporting guidelines 'that support a culture of reporting when children, adolescents and young adults are at risk of abuse or neglect'
- advocating that community education be provided to raise awareness about child abuse and that sufficient funding for investigations into alleged abuse be provided by governments.[264]

In our hearings, Counsel Assisting our Inquiry explored the role of the Australian Nursing and Midwifery Federation in the events that had occurred at Launceston General Hospital, where James Griffin, who was a nurse on Ward 4K (the former Paediatric Inpatient Unit) and a Federation workplace delegate, was accused of child sexual abuse perpetrated over a long period (refer to Chapter 14). In response to revelations about the allegations of child sexual abuse against Mr Griffin after his death, Ms Shepherd told us:

> … at that time we were shocked and horrified and certainly felt it was appropriate to undertake [an] immediate review to understand if there was any indication that [Australian Nursing and Midwifery Federation] had any knowledge of these allegations so that we could obviously examine our own systems and processes to make sure that we did address those allegations appropriately.[265]

Ms Shepherd told us that, in response to the revelations about Mr Griffin, the Federation implemented changes to its workplace delegate processes, including to inform members that if they have concerns about a delegate (or a nominee for appointment as a delegate), they should raise those concerns with the Australian Nursing and Midwifery Federation.[266] However, Ms Shepherd conceded that encouraging members to raise concerns about nominees or incumbent delegates may not be enough to ensure that the Federation is made aware of any issues. To that end, she told us the Federation had developed and implemented a mandatory training policy for its staff in 2022. Ms Shepherd said:

> We have implemented a mandatory training policy internally to encourage our staff to raise concerns if any are made in relation to abuse of children, child sexual assault, et cetera …

> [W]e have reflected on the events of James Griffin and our support of members on Ward 4K, and we felt that it was important that we needed to be looking at our systems and our processes and understanding that, although we didn't have any knowledge of reports of inappropriate conduct or anything untoward, any disciplinary matters involving James Griffin, we felt that we needed to reflect and look at our systems to make sure that our systems and our policies were absolutely in line with best practice to support our staff in supporting members in these situations.[267]

We are encouraged by the broad, practical approach to child safety matters adopted by the Federation. We discuss the role that the Federation played in Mr Griffin's case in more detail in Chapter 14.

8.1.3 Health and Community Services Union

The Health and Community Services Union seems to have maintained a more traditional, industrial relations advocacy approach to its members who have been accused of child sexual abuse and related conduct.

Lucas Digney, Assistant State Secretary of the Health and Community Services Union, told us that 52 workers (all operational staff) at Ashley Youth Detention Centre were members of the union, making it the primary union representing employees at the Centre.

Mr Digney told us the union's role was to advocate on behalf of its members in industrial matters. He told us the union tried to 'ensure that procedural fairness and natural justice are upheld in the disciplinary process and that any outcome is proportionate to the alleged or proven misconduct'.[268] According to Mr Digney, this approach did not change if the disciplinary processes in question involved allegations of child sexual abuse.[269]

In his evidence at our hearings, Mr Digney told us that when disciplinary processes were initiated against union members, at times, the union would dispute whether the Head of Agency had 'the relevant information in front of them that would enable them to form a requisite belief'.[270] Mr Digney then said:

> That's not to say that allegations haven't been made, but that's to say that perhaps an allegation that there's been a breach of the Code of Conduct has been made prematurely before other enquiries are made.[271]

Mandy Clarke, former Deputy Secretary of the Children, Youth and Families division of the Department of Communities, told us that while the safety of young people in detention was a paramount concern for the Department, this concern had to be balanced with the need for a preliminary assessment that supported 'a plausible allegation when/if subjected to industrial scrutiny'.[272] More pointedly, Ms Allen, former Acting Executive Director, People and Culture, Department of Communities, told us that in relation to initial allegations against employees, the Department was:

> [o]perating against a background of unions who would lodge applications to review actions in the Tasmanian Industrial Commission, including about whether

> the Secretary could form reason to believe that a breach of the *State Service Act 2000* Code of Conduct.[273]

This may partly explain why preliminary assessments have become long, drawn-out processes.

In terms of the safety of children in government institutions, the approach of the Health and Community Services Union to preliminary assessments of the conduct of workers that potentially threatens the safety of children in government institutions could be better directed. We consider that the relevant information needed to form a reasonable belief that there may have been a breach of the State Service Code of Conduct should be confined to a basic assessment of the alleged facts. As discussed, there is a danger that a preliminary assessment can become a de facto investigation. Further, undue delays in the investigative process should be avoided. As discussed, given procedural fairness and a right of reply is permissible at the investigation stage, we do not view it as necessary for such rights to be accorded at the preliminary assessment stage.

The Health and Community Services Union has shown concern about issues involving child safety; for example, we note its support for therapeutic approaches to residential care for young people in the youth justice system and its willingness to work with the government on reforms to disciplinary processes, so these processes are more trauma-informed.[274] The Health and Community Services Union states that its approach to advocacy is to simply enforce basic and fundamental rights regarding the proper conduct of disciplinary processes.[275]

8.1.4 Community and Public Sector Union

Thirza White, the General Secretary of the Community and Public Sector Union, told us the union provides general advice to its members who are subject to State Service disciplinary procedures about what will occur during process.[276] As with other unions, Ms White told us the Community and Public Sector Union was concerned to ensure the employer complied with the requirements of disciplinary processes, including that any sanctions imposed be 'reasonable and proportionate to any breaches found'.[277] As with other unions, Ms White said that where a member requested assistance with State Service disciplinary processes, the Community and Public Sector Union's approach to the 'industrial services provided' did not change based on the nature of the allegations, including allegations of child sexual abuse, against the member.[278] Ms White noted that '[i]nformation, advice, and representation is provided in respect of the Employer's compliance with the procedure that the Head of Agency has commenced'.[279]

Ms White's statement reveals a level of concern for matters that involve the safety of children. For example, she acknowledges that '[i]n workplaces where services are provided to vulnerable people, additional measures should be taken by the Employer

to ensure safe staffing levels and to foster a workplace culture of complaint raising and reporting of incidents'.[280]

The Community and Public Sector Union informed us of the actions it has undertaken regarding how the union handles matters involving child sexual abuse. These include:

- a review of internal processes leading to introducing an employment policy on 'Disclosure of Child Safety Matters' (the Community and Public Sector Union did not include the policy in their response, but offered to supply it on request)
- new protocols in relation to the election of delegates that are similar to those outlined above in relation to the Australian Nursing and Midwifery Federation
- raising concerns formally and through the Independent State Service Review 'around the functionality of [Employment Direction No. 5] and the grievance procedure to adequately deal with inappropriate, and at times, illegal behaviour, as well as support a culture that encourages bystander action through reporting of inappropriate conduct'
- establishing, in 2021, 'a dedicated reporting webpage for employees who had witnessed or experienced sexual and gendered violence in the workplace to allow employees to submit a report and receive a call from the [Community and Public Sector Union] Member Advice & Support Team about their options and next steps'.[281]

8.2 Union support for child safety reform

We understand the difficulties that can arise for unions (and other industrial advocates) when a member is subject to disciplinary proceedings involving child sexual abuse and related matters. On the one hand, unions are concerned with ensuring disciplinary processes are followed and procedural fairness is accorded to the member. On the other hand, unions recognise the importance of the safety of children in the workplaces where their members are employed.

These difficulties aside, there are actions that unions can take to help improve the safety of children and young people. For example, unions can:

- provide resources to members on recognising and reporting child sexual abuse and related matters
- provide clear public statements about the union's position on child sexual abuse and how the union approaches matters involving child sexual abuse
- develop policies that direct how these matters are to be addressed in the union.

Together, initiatives such as these can help to improve the safety of children and young people in the workplaces where their members are employed by fostering a culture in the union and its membership that prioritises child safety.

To this end, we are heartened by the proactive stance that some unions have taken regarding matters concerning the safety of children and young people, for example, the developments in the Australian Nursing and Midwifery Federation. We also note that, generally, all unions we engaged with appear to recognise the importance of these issues and support changes to disciplinary processes that will help to keep children and young people safe in government institutions.

To help improve the safety of children and young people in government institutions where their members work, we invite unions to:

- develop a position statement on allegations of child sexual abuse and professional boundary breaches consistent with grooming. The statement should be publicly available and easily accessible
- develop and make available to their membership policies that address how the union handles matters involving child sexual abuse and professional boundary breaches consistent with grooming
- make training available to their members that covers topics including recognising, reporting and responding to child sexual abuse and related conduct. The training should include information about child trauma-related behaviours for union delegates or workplace representatives who represent members facing allegations of child sexual abuse.[282]

We also invite unions to support the changes we are recommending to State Service disciplinary processes in the interests of ensuring the safety of children and young people in government institutions. This could be done by issuing a statement of support.

9 Role of the Tasmanian Industrial Commission

Workplace actions taken by the State against an employee are subject to review by the Tasmanian Industrial Commission.[283] The Industrial Commission may not have direct responsibility for the safety of children in government institutions. However, its review of actions taken regarding government employees can influence how these matters are approached in government agencies.

In our hearings on health, the prospect of appeals to the Tasmanian Industrial Commission figured prominently with those in the Department of Health who were responsible for such matters. For example, Mathew Harvey, former Human Resources Consultant with the Department of Health, told us that regarding unsubstantiated allegations, the Tasmanian Industrial Commission had said such allegations could not be used in any 'claim in any forum going forward'.[284]

When asked whether the focus should be on the protection and safety of children and young people as opposed to industrial relations issues in these matters, Mr Harvey's view was:

> I mean, it's the same thing: if we were to find him [James Griffin] guilty and then he took it to, for instance, appealed it through the Industrial Commission, which is the way appeals can [progress], through our system, then [they] would have said, you've relied on unsubstantiated claims to make a finding and you can't do that, and it's a decision that would have most likely been overturned.[285]

As discussed, the ability to use past matters to establish patterns of behaviour that may indicate child sexual abuse is vitally important. We also noted above Ms Allen's suggestion that appeals to the Industrial Commission can shape the way a preliminary assessment or disciplinary process is conducted.

Similar to issues involving allegations of past misconduct, we heard that the question of whether inappropriate conduct could be considered to have occurred in the course of an employee's employment (for the purpose of the State Service Code of Conduct) presented challenges for the Department of Health. The Department of Health told us that it did not consider appeals a deterrent for taking action.[286] However, the Department said that where there were allegations or incidents were not subject to criminal charges and the relevant conduct was alleged to have occurred outside the course of employment, this could mean that 'actions have greater exposure to appeals' to the Tasmanian Industrial Commission.[287]

Affording procedural fairness to employees, including through appeal processes is, of course, essential. However, we are concerned the Tasmanian Industrial Commission's approach to matters that involve child sexual abuse and related behaviours is through a strict and technical industrial relations focus, rather than one that fully considers the issues raised by such matters. This strict focus may be due to the highly prescriptive nature of State Service disciplinary processes, which can lead Tasmanian Industrial Commission reviews to focus on technical details and procedural aspects. As stated previously, the 2021 report *Critical Analysis Report on Termination in the State Service* for the Department of Premier and Cabinet said:

> This focus, internally, on form over substance then unduly narrows the focus of the [Tasmanian Industrial Commission]. The [Tasmanian Industrial Commission] is reviewing strict procedures which already burden the [Tasmanian State Service] system and is not empowered, through legislation, to take a more practical or discretionary view of matters.[288]

Because the Tasmanian Industrial Commission is required to determine employment matters regarding child sexual abuse and related conduct, we consider it should regard the need to protect children and the impacts of child sexual abuse. We consider that training in the issues raised by child sexual abuse and related conduct will help to foster a more responsive approach to these issues when they arise in reviews of government

actions by the Tasmanian Industrial Commission. This training will also help when the Government adopts our recommendation for increased rights for a complainant in cases of allegations of child sexual abuse (refer to Recommendation 20.8). We recommend in Chapter 16 that the Tasmanian Government funds the provision and/or development of training for judges on the dynamics of child sexual abuse and trauma-informed practice or funds judges to attend interstate programs such as those offered by the Judicial College of Victoria (refer to Recommendation 16.25).

Such training should be designed to raise awareness about the nature and impact of trauma and child sexual abuse, its prevalence and how to apply trauma-informed principles in judicial decision making. We recommend that Tasmanian Industrial Commission members also receive such training, either locally or by attending any relevant interstate program or training, such as the programs offered by the Judicial College of Victoria.

Recommendation 20.15

The Government should fund the Tasmanian Industrial Commission to enable its members to attend training on child sexual abuse either locally or through any relevant interstate program or training, such as the programs offered by the Judicial College of Victoria.

10 Conclusion

In this chapter, we have outlined many problems with the State's disciplinary framework in relation to responding to allegations of child sexual abuse and related conduct, including the State Service Code of Conduct and employment directions. We have proposed many reforms relating to the application and implementation of the Code itself and to the employment directions related to suspensions, breach of code of conduct investigations and inability to perform duties. Fundamentally, we are calling for a shift in the focus of this disciplinary framework to allow for a prioritisation of the safety of children. It will take significant commitment and culture change to achieve this outcome. But it should be done.

Notes

1 The State Service Code of Conduct is in section 9 of the *State Service Act 2000*. Relevant employment directions are: Tasmanian Government, *Employment Direction No. 4 – Procedure for the Suspension of State Service Employees With or Without Pay* (4 February 2013); Tasmanian Government, *Employment Direction No. 5 – Procedures for the Investigation and Determination of Whether an Employee Has Breached the Code of Conduct* (4 February 2013); and Tasmanian Government, *Employment Direction No. 6 – Procedures for the Investigation and Determination of Whether an Employee Is Able to Efficiently and Effectively Perform Their Duties* (4 February 2013). Also relevant are the State Service Principles, which are in section 7 of the *State Service Act 2000*. The Principles are a statement about the way employment in the State Service is to be managed, and the standards expected of State Service employees.

2 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 7, 33.

3 Refer to Statement of Timothy Bullard, 10 May 2022, 50 [298]; Statement of Michael Pervan (Provisional), 26 October 2022, 61 [331]; Statement of Kathrine Morgan-Wicks, 24 May 2022, 39 [332]. In relation to Ashley Youth Detention Centre employees, refer to Department of Communities, 'Preliminary Assessments', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

4 Tasmanian Government, *Employment Direction No. 5 – Procedures for the Investigation and Determination of Whether an Employee Has Breached the Code of Conduct*, 4 February 2013, cl 7.1.

5 *State Service Act 2000* ss 10(1)(a)–(b), (e), (g).

6 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce. Refer to Appendix H for the methodology used to calculate these numbers. We note there were also four suspensions in the Department of Police, Fire and Emergency Management, refer to Department of Police, Fire and Emergency Management, Spreadsheet: 'ED tracker', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

7 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

8 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce

9 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce

10 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

11 Statement of Michael Pervan, 4 August 2022, 2 [7]; Transcript of Clare Lovell, 14 June 2022, 1184 [46]–1185 [5]; Transcript of Michael Pervan, 17 June 2022, 1587 [14–41], 1594 [36–45], 1633 [47]–1634 [6]; Statement of Michael Pervan, 27 July 2022, 73 [249].

12 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

13 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

14 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

15 Refer to Chapter 6.

16 Refer to Chapter 6.

17 Refer to Chapter 6.
18 Refer to Chapter 6.
19 Refer to Chapter 6.
20 Refer to Chapter 6.
21 Refer to Chapter 6.
22 Refer to Chapter 7.
23 Refer to Chapter 11, Case study 7.
24 Refer to Chapter 11, Case studies 5 and 7.
25 Refer to Chapter 11, Case study 7.
26 Refer to Chapter 11, Case study 7.
27 Refer to Chapter 11, Case study 7.
28 Refer to Chapter 11, Case studies 5, 6 and 7.
29 Refer to Chapter 11, Case study 7.
30 Statement of Jacqueline Allen, 15 August 2022, 38 [203(c)].
31 Refer to Chapter 11, Case studies 6 and 7.
32 Refer to Chapter 11, Case study 7.
33 Refer to Chapter 11, Case study 7.
34 Refer to Chapter 11, Case study 7.
35 Refer to Chapter 14, Case study 1.
36 Refer to Chapter 14, Case study 3.
37 Refer to Chapter 14, Case study 2.
38 Refer to Chapter 14, Case study 3.
39 Refer to Chapter 14, Case study 3.
40 Refer to Chapter 14, Case study 3.
41 Refer to Chapter 14, Case study 3.
42 Ian Watt, *Independent Review of the Tasmanian State Service* (Interim Report, 2020) 54.
43 Ian Watt, *Independent Review of the Tasmanian State Service* (Final Report, 2021) 202.
44 Ian Watt, *Independent Review of the Tasmanian State Service* (Final Report, 2021) 202.
45 Ian Watt, *Independent Review of the Tasmanian State Service* (Final Report, 2021) 201. The Review found that, in Tasmania, most terminations were for inability (65 per cent in 2019) whereas terminations for underperformance or State Service Code of Conduct breaches were only 24 per cent of the total in 2019. In the Australian Government, terminations for underperformance or misconduct were 40 per cent of all terminations.
46 Edge Legal, *Critical Analysis Report on Termination in the State Service* (Report, 2021) 8–9.
47 Edge Legal, *Critical Analysis Report on Termination in the State Service* (Report, 2021) 9.
48 Ian Watt, *Independent Review of the Tasmanian State Service* (Interim Report, 2020) 54.
49 Ian Watt, *Independent Review of the Tasmanian State Service* (Interim Report, 2020) 54.
50 Submission 084 Integrity Commission of Tasmania, 4.
51 Submission 084 Integrity Commission of Tasmania, 4.
52 Transcript of Eric Daniels, 30 June 2022, 2106 [23–28].
53 Transcript of Eric Daniels, 30 June 2022, 2106 [41–44].
54 Transcript of Eric Daniels, 30 June 2022, 2107 [16–17].
55 Statement of Richard Eccleston, 2 May 2022, 9 [34].
56 Statement of Richard Eccleston, 2 May 2022, 12 [49].
57 *State Service Act 2000* s 9.

58 *State Service Act 2000* s 10.

59 *State Service Act 2000* ss 44, 45. Other potentially relevant provisions of the *State Service Act 2000* are: the inability to perform duties (s 48); review of actions (ss 50–51); and performance management, including underperformance (Part 7A).

60 Refer to, for example, *Public Sector Management Act 1994* (ACT) s 9; *Public Sector Employment and Management Act 1993* (NT) s 49; *Government Sector Employment Act 2013* (NSW) s 69 and *Government Sector Employment (General) Rules 2014* (NSW) pt 8 (refer also to *Public Service Commissioner Direction No 2 of 2022* (NSW) which incorporates *the Code of Ethics and Conduct for NSW Government Sector Employees*); *Public Service Act 2008* (Qld) s 187, *Public Sector Ethics Act 1994* (Qld) pt 4 and Code of Conduct for the Queensland Public Service; *Public Sector Act 2009* (SA) s 6 and *Code of Ethics for the South Australian Public Sector*; *Public Administration Act 2004* (Vic) s 61 and *Code of Conduct for Victorian Public Sector Employees*; *Public Sector Management Act 1994* (WA) s 9; *Public Service Act* (Cth) s 13.

61 *State Service Act 2000* s 9(1).

62 *State Service Act 2000* s 9(2).

63 *State Service Act 2000* s 9(3).

64 *State Service Act 2000* s 9(4).

65 *State Service Act 2000* s 9(13).

66 *State Service Act 2000* s 7(1)(a).

67 *State Service Act 2000* s 9(14).

68 *State Service Act 2000* s 9(6).

69 *State Service Act 2000* s 10.

70 Statement of Timothy Bullard, 4 April 2022, 10 [49].

71 Statement of Kathrine Morgan-Wicks, 24 May 2022, 42 [353]. Refer also to Isabel Bird, 'Stronger Code for Abuses', *The Examiner* (Launceston, 1 December 2022) 3.

72 Statement of Michael Pervan, 23 August 2022, 6 [15], 12 [42].

73 Statement of Stephen Smallbone, 28 April 2022, 8 [32]; Statement of Tim McCormack, 22 April 2022, 3 [15].

74 Refer to Transcript of Jenny Gale, 13 September 2022, 4019 [8–43]; Transcript of Ginna Webster, 12 September 2022, 3959 [10–13].

75 *State Service Act 2000* s 9(4).

76 Tasmanian Government, *Employment Direction 5 – Procedures for the Investigation and Determination of Whether an Employee Has Breached the Code of Conduct*, 4 February 2013, cl 6.5.

77 Statement of James Bellinger, 10 June 2022, 27.

78 Statement of Kathrine Morgan-Wicks, 24 May 2022, 42 [351].

79 This was repeated in several of Secretary Bullard's statements. Refer to, for example, Statement of Timothy Bullard, 'Wayne' 4 April 2022, [48–49]; Statement of Timothy Bullard, 'Jeremy' 4 April 2022, 10–11 [48–49].

80 Tasmania, *Parliamentary Debates*, House of Assembly, 21 November 2000, 84 (Denise Swan). The Australian Public Service Code of Conduct is found in section 13 of the *Public Service Act 1999* (Cth).

81 Australian Public Service Commission, *Handling Misconduct – A Human Resource Manager's Guide* (2021) 135 [2.29] <https://www.apsc.gov.au/circulars-guidance-and-advice/handling-misconduct-human-resource-managers-guide>.

82 Letter from Michael O'Farrell to Timothy Bullard, 11 June 2021, 5 [25], produced by the Tasmanian Government in response to a Commission notice to produce. The view of Mr Michael O'Farrell, the previous Solicitor-General, was based on the decision of the High Court in *Comcare v Banerji* (2019) 267 CLR 373, which dealt with a similar integrity provision in the *Commonwealth Public Service Act 1999* (Cth). The issue in *Banerji* was whether the relevant provision in the Public Service Act fettered the implied freedom of political communication, in a case where a public servant had posted tweets criticising the government. The High Court did not clearly indicate that the obligations of Australian public servants could not extend beyond the workplace, so that the case does not necessarily confine the acts to which s 9(14) could apply.

83 Queensland Government, *Code of Conduct for the Queensland Public Service* (1 January 2021) cl 1.5(d).

84 *Public Service Act 1999* (Cth) s 13(11)(b).

85 Australian Public Service Commission, *Handling Misconduct – A Human Resource Manager's Guide* (2021) 21 [2.28].

86 Australian Public Service Commission, *Handling Misconduct – A Human Resource Manager's Guide* (2021) Appendix 2, 135 [2.56].

87 Australian Public Service Commission, *Handling Misconduct – A Human Resource Manager's Guide* (2021) Appendix 2, 135 [2.56].

88 Refer to *State Service Act 2000* ss 9(1)–(4), (13).

89 Statement of Timothy Bullard, 'Wayne', 4 April 2022, 11 [50].

90 Statement of Ginna Webster, 10 June 2022, 38 [234].

91 Email from Senior Workplace Relations Consultant to Industrial Relations Consultant, 9 February 2022, 1, produced by the Tasmanian Government in response to a Commission notice to produce.

92 Email from Senior Workplace Relations Consultant to Industrial Relations Consultant, 9 February 2022, 1–2, produced by the Tasmanian Government in response to a Commission notice to produce.

93 Letter from Solicitor General of Tasmania to Senior Advisor, Legal Services Unit, 22 December 2005, produced by the Tasmanian Government in response to a Commission notice to produce. We note that in terms of the vicarious liability of schools for the conduct of teachers, Gleeson CJ has said: 'where the teacher–student relationship is invested with a high degree of power and intimacy, the use of that power and intimacy to commit sexual abuse may provide a sufficient connection between the sexual assault and the employment to make it just to treat such contact as occurring in the course of employment. The degree of power and intimacy in a teacher–student relationship must be assessed by reference to factors such as the age of students, their particular vulnerability if any, the tasks allocated to teachers, and the number of adults concurrently responsible for the care of students. Furthermore, the nature and circumstances of the sexual misconduct will usually be a material consideration': *New South Wales v Lepore; Samin v Queensland; Rich v Queensland* (2003) 195 ALR 412, 434 (Gleeson CJ). On this topic, refer also to *Prince Alfred College Inc v ADC* (2016) 335 ALR 1, 17 (French CJ, Kiefel, Bell, Keane and Nettle JJ).

94 As explained in Chapter 17 Redress, Civil Litigation and Support, the State may now be held liable for child sexual abuse committed by employees in circumstances where vicarious liability might not apply.

95 Refer to Transcript of Timothy Bullard, 12 May 2022, 929 [8–15]. Refer also to Statement of Timothy Bullard, 'Wayne', 4 April 2022, 29 [120–121]; Briefing Note from Lyn Metcalfe to John Smyth, 1 August 2007, 3–4, produced by the Tasmanian Government in response to a Commission notice to produce.

96 Statement of Timothy Bullard, 'Wayne', 4 April 2022, 20 [91].

97 Statement of Timothy Bullard, 'Wayne', 4 April 2022, 20 [91].

98 Transcript of Sarah Kay, 8 July 2022, 2657 [16–23].

99 Statement of Timothy Bullard, 'Wayne', 4 April 2022, 22 [95–96].

100 Transcript of Timothy Bullard, 12 May 2022, 930 [34–37].

101 Statement of Timothy Bullard, 'Wayne', 4 April 2022, 22 [98].

102 Transcript of Sarah Kay, 8 July 2022, 2658 [13–26].

103 Transcript of Kathrine Morgan-Wicks, 9 September 2022, 3858 [6–9].

104 Statement of Kathrine Morgan-Wicks, 20 May 2022, 41 [338].

105 Transcript of Kathrine Morgan-Wicks, 9 September 2022, 3858 [17–18].

106 *Public Sector Employment and Management Act 1993* (NT) s 49(f).

107 *Public Sector Management Act 1994* (ACT) s 9(1)(c).

108 ACT Public Sector Standards Commissioner, *Guidelines to the Misconduct Process* (October 2019) 23.

109 Refer to, for example, *Public Service Act 1999* (Cth) s 13. Refer also to Australian Public Service Commission, *Handling Misconduct – A Human Resource Manager's Guide* (2021) Appendix 2, 20 [2.24]; NSW Public Service Commission, *Public Service Commissioner Direction No 2 of 2022*, 4, which incorporates the *Code of Ethics and Conduct for NSW Government Sector Employees*; *Public Sector Act 2009* (SA) s 15(1)(b); Victorian Public Sector Commission, *Code of Conduct for Victorian Public Sector Employees* (1 June 2015) 3.9.

110 Transcript of Matthew Hardy, 4 July 2022, 2216 [23–29]. Refer also to *Health Practitioner Regulation National Law Act 2009* (Qld) s 156.

111 *Teachers Registration Act 2000* ss 17J–17L, s 24B.

112 Refer to, for example, *Police Act 1892* (WA), s33L; *Police Service Act 2003,* s30.

113 Refer to, for example, *Police Act 1892* (WA), s33L; *Police Service Act 2003,* s30.

114 Statement of Stephen Smallbone, 28 April 2022, 9 [34–35]; Transcript of Tim McCormack, 9 May 2022, 663 [45]–664 [23].

115 Transcript of Tim McCormack and Stephen Smallbone, 9 May 2022, 664 [1–3]. Refer also to Stephen Smallbone and Tim McCormack, *Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse* (Report, 2021) 10.

116 Stephen Smallbone and Tim McCormack, *Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse* (Report, 7 June 2021) 79, Recommendation 12.

117 Transcript of Timothy Bullard, 12 September 2022, 3938 [23–30].

118 Western Australia has a system that requires public agencies to implement agency-specific codes of conduct.

119 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 7, 36.

120 Refer to, for example, Transcript of Timothy Bullard, 12 May 2022, 931 [3–32], in which he describes linking departmental policies to particular provisions of the State Service Code of Conduct to establish a breach of the code.

121 Transcript of Jenny Gale, 13 September 2022, 4019 [11–14].

122 Refer to Letter from Michael Pervan to 'Stan', 12 February 2021, 3, produced by the Tasmanian Government in response to a Commission notice to produce.

123 Transcript of Jenny Gale, 13 September 2022, 4019 [38–43].

124 While we were not provided the Solicitor-General's advice in relation to this issue, we understand that the advice was given in relation to a different request and was of the nature that standing orders could only be made for 'purposes of the administration and operation of the relevant Agency': Frank Ogle, Email, 5 February 2014, 1, produced by the Tasmanian Government in response to a Commission notice to produce.

125 Refer to Department of Education, 'DoE Executive Group Meeting, Professional Standards for Staff', 17 March 2014, 2, produced by the Tasmanian Government in response to a Commission notice to produce.

126 Refer to Letter from Michael Pervan to 'Stan', 12 February 2021, 3, produced by the Tasmanian Government in response to a Commission notice to produce.

127 Refer to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 7, 186.

128 Teachers Registration Board, *Professional Boundaries: Guidelines for Tasmanian Teachers* (2021) 8. We note that similar cautionary advice or restrictions exist in most states and territories. For example, refer to Victorian Institute of Teaching, *The Victorian Teaching Profession's Code of Conduct* (2021) 6 Principle 1.5; Queensland College of Teachers, *Professional Boundaries* (August 2019) 6; Department of Education and Child Development, *Protective Practices for Staff in Their Interactions with Children and Young People: Guidelines for Staff Working and Volunteering in Education and Care Settings* (2nd rev ed, Government of South Australia, 2019) 10; Northern Territory Teachers Registration Board, *Managing Professional Boundaries: Guidelines for Teachers* (2015) 4, 9.

129 Teachers Registration Board, *Professional Boundaries: Guidelines for Tasmanian Teachers* (2021) 9.

130 Statement of Kathrine Morgan-Wicks, 24 May 2022, 42 [353]. Refer also to Statement of Jacqueline Allen, 15 August 2022, 54 [326(c)] (in the context of 'in the course of employment'); Isabel Bird, 'Stronger Code for Abuses', *The Examiner* (Launceston, 1 December 2022) 3.

131 *Child and Youth Safe Organisations Act 2023* s 7(1).

132 *Child and Youth Safe Organisations Act 2023* s 35.

133 *State Service Act 2000* s 3(1) (definition of 'employee').

134 Refer to discussion in Chapter 5.

135 Statement of Timothy Bullard, 10 May 2022, 34 [194(b)], 36 [217].

136 Solicitor-General of Tasmania, *Procedural Fairness Response*, 27 June 2023, 30.

137 *Child and Youth Safe Organisations Act 2023* s 35(1)(a).

138 *Child and Youth Safe Organisations Act 2023* s 8(b).

139 *State Service Act 2000* s 17. Under section 17 of the *State Service Act*, the Employer may issue Employment Directions. Section 14 of the *State Service Act* provides that the Minster administering the *State Service Act* is the 'Employer'.

140 We note that Employment Direction No.5—Breach of Code of Conduct was recently updated in April 2023, after we had completed our inquiry phase. Due to the timing of the update, we discuss the previous iteration of Employment Direction No.5—Breach of Code of Conduct in this chapter.

141 Refer to Statement of Timothy Bullard, 10 May 2022, 50 [298]; Statement of Michael Pervan (Provisional), 26 October 2022, 61 [331]; Statement of Kathrine Morgan-Wicks, 24 May 2022, 39 [332]. In relation to Ashley Youth Detention Centre employees, refer to Department of Communities, 'Preliminary Assessments', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

142 *State Service Act 2000* ss 15, 16, 20, although the Head of the State Service cannot issue Employment Directions: s 20(2).

143 Under sections 3 and 14 of the *State Service Act 2000*, the 'Employer' is the Minister administering the *State Service Act 2000*. By virtue of the Administrative Arrangements for Tasmanian Enactments, the relevant Minister is the Premier. Part of the role of the State Service Management Office is to support 'the Minister administering the *State Service Act 2000* and the Head of the State Service to undertake the employer functions and powers'. Refer to Department of Premier and Cabinet, *State Service Management Office* (Web Page) <https://www.dpac.tas.gov.au/divisions/ssmo>.

144 Refer to, for example, Integrity Commission Tasmania, *An Own-Motion Investigation into the Management of Misconduct in the Tasmanian Public Sector* (Report No. 3, December 2017).

145 Refer to, for example, William Cox, *Independent Review of the Integrity Commission Act 2009 – Report of the Independent Reviewer* (Report, May 2016); Integrity Commission Tasmania, *An Own-Motion Investigation into the Management of Misconduct in the Tasmanian Public Sector* (Report No. 3, December 2017).

146 Department of Premier and Cabinet, 'Draft Employment Direction No 4', 'Draft Employment Direction No 5' and 'Draft Employment Direction No 6', produced by the Tasmanian Government in response to a Commission notice to produce. Refer also to State Service Management Office, 'Examination of Employment Framework – Update Report – April 2018', 2018, produced by the Tasmanian Government in response to a Commission notice to produce.

147 Refer generally to Department of Premier and Cabinet, *Government Response to the Independent Review of the Tasmanian State Service* (Report, 2021).

148 Ian Watt, *Independent Review of the Tasmanian State Service* (Final Report, 2021) 202.

149 Ian Watt, *Independent Review of the Tasmanian State Service* (Final Report, 2021) 202.

150 Department of Premier and Cabinet, *Government Response to the Independent Review of the Tasmanian State Service* (Report, 2021).

151 Refer generally to Department of Premier and Cabinet, *Government Response to the Independent Review of the Tasmanian State Service* (Report, 2021), Recommendations 37, 55, 56.

152 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce. Refer to Appendix H for the methodology used to calculate these numbers.

153 We note that in evidence provided to us, the term 'preliminary assessment' is used interchangeably with 'preliminary investigation'. We have chosen to use 'preliminary assessment' as this aligns with the Integrity Commission's guidance on preliminary assessments and emphasises that these are not investigations.

154 Tasmanian Government, *Employment Direction No. 5: Procedures for the Investigation and Determination of Whether an Employee Has Breached the Code of Conduct*, 4 February 2013, cl 7.3.

155 Integrity Commission Tasmania, *Guide to Managing Misconduct in the Tasmanian Public Sector* (March 2021).

156 Integrity Commission Tasmania, *An Own-Motion Investigation into the Management of Misconduct in the Tasmanian Public Sector* (Report No. 3, December 2017) 68–74. The original guide to managing misconduct in the own-motion report was updated in 2021. See Integrity Commission, *Guide to Managing Misconduct in the Tasmanian Public Sector* (March 2021).

157 Integrity Commission Tasmania, *Guide to Managing Misconduct in the Tasmanian Public Sector* (March 2021) 9–10.

158 Integrity Commission Tasmania, *Guide to Managing Misconduct in the Tasmanian Public Sector* (March 2021) 10.

159 Integrity Commission Tasmania, *Guide to Managing Misconduct in the Tasmanian Public Sector* (March 2021) 10.

160 Michael Easton, *Integrity Commission Procedural Fairness Response*, 8 March 2023, 2.

161 Department of Health, 'Code of Conduct Investigations – Internal Audit', August 2019, 6, produced by the Tasmanian Government in response to a Commission notice to produce.

162 Department of Health, 'Guidance Notes – Employment Direction No. 5 Preliminary Assessment', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

163 Department of Health, 'Guidance Notes – Employment Direction No. 5 Preliminary Assessment', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

164 Department of Health, 'Guidance Notes – Employment Direction No. 5 Preliminary Assessment', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

165 Department of Health, 'Guidance Notes – Employment Direction No. 5 Preliminary Assessment', undated, produced by the Tasmanian Government in response to a Commission notice to produce.

166 Solicitor-General of Tasmania, *Procedural Fairness Response*, 27 June 2023, 33–34.

167 Integrity Commission Tasmania, *Guide to Managing Misconduct in the Tasmanian Public Sector* (March 2021) 11.

168 Department for Education, Children and Young People, *Advice for School Staff—Responding to Incidents, Disclosures or Suspicions of Child Sexual Abuse* (2022) 2.

169 Statement of Michael Pervan, 14 June 2022, 43 [229]; refer also to Statement of Jacqueline Allen, 15 August 2022, 32 [181].

170 Refer to, for example, case examples of Lester, Ira and Stan in Chapter 11. The names 'Lester', 'Ira' and 'Stan are pseudonyms; Order of the Commission of Inquiry, restricted publication order, 18 August 2022.

171 Refer to Statement of Timothy Bullard, 10 May 2022, 10 [60(c)].

172 Tasmanian Government, *Employment Direction No. 4 – Procedure for Suspension of State Service Employees With or Without Pay*, 4 February 2013, cl 6.1.

173 Tasmanian Government, *Employment Direction No. 4 – Procedure for Suspension of State Service Employees With or Without Pay*, 4 February 2013, cl 6.2.

174 Tasmanian Government, *Employment Direction No. 4 – Procedure for Suspension of State Service Employees With or Without Pay*, 4 February 2013, cl 6.4.

175 Tasmanian Government, *Employment Direction No. 4 – Procedure for Suspension of State Service Employees With or Without Pay*, 4 February 2013, cl 6.4.

176 Department of Communities, 'Official Stand Downs' (Excel spreadsheet), August 2021, 4, produced by the Tasmanian Government in response to a Commission notice to produce.

177 Statement of Jenny Gale, 10 June 2022, 35 [37].

178 Statement of Timothy Bullard, 4 April 2022, 9 [40].

179 Statement of Jacqueline Allen, 15 August 2022, 54 [326]; Statement of Michael Pervan, 14 June 2022, 65 [357].

180 Statement of Jacqueline Allen, 15 August 2022, 54 [326]; Statement of Michael Pervan, 26 October 2022, 65 [357].

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21 Therapeutic services

1 Introduction

In this chapter, we consider the therapeutic service system in Tasmania, which has the potential to support victim-survivors of institutional child sexual abuse and children who have engaged in harmful sexual behaviours.

Without the right support and intervention, victim-survivors can be left to cope with their trauma in ways that are harmful to themselves and others—such as using alcohol and other drugs, engaging in violent or criminal behaviour, or self-harming. It can have an impact on their life opportunities, including their ability to engage in education and employment. They can also become vulnerable to more victimisation.[1]

We heard that the first contacts a victim-survivor has with a therapeutic service can affect their trajectory towards recovery. If they feel supported and validated, they are more likely to engage in therapeutic treatment and to seek justice. However, if they feel dismissed or minimised, they may be less likely to pursue recovery or justice for themselves.[2] Therefore, when a victim-survivor reaches out for help, referral pathways need to facilitate timely access to appropriate services. This service system needs to be informed by its users—adult and child victim-survivors.

While our terms of reference require us to inquire into the needs of victim-survivors of child sexual abuse in institutional settings, we consider our recommendations in this chapter will benefit all victim-survivors of child sexual abuse who have similar and complex therapeutic needs.

Victim-survivors may disclose their abuse at any time after it occurs and sometimes do so very late in their lives. Impacts of child sexual abuse can also manifest differently at various stages in a person's life—for example, when they enter adolescence or when they have their own children. Recognising these diverse needs across the lifespan, this chapter considers the different support needs of child and adult victim-survivors. We also consider victim-survivors who have extra needs or often experience barriers to receiving suitable support, such as those who have disability or are Aboriginal.

We discuss the needs of children who have engaged in harmful sexual behaviours separately in this chapter. These children need an added level of specialised help and intervention to address the harm that the behaviour does to their development, and to reduce the likelihood of them repeating the behaviour. Although children who have displayed harmful sexual behaviours may experience criminal justice issues as a result, and cause harm to victim-survivors, we consider it vital to recognise that these children need help. We also consider that children who have been harmed by the sexual behaviours of another child need equivalent therapeutic supports to victim-survivors of other forms of child sexual abuse.

We do not explore therapeutic interventions available to adult perpetrators of child sexual abuse in this chapter, although we consider it briefly in Chapter 16.

This chapter is divided into four main sections, in addition to the Introduction (Section 1) and Conclusion (Section 6).

In Section 2, we outline the National Royal Commission's recommendations for an accessible, well-coordinated therapeutic service system designed to meet the needs of victim-survivors.

In Section 3, we describe the services available to victim-survivors of child sexual abuse. We refer to these services as 'sexual assault services' in line with current practice, noting that they provide services for victim-survivors of child sexual abuse and of adult-on-adult sexual assault (and do not limit services to abuse that meets a criminal definition of assault).

As outlined in Section 3, we found it difficult to get a handle on the therapeutic service system and how the various components of the service system intersect.[3] We note that it may be even more difficult for people who need these forms of support to understand how the service system works and what is available to them.

In Section 4, we consider the extent to which the therapeutic service system meets the needs of victim-survivors of child sexual abuse and offers services that are accessible and appropriate. We identify several areas for improvement including:

- a need for government leadership to develop and fund a well-coordinated therapeutic service system for child sexual abuse

- a need for more sexual assault counselling services to enable adult and child victim-survivors of child sexual abuse to access them easily and in a timely way
- an urgent need for more culturally appropriate Aboriginal healing services and for sexual assault services that accommodate diversity and disability in a natural and welcoming way.

In Section 5, we focus on the therapeutic service system for children who have displayed harmful sexual behaviours. We conclude that children who have displayed harmful sexual behaviours need better access to therapeutic services, and that there needs to be a coordinated response across government agencies, which the Government should lead.

Overall, a well-functioning, trauma-informed, accessible, collaborative and appropriate therapeutic service system for child sexual abuse and harmful sexual behaviours requires the Tasmanian Government to assume a higher level of responsibility for overseeing, funding and monitoring such a system.

2 National Royal Commission

The Royal Commission into Institutional Responses to Child Sexual Abuse ('National Royal Commission') dedicated volume 9 of its final report to 'advocacy, support and therapeutic treatment services' for victim-survivors. Five of the recommendations in that volume are relevant to the Tasmanian Government's responsibility for the funding and characteristics of the Tasmanian service system for child sexual abuse, namely:

- ensuring there is a system of integrated advocacy, support and counselling for child and adult victim-survivors of child sexual abuse in institutional settings (Recommendation 9.1)
- increasing funding to sexual assault services to improve their capacity to support adult and child victim-survivors of child sexual abuse in institutional settings (Recommendation 9.6)
- funding Aboriginal and Torres Strait Islander-specific healing approaches (Recommendation 9.2)
- funding for support services for victim-survivors with disability (Recommendation 9.3)
- ensuring government human services agencies' policy frameworks and strategies recognise the needs of victim-survivors and the benefits of trauma-informed approaches in their work (Recommendation 9.8).[4]

Since 2018, Tasmanian Government has reported annually on its implementation of the National Royal Commission's recommendations, most recently in the *Fifth Annual Progress Report and Action Plan 2023*.[5] 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.[6]

The Government's fifth report suggested that its *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* has fulfilled the above five National Royal Commission recommendations, but it provided little information to address each recommendation.[7]

Our reading of the Government's third action plan and its predecessor—*Safe Homes Families Communities: Tasmania's Action Plan for Family and Sexual Violence 2019–2022*—revealed that only six of the 38 actions contained in the plans could be considered relevant to the sexual assault service system (depending on how they are implemented); the others relate to family violence.[8] The relevant six actions cover improved forensic testing technology (Action 4), increased core funding to sexual assault counselling services with five-year funding contracts (Action 12), establishing a peak family and sexual violence body (Action 14), 'strengthening' the Victims of Crime Service (Action 19), continuing the Sexual Assault Support Service's recently funded Prevention, Assessment, Support and Treatment program for addressing harmful sexual behaviours (Action 28) and establishing two multidisciplinary centres (Action 1).[9]

We are concerned that the Government decided to incorporate the National Royal Commission's recommendations about child sexual abuse into the existing activities and frameworks for family and sexual violence. We recognise that child sexual abuse can co-occur with family violence, but this approach misses the intention of the National Royal Commission's recommendations; namely, that child sexual abuse, and particularly child sexual abuse *in institutions* requires a specific response. We consider this recognition requires the Government to lead, coordinate and fund therapeutic services specifically for child sexual abuse and harmful sexual behaviours. We discuss these concerns further in Chapter 19.

3 The current service system

Tasmania's therapeutic service system for child sexual abuse took us some time to comprehend despite our own research activities and our notices to produce to the Government (discussed in Section 4). We benefited greatly from the information provided by local sexual assault services: the Sexual Assault Support Service and Laurel House.

Broadly speaking, the Tasmanian therapeutic service system for child sexual abuse appears to have evolved over time, often in silos and in response to local issues.

We identified its main components to be:

- the Strong Families Safe Kids Advice and Referral Line ('Advice and Referral Line') for concerns or suspicions about the sexual abuse of a child
- local sexual assault counselling services, which provide a crisis response and short-, medium- or longer-term support
- counselling support available through the National Redress Scheme
- local counselling support for victims of crime
- local therapeutic services for children who have displayed harmful sexual behaviours
- national online or phone sexual assault support services
- forensic services to collect evidence that may be used to prosecute a sexual crime (explored in Chapter 16)
- multidisciplinary centres where sexual assault services are co-located with other services that victim-survivors may need, such as police, the Child Safety Service or family violence assistance
- mainstream counselling or mental health services that often need to respond to disclosures of sexual abuse or its impacts while delivering therapeutic support.

In a collaborative and responsive therapeutic service system, as advocated by the National Royal Commission, all aspects of the service system communicate well and refer to each other easily.[10] In the rest of this section, we explore each part of Tasmania's service system in turn before examining areas requiring improvement in Section 4.

3.1 Advice and Referral Line

For people who are concerned about the welfare of a child, the Advice and Referral Line is often their first port of call for advice about what to do and where to go. As well as its statutory role in the child protection system, the Advice and Referral Line refers families and children to services that could assist with problems they are experiencing, including referring a family to sexual assault services to receive support for child sexual abuse or harmful sexual behaviours.[11]

3.2 Local counselling services

3.2.1 MY SUPPORT helpline

In the first instance, Tasmanian victim-survivors can phone the State Government funded 24-hour 1800 MY SUPPORT helpline for support in relation to sexual assault or

sexual abuse.[12] The MY SUPPORT helpline number is directed to counsellors employed at the Sexual Assault Support Service or Laurel House (described in the next section), depending on the caller's location.[13] Phone counsellors provide immediate crisis support for victim-survivors, assist them if they want to make a report to police and/or want a forensic medical assessment, and refer them for in-person counselling and support, including through Laurel House and the Sexual Assault Support Service.[14]

3.2.2 Sexual assault counselling services

The two main sexual assault counselling services generally service distinct geographical regions in Tasmania—Laurel House provides services to northern Tasmania and the North West, and the Sexual Assault Support Service provides services in southern Tasmania.[15] The Tasmanian Government funds both services to offer counselling and support for a wide range of victim-survivors, including victim-survivors of institutional child sexual abuse and children who have experienced harmful sexual behaviours from another child.[16] Following the disbandment of the Department of Communities on 1 October 2022, the Department of Premier and Cabinet began funding sexual assault services.[17]

There is a third, much smaller service—Enterprising Aardvark—in northern Tasmania, but it is not government funded.

Broadly speaking, the Sexual Assault Support Service and Laurel House appear to offer roughly equivalent services in many respects. Both agencies support victim-survivors of child sexual abuse (including harmful sexual behaviours) of all ages and genders, as well as 'secondary victims such as parents, siblings, friends and supporters' by a variety of means: in person, phone, online and outreach.[18] We concluded that both agencies employ experienced therapists who have degree-level qualifications in counselling, psychology or social work, and provide their staff with professional development and supervision.[19]

Laurel House and the Sexual Assault Support Service accept referrals from many different sources.[20] When a victim-survivor contacts either service directly, they speak to an intake counsellor who triages the case for allocation to a counsellor.[21] While a person is awaiting allocation, both services provide crisis assistance (refer to discussion about waiting lists in Section 4.3.1).[22]

The Sexual Assault Support Service has the advantage of having greater capacity, perhaps due to the larger population in southern Tasmania. The Sexual Assault Support Service has also secured the entire government funding for providing therapy to children and young people up to the age of 18 who engage in harmful sexual behaviours (the Prevention, Assessment, Support and Treatment program described in Section 5.2.1) and receives Commonwealth funding to provide counselling for victim-survivors seeking redress through the National Redress Scheme (refer to Section 3.2.3 and, for more

detail, Chapter 17). It employs 48 staff, most of whom are part-time, and receives about 1,400 referrals a year.[23]

Laurel House provided counselling to just under 900 clients in the 2020–21 financial year.[24] The service did not provide staffing numbers, but its Chief Executive Officer, Kathryn Fordyce, advised us that the case load of a full-time counsellor at Laurel House was the same as for the Sexual Assault Support Service: about 30 clients at any one time.[25]

We learned of Enterprising Aardvark from a victim-survivor who had heard about the service from police.[26] According to its website, Enterprising Aardvark is a free counselling and support service in northern Tasmania for victim-survivors of child sexual abuse and their families.[27] Its website says it relies on donations because it receives no government funding, employs two part-time counsellors and has provided about 1,500 hours of counselling each year since it started in 2017.[28]

We were told that, in 2020, Enterprising Aardvark provided education sessions for Ward 4K staff at Launceston General Hospital about profiles of abusers, grooming tactics and strategies.[29] Otherwise, we have little information about this service and we presume it is not well-publicised outside informal networks. It did not make a submission to us.

3.2.3 Redress support services

We discuss the National Redress Scheme in Chapter 17, but consider here the supports provided to victim-survivors as part of that scheme. Many of those involved in accessing the National Redress Scheme, or supporting those who access the scheme, told us that the process can be traumatising, and that support is vital while victim-survivors retell their experiences of child sexual abuse and go through the distressing process of having those experiences quantified against a scale of seriousness.[30]

In Tasmania the Commonwealth Government funds the Sexual Assault Support Service, Relationships Australia and the South East Tasmanian Aboriginal Corporation to provide redress support services, which are counselling services for victim-survivors in the National Redress Scheme.[31] Laurel House said it does not provide redress support services but aims to do so in the future.[32]

Under the National Redress Scheme, victim-survivors can also choose counselling services from approved counsellors to be included in their redress offer.[33] The Department of Justice coordinates this part of the service system.[34]

Civil legal action can be protracted and very stressful for victim-survivors (refer to Chapter 17).[35] Although there is no specifically funded support service for victim-survivors who take civil action over their abuse, sexual assault counselling services will support victim-survivors who are engaging in civil action.[36]

3.2.4 Victims of Crime Service

Provided by the Department of Justice's Victims Support Services (refer to Chapter 17), the Victims of Crime Service has offices in Burnie, Launceston and Hobart.[37] The service 'provides a counselling, support and referral service to victims of serious interpersonal violence and sexual offences'.[38]

This free service is generally used by victim-survivors who have reported their abuse to police.[39] Basic information about the service is available on the Department of Justice's website.[40]

3.3 Online and phone sexual assault support services

Phone and online sexual assault support services for victim-survivors strengthen Tasmania's service system. Victim-survivors can contact the free national 24-hour 1800RESPECT helpline, which offers immediate support and counselling for sexual assault and family violence via phone and online. The helpline has a referral database for local services and provides self-help information and apps to help victim-survivors access supports in a safe way.[41] Organisations, such as the Sydney-based Survivors and Mates Support Network for male victim-survivors and the national organisation Blue Knot Foundation, provide some support, information and referral services to victim-survivors and their supporters.[42]

3.4 Forensic medical assessments

The Tasmanian Health Service can undertake forensic examinations for victim-survivors after a sexual assault. These examinations can be conducted at the Royal Hobart Hospital, the Launceston General Hospital and the North West Regional Hospital (Burnie).[43] The victim-survivor's chosen service will conduct the medical examination, record injuries and collect biological samples if relevant. A victim-survivor does not need to have made a police report to have a forensic medical examination.[44] Counsellors from Laurel House or the Sexual Assault Support Service can support the victim-survivor during the examination.[45]

Chapter 16 discusses forensic medical examinations including the roles of police, medical and nursing personnel and specialist sexual assault services.

3.5 Multidisciplinary centres

Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027 committed to piloting two multidisciplinary centres as a new action 'to provide survivor-centred, holistic and integrated responses to family and sexual violence'.[46] These centres, named Arch centres, should be up and running in 2023.[47] Tasmania Police has led development of these multidisciplinary centres to improve

specialisation for police and coordinate responses to sexual violence in general.[48] In Chapter 16, we call for Tasmania Police to prioritise police specialisation. Refer to Section 4.2 for more on the new Arch centres.

3.6 Mainstream services

Not everyone who was sexually abused as a child will access only specialist sexual assault services. Many victim-survivors will seek support for the problems arising from experiencing child sexual abuse, such as post-traumatic stress disorder, alcohol and other drug misuse, suicidal ideation, depression, anxiety and relationship issues.[49]

The key mainstream services that we consider would have contact with victim-survivors for treatment or referral are:

- medical practitioners such as psychiatrists and general practitioners who can provide Mental Health Treatment Plans under Medicare
- private psychologists and mental health practitioners who see clients referred by general practitioners, often subsidised for a set number of sessions by Medicare under a Mental Health Treatment Plan
- public mental health services offered by the Tasmanian Health Service such as Adult Mental Health Services, Child and Adolescent Mental Health Services, the Alcohol and Drug Service and adult inpatient mental health units
- Aboriginal health organisations (discussed more in Section 4.4.7).

We discuss the need for government mainstream services to become more trauma-informed in Chapter 19.

4 Improving the therapeutic service system

As a basis for its recommendations (refer to Section 2), the National Royal Commission identified the key characteristics of a responsive service system for adult and child victim-survivors of child sexual abuse and for children who have displayed harmful sexual behaviours:

- The system and its components need to be trauma-informed and knowledgeable about child sexual abuse.
- The system needs to work together to meet the range of potential needs of victim-survivors and the complexity of the service system.
- Enough services should be available for victim-survivors to access and be delivered for as long as necessary for each person.

- Services should be accessible for all victim-survivors regardless of their capacity to pay, geographical location, disability or cultural background.
- Services should be 'acceptable' to victim-survivors who have diverse needs; that is, they should be flexible enough to respond to victim-survivors from a variety of cultural and social contexts.
- The high quality of the services should be assured through ongoing evaluation of evidence-informed approaches.
- The service system should include Aboriginal healing approaches.[50]

The National Royal Commission's recommendations assigned responsibility to the state and territory governments to ensure the therapeutic service system has these characteristics.[51] We consider that the Tasmanian Government needs to do more to meet these requirements.

This section considers the extent to which the current therapeutic service system meets the needs of victim-survivors and provides services that are accessible and appropriate. We also identify several areas for improvement.

4.1 Developing a therapeutic service system for child sexual abuse

The Tasmanian therapeutic service system has evolved organically from the bottom up. Over time, separate non-government services have been established in communities to meet the needs of victim-survivors at that time. Gradually, services have sought and received government funding to expand into areas where they have identified gaps. Consequently, the service system is not particularly cohesive or equitable.

At the strategic level, we consider the Tasmanian Government has not taken responsibility for ensuring the therapeutic service system is adequately planned and funded. Instead, the task of service provision and leadership in the system has fallen to hard-working and dedicated non-government organisations. There has therefore been no coordination or overarching plan for developing the system that would ensure consistency in approach, coordination of services, appropriate coverage or equitable access.

We asked the Government to describe its service system in preventing, identifying, reporting and responding to allegations or incidents of child sexual abuse in institutional contexts, including for:

- advocacy, therapeutic and social supports for victim-survivors
- therapeutic and social supports for children who have displayed harmful sexual behaviours

- targeted supports for
    - Aboriginal children
    - children with a culturally and linguistically diverse background
    - children in youth detention
    - children in out of home care
    - children with disability
    - children who identify as LGBTQIA+
    - any other groups that receive targeted supports.[52]

The Government's response did not demonstrate to us that there is a well-structured therapeutic service system for adult and child victim-survivors of child sexual abuse and children who experience or display harmful sexual behaviours.[53] In the remainder of Section 4 and in Section 5, we outline gaps in the scope of sexual assault services for victim-survivors of child sexual abuse and harmful sexual behaviours, as well as in a consistently coordinated approach to service delivery.

Given the difficulties we experienced trying to understand the therapeutic service system for child sexual abuse, it follows that victim-survivors would also find it difficult to understand the service system and access the services they need when they need them.

The Tasmanian Government should lead, coordinate and fund development of a therapeutic service system that includes responses for adult and child victim-survivors of child sexual abuse and for children who have experienced or displayed harmful sexual behaviours. This therapeutic service system should ensure coordination of services, appropriate service coverage and equitable access to quality services.

The Government should ensure the therapeutic service system is easily understood by victim-survivors and those affected by child sexual abuse, as well as mainstream services that may need to make or receive warm referrals.

The Government also needs to know the therapeutic service system is working and meeting the needs of victim-survivors. The National Royal Commission stated that 'a high-quality service system is informed by evidence, well-trained and supported, outcome focused, accountable and subject to ongoing evaluation'.[54]

We only heard about two of the services in Tasmania's sexual assault service system that are being actively evaluated, mainly because they are both pilot programs—the Prevention, Assessment, Support and Treatment program for harmful sexual behaviours and the Arch centres.

The Sexual Assault Support Service expressed concern about a lack of quality assurance or standards required in government funding contracts.[55] We identified a similar concern in the context of non-government out of home care provider funding agreements (refer to Chapter 9). Commissioning arrangements appear to have been problematic in several areas in the former Department of Communities.

The Department of Premier and Cabinet, in its new role of funding sexual assault services, should provide leadership, fill service gaps and ensure funding agreements with non-government sexual assault counselling services have governance requirements, service evaluation and child safe accreditation built in. The child safe accreditation will empower children to contribute to how the services provided for them are shaped.

It is important that in leading development of this therapeutic service system, the Government collaborates with all those affected by the service system including children and adult victim-survivors, specialist counselling services, police, government agencies and the peak body for the sexual assault service system recommended in Recommendation 21.3.

Recommendation 21.1

1. The Department of Premier and Cabinet should lead, coordinate and fund a therapeutic service system for child and adult victim-survivors of child sexual abuse and children who have experienced or displayed harmful sexual behaviours.
2. The Department should ensure the therapeutic service system:
    a. addresses service gaps and provides coordination of services, appropriate coverage and equitable access to quality services
    b. is easily understood and accessible to the public, state servants and other mainstream service providers.
3. The Department, in leading this work, should consult with:
    a. any relevant government departments, including the Department for Education, Children and Young People, the Department of Health and Tasmania Police
    b. sexual assault and abuse counselling services
    c. the Premier's Youth Advisory Council and the adult victim-survivors of child sexual abuse advisory group (Recommendation 19.5)

d. the peak body for the sexual assault service system (Recommendation 21.3).

4. The Tasmanian Government should ensure funding agreements with non-government specialist services include appropriate governance requirements, sexual abuse service standards, service evaluation and child safe accreditation.

4.2 Creating a collaborative system

The National Royal Commission heard that services victim-survivors need 'span several sectors and can be difficult to navigate' and that those services '[do] not collaborate with one another, compounding the difficulties victims and survivors faced when navigating the complex policy and service environment'.[56]

Kylee's experience

One victim-survivor told us about her experience of having to tell nine people her story in order to report to police and receive therapeutic care.

> For someone who never wanted to tell anyone, the amount of people I then had to tell … One example is Victims of Crime, I was encouraged by the Detective to contact them, so I ring up to make an initial appointment, you're then speaking to a counsellor to do an extension of time application, that then goes to someone to be assessed. Then come in and see someone else to do an application … then I'm contacted by someone who says 'you need to see a counsellor' … They then organise me to see a phone link-up counsellor, she says, 'you do realise you're going to have to tell your GP?' … Then because the counsellor thought I had a diagnosis of moderate post-traumatic stress disorder, I had to then be referred on to a psychologist … Then I had an interview with a Commissioner [for Victims of Crime], and an assistant and they then determined whether I was eligible or not … nine people I had to share my experience with.[57]

The National Royal Commission recommended establishing:

> … dedicated community support services for victims and survivors in each jurisdiction, to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts.[58]

The Blue Knot Foundation's *Organisational Guidelines for Trauma-Informed Service Delivery* also supports providing collaborative, integrated care:

> People living with the impacts of trauma often present to multiple services over a long period of time. The care they receive is frequently fragmented and not well coordinated between services. There are often inadequate referral and follow-up pathways. These failures in the system can mean that clients experience a 'merry go round' of unintegrated care. As a result, people are more likely to be retraumatised and their trauma is more likely to be compounded.[59]

We heard of local examples of close working relationships between services, such as in North West Tasmania. Community members there proudly reported that police, schools and the Child Safety Service in their area had developed a good working relationship to respond in a trauma-informed way to disclosures of child sexual abuse and, perhaps consequently, they reported an increase in disclosures.[60] Laurel House also noted the flow-on benefits for victim-survivors of developing positive working relationships with police and other services.[61]

The response to child sexual abuse in Tasmania includes some systems for collaboration, such as interagency case discussions and a memorandum of understanding to share information between police and the Child Safety Service. However, we were told that 'effective collaboration and therefore responses stem beyond this' and:

> ... the response to allegations and incidents of child sexual abuse in institutional contexts is complex and requires multi-agency collaboration, inclusive of co-located cross-agency teams, improved information sharing, appropriate specialised training and consultations between key agencies.[62]

Jillian Maxwell, Chief Executive Officer, Sexual Assault Support Service, noted that:

> Victim-survivors of all ages express feeling overwhelmed in respect of the number of agencies who they are meant to 'follow up with'. The onus is often placed on the individual, who has already experienced significant hardship and distress, to contact the Police, Child Safety Services and other State Government agencies ... [multidisciplinary centres] would be particularly beneficial given the way we work in Tasmania; a place which is built on relationships, trust and safety. Having a client, whether an adult or a child, attending at one place where they are supported by their counsellor in accessing the other services that are either co-located or coming onsite would also be much more trauma-informed than current 'siloed' approaches.[63]

For the past few years, the Sexual Assault Support Service and Laurel House have lobbied for the setting up multidisciplinary centres in Tasmania to better coordinate services and provide 'collaborative and integrated responses to victim-survivors in one location'.[64]

4.2.1 The Tasmanian model of multidisciplinary centres

As discussed above, the Government committed to piloting two multidisciplinary centres as part of its *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027*.[65] On 2 December 2022 the Government announced that two

Arch centres, one in Hobart and one in Launceston, would be 'available in 2023'.[66] In conjunction with sexual assault services, Tasmania Police has led development of the centres as a means of improving specialisation for police and for coordinating responses to sexual violence more generally.[67] The Government has said that these multidisciplinary centres will enable victim-survivors to 'receive immediate and integrated support in a safe place'.[68] The intention is to facilitate a positive first contact with counselling and statutory services for victim-survivors.

We discuss the evidence for the effectiveness of multidisciplinary centres and the need for police specialisation in Chapter 16. This section focuses on the proposed Tasmanian model of multidisciplinary centres and how they might meet the therapeutic needs of victim-survivors.

Arch centres

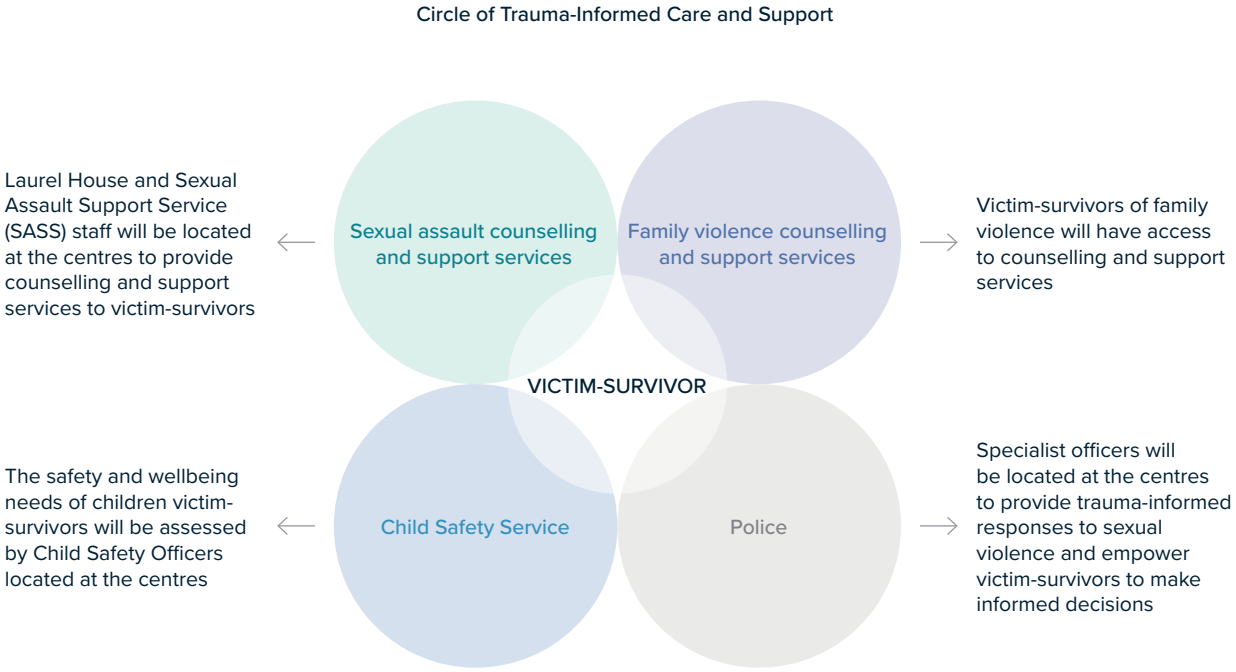
The Tasmanian Government has indicated that the pilot Arch centres aim to be a 'one-stop shop' for victim-survivors of sexual abuse to access all the services they need in one location.[69] On the basis of available information at the time of writing, it appears that services at the centres may include:

- sexual assault counselling services
- specialist sex crimes police investigators
- child safety support workers
- family violence counselling support services
- witness intermediaries (as requested)
- facilities for tailored service provision (as required)
- State Service employees in investigative support roles.[70]

Arch centres are being co-designed with victim-survivor advocates and existing services in the family and sexual violence sector to ensure 'service delivery meets the needs of victim-survivors'.[71] As part of the process of ensuring these are child safe organisations, we encourage the Government to work with children to inform their design. We also caution the Government to ensure the design process goes beyond co-locating services to the purposeful systems, processes and practices that will support multidisciplinary collaboration, preventing victim-survivors from having to retell their story to each service in the Arch centre with which they engage.

Key elements of the proposed model are set out in Figure 21.1.

Figure 21.1: Key elements of the Arch centre model[72]



Source: *Sexual and Family Violence Project Newsletter*, Issue 1 (July 2022).

The $15.1 million allocated to Arch centres for the two-year pilot includes funds for new full-time-equivalent positions:

- 15 specialist sex crimes investigators (10 in the south and five in the north)
- nine State Service employees in analytics and specialist roles (across the model)
- three Child Safety Officers (two in the south and one in the north)
- two family violence counselling support workers (one each in the south and north).[73]

It is unclear how many staff from sexual assault counselling services will be at the centres, but we note that, in addition to the above, $21 million has been allocated to the sexual violence sector and $51 million to the family violence sector 'to support the implementation of the *Third Sexual and Family Violence* action plan'.[74]

Key considerations

Although there are many potential benefits to the multidisciplinary centre model, its success depends on several factors. Professor Leah Bromfield, one of the Commissioners for our Inquiry, co-authored an article with James Herbert based on a national analysis of the multidisciplinary centre model. In the article, Commissioner Bromfield commented: 'There is often a difference between the stated models and

how models operate in practice'.[75] The Victorian Law Reform Commission also recently identified some common challenges with multidisciplinary centres including:

- power imbalances between agencies
- tensions in agencies' purposes and goals
- information sharing and privacy concerns
- being responsible and accessible to victim-survivors with diverse and complex needs
- not having enough resources.[76]

There is an absence of evidence directly comparing models of cross-agency responses to determine what contributes to positive outcomes, which makes it difficult to work out the essential components for an effective response.[77] However, a recent scoping review identified 11 factors that may support quality cross-agency responses and outcomes in cases of child sexual abuse.[78] These are listed in Table 21.1. Arch centres will need to consider such factors in their design, implementation and evaluation.

Table 21.1: Factors that may support quality cross-agency responses and outcomes[79]

Process factors (factors reflecting the delivery of a cross-agency model)	Protocols	Clear and comprehensive cross-agency protocols that have been developed and agreed to by agencies taking part in the response
	Case review meetings	Provide an opportunity for decision making across agencies and disciplines and for participants to understand each agency's role
	Cross-agency training	Similar training is provided to different professional disciplines
	Co-location	Staff are easily accessible and can develop rapport with those from other agencies and disciplines
Individual factors (factors enabling workers to effectively collaborate with one another)	Professional skills and knowledge	Staff have the skills and knowledge to undertake their own work and to collaborate with others
	Mandates, vision, roles and priorities	Staff can reconcile their own professional responsibilities with their role in a cross-agency team
Enabling factors (factors supporting processes and collaboration)	Feedback and evaluation	Data is received from victim-survivors and staff to enhance responses
	Leadership and governance	Emphasises the importance of cross-agency leadership, teamwork and dispute resolution
	Resources	A lack of resources to support cross-agency collaboration is a barrier to models
Improved cross-agency collaboration factors (factors reflecting good practice)	Trust and respect	Relationships between staff centre on mutual trust and respect
	Communication and information sharing	There is frequent communication and exchange of quality information across agencies

Source: Adapted from: James Herbert et al., 'Possible Factors Supporting Cross-Agency Collaboration in Child Abuse Cases'.

Genuine collaboration

Although Arch centre materials indicate that the centres will be physically designed to facilitate collaboration and coordination, Jenny Wing, Chair, Victorian Harmful Sexual Behaviour Network, told us that co-location or proximity does not guarantee collaboration:[80]

> … [collaboration] is a constant relationship that needs to be maintained. Being co-located in multidisciplinary centres provides greater opportunities to maintain these relationships … there still needs to be a combined effort to meet and engage regularly for the relationship to work effectively.[81]

The New South Wales experience was similar. Peter Yeomans, Detective Chief Inspector, New South Wales Police Force, who leads the Child Abuse and Sex Crimes Squad, said that 'effective and regular communication between agencies is critical', whether the service is co-located or not.[82] Tasmania Police acknowledged that the effectiveness of multidisciplinary centres was 'dependent upon relationships at a practice level, these relationships need to be established prior to systems and structures being imposed'.[83] Former Commissioner Darren Hine AO APM from Tasmania Police commented that:

> … it's not having those people in one area; it's having the right people in that area. And that's one of the things we've learned from other states: some centres work better than others, and it comes down to … leadership, and it comes down to the people actually involved and we need to learn from that.[84]

Given the importance of coordination and collaboration, it is essential for Arch centres to facilitate these relationships in an ongoing way through strong leadership and deliberate and purposeful collaboration mechanisms that put victim-survivor needs at the centre.

Police presence

A police presence in multidisciplinary centres is pivotal to their success. Tasmania's sexual assault counselling services recommended that the police presence must be unobtrusive and inconspicuous.[85] Indications are that the Arch centres will reflect this principle. Commissioner Hine said: 'it's not connected to a police station, will not look like a police station'.[86]

Laurel House noted that those victim-survivors who do not want to engage with police or direct government services should still be able to access the other services—choice is critical.[87] Indeed, choice is a principle of trauma-informed care that must be central to the multidisciplinary centre model.[88] Arch centre materials indicate that they have:

> … carefully considered the choices clients might make at the centres and what this will mean for their movement within them. If you choose to see one particular service provider only, the design will help to ensure that you do not bump into any others. For example, we respect that some clients may not want to, or may not be ready to, see a police officer. With this in mind, police officers who work in the centres will not be in uniform and will use an alternative door.[89]

Family violence

Following their examination of the Victorian multidisciplinary centre model, Tasmania Police reported their impression that Victoria Police 'considered the integration of sex crimes and family violence appropriate given there is extensive research regarding the correlation between the two'.[90]

Victoria Police told us:

> … given the high prevalence of sexual offending in family violence, Victoria Police is continually looking for opportunities to align its responses to these crime themes when they co-occur. Family violence and sexual offence units are specialist units but will operate collaboratively in some instances, such as, when the sexual violence is intrafamilial. Some multidisciplinary centres … include both specialist teams but the key function of [multidisciplinary centres] is to provide specialist sexual offence responses.[91]

We also heard from several people who have worked in the sexual assault field across different jurisdictions that family violence can become 'the dominant force' and that it is better to not 'dilute the expertise of dealing with child sexual assault matters'.[92]

Commissioner Hine told us that Arch centres will not incorporate Tasmania Police Family Violence Units, nor will the Safe at Home model change.[93] We understand the Safe at Home model to be a cross-government partnership to coordinate responses to family violence.[94] Tasmania Police told us that the intention is for extra resources to be allocated to the Safe Families Coordination Unit to expand its role to include sexual violence, enabling it to 'coordinate information to deliver the Government's vision of a collaborative, multi-agency response to sexual violence'.[95] Commissioner Hine stated that:

> This approach provides confidence that high-volume family violence matters will not impact the priority afforded to sexual assault and it is acknowledged that this will need to be subject to evaluation as part of the pilot program.[96]

Arch centre materials indicate that 'offences or information relating to family violence' that require a response will be sent to local police as is the current system, which we take to mean matters will continue to be referred to local Family Violence Units. The material also indicated that if the matter includes 'sexual violence', it will be sent to an Arch centre.[97]

We welcome the commitment to ensure family violence matters do not overwhelm a specialisation in child sexual abuse.

Resourcing

Adequate resourcing of Arch centres will be essential. Ms Maxwell, from the Sexual Assault Support Service, noted that the funding allocated may not be enough to create ideal multidisciplinary centres.[98]

It is not yet known how the extra funding to the sexual and family violence sectors will be allocated, and whether it will be enough to resource the Arch centres *and* existing services. However, Arch centre materials indicate that choice will be paramount in terms of services accessed within and outside of the centres. Materials suggest that Arch centres will be an extra rather than a replacement resource and that 'established counselling and support services already available in the community will not change when the centres commence'.[99]

Evaluation

The National Royal Commission noted that while multidisciplinary models can achieve goals such as reducing retraumatisation, assisting victim-survivors to navigate the system and promoting effective collaboration between services, 'co-location and other models of collaboration are only tools to achieve a better service offering, not goals in themselves'.[100] Given the complexities of providing effective therapeutic and statutory services to victim-survivors of child sexual abuse, evaluation of Arch centres must be independent, robust and ongoing.

Commissioner Hine told us that, as a pilot program, 'evaluation will be critical and commence from the program launch to ensure experience informs the future'.[101] This is supported by *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027*, which indicates that 'learnings from the pilot will inform future considerations of the model'.[102] The evaluation should follow sound principles to provide an accurate picture of the impact of Arch centres.

We heard from stakeholders that multidisciplinary centres 'will not provide the solutions to all the issues and challenges that affect victim-survivors of child sexual assault in Tasmanian Government settings'.[103] Similarly, the Victorian Law Reform Commission recommended expanding multidisciplinary centres in Victoria, but acknowledged that they are only one feature of a much larger system.[104] We discuss other aspects of the service system, including sexual assault counselling services, in Section 4.3.

Recommendation 21.2

1. The Tasmanian Government should conduct an independent process and outcomes evaluation for the pilot multidisciplinary Arch centres and any future centres after three years of operation to inform the Government of any systems improvements that could be made to the centres and whether they have resulted in improvements in client outcomes. The evaluation should incorporate:

a. an evaluation and data outcomes framework established during the first year that includes required baseline and outcomes data for clients receiving services through the Arch centres, and considers how Arch centre outcomes can be compared with the outcomes of cases that have not received an Arch centre response

b. the collection of data in line with the data outcomes framework in the first year

c. the storing and retention of data in a format that can be provided to the independent evaluators.

2. The evaluation and data outcomes framework should include outcome measures for adult and child victim-survivors of child sexual abuse and children who have experienced or displayed harmful sexual behaviours.

3. The Tasmanian Government should ensure multidisciplinary centres are not the sole response to the therapeutic needs of adult and child victim-survivors of child sexual abuse.

4.2.2 Peak body

Despite the small size of its service system, Tasmania's specialist sexual assault service providers can be relatively isolated from one another, and from interstate services, due to the north–south Tasmanian divide and the lack of a coordinated service system. Other states have peak bodies representing sexual assault services to coordinate services and advocate for system improvements, but Tasmania does not have such an organisation.[105]

The closest approximation in Tasmania is Providers of Sexual Assault Care. The organisation's website lists its main members as Tasmania Police, Sexual Assault Forensic Examiners at Launceston General Hospital, the specialist sexual assault support services of Laurel House and the Sexual Assault Support Service, and Forensic Science Service Tasmania.[106] Although its membership reflects a strong forensic focus, Providers of Sexual Assault Care has a broader stated purpose: to bring together the services that respond in the event of a sexual assault to support those involved in the care of victim-survivors of sexual assault, share multidisciplinary knowledge, facilitate 'expert total care' to victim-survivors and raise awareness of the problem of sexual assault.[107] The Providers of Sexual Assault Care administrator advised us that the organisation is funded through membership fees. The Tasmanian Government did not refer to it in its 'Tasmanian Government's current service system' response to our notice to produce, discussed in Section 3.[108]

The Government has recognised the need for a peak body in Action 14 of *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027*,

which committed the Government to funding the Tasmanian Council of Social Services to establish a peak family and sexual violence body.[109] The peak body would:

> ... streamline engagement between Government and the community sector, and support the sector in policy development, enabling it to focus on service delivery to the Tasmanian community.[110]

This is a promising move, but we remain concerned about the Government combining family violence with child sexual abuse. Such a peak body risks being dominated by a focus on family violence, given the sheer size of this important social problem.

The Tasmanian Government should establish a more active, supported peak body to improve the sexual assault service system in a more consistent and coordinated way and, in this, consider the existing Providers of Sexual Assault Care. The coordination function of a peak body would be important as the Government expands sexual assault services available to victim-survivors, as described in Recommendation 21.4. A peak body could also develop or adopt existing standards of practice to ensure consistent quality in sexual assault services, as the Victorian Harmful Sexual Behaviour Network has done in Victoria.[111]

Recommendation 21.3

1. The Tasmanian Government should establish a peak body for the sexual assault service system, including therapeutic interventions for children who have engaged in harmful sexual behaviours, to:
    a. ensure the needs of adult and child victim-survivors of child sexual abuse and children who have experienced or displayed harmful sexual behaviours are met by the sexual assault service system
    b. represent sexual assault service providers in a coordinated way
    c. share evidence and experience
    d. develop or identify practice standards for sexual assault services and interventions for child sexual abuse and harmful sexual behaviours
    e. coordinate service delivery for victim-survivors
    f. advocate for improvements in the sexual assault service system.
2. This peak body for the sexual assault service system should be distinct from, but work in cooperation with, a family violence peak body.

4.3 Building on sexual assault services

Our resounding impression is that there are not enough local sexual assault services available or accessible to Tasmanian victim-survivors of child sexual abuse or children who have displayed harmful sexual behaviours. This shortage applies to timely, local forensic medical examinations, sexual assault counselling services, therapeutic interventions for children who have engaged in harmful sexual behaviours and counselling services available through the Victims of Crime Service.

Also, victim-survivors in Ashley Youth Detention Centre and more remote parts of the State experience particular difficulty in accessing suitable supports. The Government needs to address this shortfall in specific ways, which we describe in this section.

In Section 4.4, we discuss the problems of accessing services that meet the needs of some victim-survivors including victim-survivors with disability, or those wanting to access an Aboriginal service.

In Section 5, we consider and make recommendations about services for children who have engaged in harmful sexual behaviours.

4.3.1 Sexual assault services

Sexual assault counselling services

Ms Maxwell told us that victim-survivors of child sexual abuse in institutional settings can be especially sensitive to a service's response because they have often experienced poor institutional responses.[112] Therefore, she said, quick access to services is important for those people because they can perceive delays as not being heard or supported.[113]

During sessions with a Commissioner and in consultations, we heard concerns about waiting lists for sexual assault counselling, which people attributed to lack of funding.[114] Victim-survivors told us how difficult it was to wait for sexual assault counselling once they had disclosed their abuse.[115]

In May 2022, the Sexual Assault Support Service told us that it had about 90 people on its waiting list and it expected some of those would need to wait six-to-eight weeks before they could start work with a counsellor.[116] At the same time, Laurel House said it had about 40 people on its waiting list and some were waiting up to 33 working days (more than six weeks) to see a counsellor.[117] This is too long to wait for services.

Laurel House and the Sexual Assault Support Service said they develop a plan with each person on the waiting list to ensure they have access to support while they wait to see a counsellor.[118] A child sexual abuse counsellor told us that there should not be a waiting time for a child victim-survivor and their family to access specialist support.[119] Both services said, where possible, they prioritise children on their waiting lists ahead of adults.[120]

It appears that a significant increase in referrals without a corresponding increase in funding has contributed to larger waiting lists.[121] Both services also told us that they can struggle at times to attract and retain qualified and experienced counselling staff, which has further increased waiting times.[122] Kathryn Fordyce, the Laurel House Chief Executive Officer, told us that one factor contributing to difficulties with staff attraction and retention is the short-term nature of government funding; staff can be anxious about continuing in a role if funding is not secure.[123]

In November 2022, the Tasmanian Government announced a 37 per cent increase in core funding to family and sexual violence services and has introduced five-year contracts to assist with funding certainty.[124] However, the Government did not specify how the funding will be allocated to services.[125] Because the funding increase covers family violence services as well as sexual assault services, it is not clear what proportion will be allocated to specialist services for victim-survivors of child sexual abuse.

Victims of Crime Service

For a variety of reasons, some victim-survivors may prefer not to engage with the sexual assault service in their area. Having access to other free or low-cost counselling services offers victim-survivors some choice, which is an important characteristic of a trauma-informed sexual assault service system. The Victims of Crime Service provides an alternative counselling service option for those victim-survivors who cannot or prefer not to engage with the Sexual Assault Support Service or Laurel House.

Victim-survivors told us that they thought the Victims of Crime Service was underfunded.[126] However, Catherine Edwards, Manager, Victims Support Services, told us that the average waiting time for a victim-survivor to see a Victims of Crime Service counsellor was one-to-two weeks, which seems reasonable.[127] The service has one full-time counsellor in southern Tasmania, one almost-full-time counsellor in northern Tasmania and a 0.4 full-time-equivalent counsellor in the North West.[128] Ms Edwards also said there was 'an urgent pressing need' to increase the Victims of Crime Service counsellor position in the North West to full-time and, ideally, she would like to see two counsellors in each region.[129] She said the scope of the Victims of Crime Service is confined by its budget, and more resourcing would allow the service to provide more for victim-survivors.[130] We expect that more promotion of the service would increase demand, so it would seem wise to expand the service to at least Ms Edwards' ideal staff complement.

We welcome the Tasmanian Government's commitment to 'Strengthen the Victims of Crime Service' in Action 19 of *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027;* however, we note that the plan has no information about what this might involve.[131] We recommend that it increases the number of counsellors available to support victims of crime and promotes the service to victim-survivors (refer to Recommendation 21.5). While some victim-survivors of child sexual

abuse in institutional settings will choose not to seek support from a government service, others will welcome an alternative among the limited range of options.

4.3.2 Geographical isolation

As a very small jurisdiction with a widely distributed population, Tasmania has always posed a significant challenge to the fair and equitable distribution of services. This challenge is amplified when trying to ensure all Tasmanians have access to sexual assault services. Such services might only be required intermittently and are more expensive to provide and access than in larger jurisdictions, which can benefit from the economies of scale associated with larger population centres. While this problem is not unique to Tasmania—victim-survivors in rural and regional areas across Australia are disadvantaged when it comes to accessing sexual assault services—the Government should address the need for these services across the State.[132] The situation appears to be particularly challenging in Tasmania's West Coast and North West. For example, in Queenstown we heard that a lack of transport options and difficulty attracting skilled staff make it difficult for victim-survivors to access sexual assault services.[133] In a general discussion about the challenges of reduced services overall, Aboriginal community members in the North West spoke of difficulties accessing sexual assault counselling for children.[134] In January 2023, the *King Island Courier* reported an increase in the number of people disclosing sexual abuse on the island and islanders wanted 'to develop structures and systems' to enable victim-survivors to access reporting and forensic services.[135] The article reported that the local council had attempted to fill the service gap but had struggled to find the resources.[136]

The two main Tasmanian sexual assault counselling services offer outreach services to parts of regional Tasmania. Laurel House has offices in Burnie, Devonport and Launceston and provides outreach services to some regional areas in northern Tasmania and the North West, such as George Town, Ulverstone, Beaconsfield and Smithton. However, they have found it harder to offer regular outreach to more remote locations such as Circular Head, the East Coast and the Bass Strait islands.[137]

In the south, the Sexual Assault Support Service has offices in Hobart and Huonville and will travel to locations such as the Southern Midlands to provide counselling when a client cannot travel to an office.[138] The Sexual Assault Support Service will also subsidise clients' travel to an office if cost is a barrier.[139]

Both services can provide online or phone counselling for people in remote areas.[140] However, some clients do not have access to a computer or a private space at home where they can take part in a session, so they may prefer to travel or meet a counsellor somewhere locally.[141] Some community members said phone support services were not personal enough.[142]

Located in Launceston and Hobart, the two pilot Arch centres will leave large areas of the State without ready access to that service. Commissioner Hine noted that many areas of Tasmania will be too small to have an Arch centre but that consideration is being given to how those areas will have 'the same service or a similar service'.[143] This will need to be carefully considered to ensure victim-survivors can access effective support, regardless of their location.

One of the challenges of holding outreach clinics or visiting clients in remote locations is the cost to the service of the counsellor's travel time, which makes it more expensive per client to conduct a remote outreach clinic than to provide in-house counselling services.[144]

However, having access to sexual assault counselling from agencies outside the local community through outreach clinics can be helpful for victim-survivors in small communities. Ms Fordyce said that when specialist services are delivered and located in the local community, service users have encountered difficulties with knowing a service provider in a personal capacity, conflicts of interest and a lack of privacy.[145] Ms Maxwell agreed that being external to a local community is a strength in some cases:

> It means people can address issues arising in the community without having to approach a member of the community, who might be linked to the issue or person involved in some way.[146]

Azra's experience

Azra's experience illustrates some of the difficulties victim-survivors face in seeking help in a small community:

> 'Abe' (a pseudonym) recommended a psychologist who was a friend of his to help me.[147] Initially I spoke to this therapist about Abe using a nickname for him. When I eventually mentioned that I was talking about Abe, the therapy broke down.
>
> I felt so used and discarded by Abe. I was let down by him and by the therapist he recommended. I had invested over 12 months into the therapy and thanks to Abe it was a waste of my time. I had to start again with a new therapist. Abe made something that was already traumatic worse.[148]

When increasing funding to improve access to sexual assault services, the Tasmanian Government should pay particular attention to improving access for those in regional and remote areas, particularly the far North West, Bass Strait islands and the West Coast. Based on the principle of retaining choice for victim-survivors, this should ideally involve a combination of outreach by sexual assault services to provide in-person counselling, phone and online services; improving transport for victim-survivors to service locations; and increasing the capacity of local mainstream health services to provide trauma-informed care.[149]

4.3.3 Ashley Youth Detention Centre

As discussed in Chapter 10, children at Ashley Youth Detention Centre often enter the Centre having experienced child sexual abuse. They may then experience sexual abuse or experience or display harmful sexual behaviours while at the Centre. As a result, they have a high need for sexual assault counselling services.

The Department of Health provides mental health support to children while they are in Ashley Youth Detention Centre.[150] However, the Sexual Assault Support Service thought it was advantageous for an external specialist agency to offer outreach to the Centre because children can receive continuity of care in the community when they are discharged.[151] Tasmania Legal Aid agreed that this model would be better for their clients in Ashley Youth Detention Centre.[152] It also affords children some privacy and oversight of care from a provider external to the Centre, which has been lacking.

Laurel House said it has sometimes given therapeutic support to children at Ashley Youth Detention Centre. The Sexual Assault Support Service said it had not previously had referrals and that it found it difficult to deliver interventions for harmful sexual behaviours in that setting.[153] Some people provided examples of a lack of action by staff at Ashley Youth Detention Centre to facilitate therapeutic supports for children in the Centre.[154]

In contrast with Ashley Youth Detention Centre, the Sexual Assault Support Service said that it had been visiting Risdon Prison since the National Royal Commission to provide sexual assault counselling to inmates. It said that demand has grown to the point where it now has almost three full-time counsellors for that site.[155] It said that over time, the prison has become more open to referring inmates who can now also self-refer to the Sexual Assault Support Service.[156]

Former Secretary of the Department of Communities, Michael Pervan, stated that since our hearings in May 2022, 'the Sexual Assault Support Service is now available to support young people who were victims or witnesses' of harmful sexual behaviours in Ashley Youth Detention Centre, and that a private psychology practice provides three hours per week of psychology services to residents via a digital platform.[157] He told us that a child who has experienced harmful sexual behaviours at Ashley Youth Detention Centre would receive therapeutic support from the private psychology practice, the Centre's nurse and the visiting doctor.[158]

Although it took our Inquiry to trigger them, these changes sound like progress for children in Ashley Youth Detention Centre who need therapeutic support for sexual assault. However, we consider more should be done. The Tasmanian Government should ensure sexual assault services receive enough funding to offer outreach services to children in detention or remand now and into the future. We discuss the need for Ashley Youth Detention Centre to embrace therapeutic supports for young people in Chapter 12.

4.3.4 Peer support

Some Tasmanians access support from peer support organisations such as the Survivors and Mates Support Network and the Care Leavers Australasia Network. The latter supports care leavers and their families via services that include advocacy, counselling and casework; in Tasmania, it also operates peer support groups in Hobart and Launceston.[159] We heard from the Care Leavers Australasia Network that the Tasmanian Government does not fund its services and that it would like to better support victim-survivors.[160] We also heard from a victim-survivor who received support from local peer support organisation Beyond Abuse and found this helpful.[161] We note that the Survivors and Mates Support Network is the only sexual abuse support specifically for male victim-survivors of child sexual abuse in Tasmania. Men can face different challenges when disclosing child sexual abuse and engaging with support services than women (discussed in Section 4.4) and would benefit from having the choice to access male-specific services.

The National Royal Commission 'highlighted the importance of peer support in helping victims and survivors to overcome feelings of guilt and betrayal, and reduce isolation through sharing their experiences with one another', particularly for victim-survivors of child sexual abuse in residential institutions.[162] It recommended that dedicated community support services for victim-survivors of child sexual abuse be required and enabled to 'support and supervise peer-led support models' as part of their services.[163] It also suggested that services 'should provide practical assistance to peer-led support groups, including by providing professional supervision where required'.[164]

Given the potential of peer support groups to assist recovery and facilitate advocacy for victim-survivors, this area warrants more investigation and investment in Tasmania. Funding for specialist sexual assault services should include assistance for peer support groups.

Recommendation 21.4

1. The Tasmanian Government should increase the funding for free or low-cost sexual assault counselling services to:
    a. reduce waiting times to no longer than four weeks for victim-survivors, regardless of where they live in Tasmania
    b. enable fortnightly access to sexual assault counselling in Ashley Youth Detention Centre
    c. assist peer support groups.

2. The Department of Premier and Cabinet should adopt strategies to increase the number of professionals with skills to provide therapeutic responses to abuse-related trauma to address the challenge in attracting and retaining sufficient suitably qualified staff to fill vacancies and meet the need for therapeutic responses to child sexual abuse.

Recommendation 21.5

The Tasmanian Government should increase the capacity of the Victims of Crime Service by:

a. increasing the number of counsellors available in each of the Victims of Crime Service offices to at least three in southern Tasmania, two in northern Tasmania and two in the North West

b. promoting the availability of the Victims of Crime Service counselling service to victim-survivors of sexual assault.

4.4 Meeting the needs of specific groups of victim-survivors

We know from the National Royal Commission that children who are Aboriginal, have disabilities, are from culturally and linguistically diverse backgrounds or identify as LGBTQIA+ and who have experienced trauma or neglect are at higher risk of sexual abuse and are more likely to receive an inadequate response to sexual abuse than other children.[165]

The National Royal Commission described an 'acceptable' service system as one that:

> ... considers the diversity of individuals who have been affected by institutional child sexual abuse and is responsive to their lived, social and cultural contexts. Services should be culturally appropriate and aware of needs related to disability, gender and sexuality, particularly in regional areas where choice of services is limited.[166]

In this section, we consider the acceptability of the Tasmanian service system for sexual assault, and areas in which it might be improved for victim-survivors and children who have displayed harmful sexual behaviours in the following cohorts:

- children—they require a more family-based and developmentally appropriate approach than adult victim-survivors
- people with disability or a mental health issue
- people who identify as LGBTQIA+
- male victim-survivors

- people from culturally and linguistically diverse communities
- Aboriginal people.

We also consider how the Arch centres can be designed to ensure they are acceptable to a diverse range of victim-survivors.

There is significant scope for the service sector in Tasmania to improve care provided to victim-survivors who have specific needs. For mainstream services, this includes equipping and training the workforce and collaborating with sexual assault services. Also, the National Royal Commission noted that there is 'very little research' on effective treatment for some of these groups and that more is needed to inform practice.[167]

4.4.1 Children as a subspeciality

The Sexual Assault Support Service told us that about one-third of the referrals they receive are for child victim-survivors.[168] As indicated above, the Sexual Assault Support Service and Laurel House prioritise children on their waiting lists.[169]

The National Royal Commission established that, to be effective, sexual assault services for child victim-survivors need to slightly differ from those for adult victim-survivors, namely:

- they should be flexible and appropriate for the child's developmental stage
- practitioners working with children 'need to have specialist expertise and be appropriately qualified'
- therapy needs to involve non-offending carers and family
- it can be helpful to involve the child's school
- traumatised children can benefit from programs in non-clinical settings that help build their sense of confidence more generally.[170]

We heard evidence to suggest that Laurel House and the Sexual Assault Support Service attempt to involve schools and families in a child victim-survivor's treatment and, in the case of harmful sexual behaviours, Mission Australia assists with case management.[171]

Such a systemic approach with a child victim-survivor is more time-intensive than the direct therapy usually provided to an adult victim-survivor. Therefore, services will need more funding to provide a suitable child-appropriate service than for the same number of adult clients.

4.4.2 Victim-survivors with disability

The limited evidence available about the prevalence of the child sexual abuse of children with disability suggests that these children are three times more likely to experience

child sexual abuse than other children.[172] The rates are even higher for female children and children with intellectual and behaviour-related disabilities.[173]

A range of factors is thought to account for this increased risk:

- children with disability have more exposure to health, medical and other disability-related services, making them more susceptible to mistreatment from service staff
- children with disability are often socially isolated due to stigma and discrimination
- the increased risk arising from their disability is compounded by other risk factors common to many children with disability, such as gender, age, socioeconomic disadvantage and Aboriginality
- their disability may make it harder for them to communicate and disclose child sexual abuse
- families often depend on services and so are reluctant to complain
- the increased regular personal touch associated with physical therapies and personal care can cause a child to develop a 'broken touch radar' so they do not recognise inappropriate touch or realise that their bodies belong to them and they are entitled to privacy
- adults often expect children with disability to be more compliant than other children
- adults can misinterpret a child's attempts to communicate distress or attempts to disclose as disobedience or part of their disability.[174]

In response to the specific needs of victim-survivors with disability, the National Royal Commission recommended, as Recommendation 9.3, that:

> The Australian Government and state and territory governments should fund support services for people with disability who have experienced sexual abuse in childhood as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse.[175]

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability may make more recommendations on providing sexual assault services to people with disability. In the interim, the National Royal Commission's Recommendation 9.3 needs to be fully implemented.

The Tasmanian Government reported its progress towards implementing this recommendation in its *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027*.[176] This plan commits to a 'new Disability Action Plan' for the State and, more relevantly, to:

> Deliver funding for community-based projects to support inclusion, access and equity to support diverse Tasmanians who experience barriers for accessing support for family and sexual violence … This includes … Tasmanians with a disability …[177]

While we welcome recognition of the needs of people with disability, we found it difficult to understand the nature and extent of the Government's commitment. Moreover, it was the only action in the plan that related to victim-survivors of sexual assault who have disability.

Children with disability are also more likely to engage in or be subjected to harmful sexual behaviours.[178] We heard in the out of home care stakeholder consultation that it is difficult to find therapists in Tasmania who can deliver specialised interventions to these children.[179] This issue is not unique to Tasmania—there is generally a lack of trauma-informed resources and specially trained therapists to deliver such interventions.[180]

The National Royal Commission observed that the disability service system can be siloed from other service systems.[181] Consequently, disability services remain largely non-trauma informed.[182] Conversely, trauma and mental health services struggle to know how to respond to their clients who have disability.[183]

There are some examples of attempts to cross this divide. For example, Laurel House has a Disability Workforce Support Project to raise awareness of, and the responses of carers and professionals to, the sexual assault and abuse of people with disability.[184] It is designed to improve the response of those directly supporting victim-survivors who live with disability. The toolkit and resources webpage provides extensive information about sexual violence and people with disability, including communication guides, trauma-informed approaches, how to respond to a disclosure, referral pathways and links to advocacy services and specialist disability supports for victim-survivors.[185]

In view of the silos that exist, we suspect that a multipronged solution will be required to improve the quality of therapeutic services for children with disability who have engaged in harmful sexual behaviours and sexual assault services for victim-survivors of child sexual abuse who have disability. This would likely include measures to increase the inclusiveness of sexual assault services, as well as to make disability services more trauma-informed and knowledgeable about child sexual abuse.

The Tasmanian Government should ensure victim-survivors with disability can access appropriate supports, including children with disability who need help with harmful sexual behaviours. On 13 September 2022, the Tasmanian Minister for Disability Services announced the appointment of 'the State's first Interim Disability Commissioner'.[186] We consider the new Interim Disability Commissioner should be closely consulted in achieving this outcome.

4.4.3 Victim-survivors who identify as LGBTQIA+

The National Royal Commission heard that there are:

> … particular barriers to disclosing child sexual abuse and seeking support faced by victims and survivors who identify as lesbian, gay, bisexual or transgender

> … marginalisation and a lack of understanding in the service system may act as a barrier to effective support.[187]

It also found that victim-survivors who identify as lesbian, gay, bisexual or transgender—due to experiencing significant levels of sexual violence, abuse, discrimination, shame, transphobia, homophobia, keeping a low profile and invisibility—may be less likely to access support services.[188]

We heard during hearings that children and young people who identify as LGBTQIA+ are more vulnerable to being groomed and sexually abused, as well as being less likely to report abuse, partly due to not feeling safe and accepted.[189] Also, in a school setting—where these children are at greater risk of experiencing harmful sexual behaviours—disclosures are often not responded to appropriately, further marginalising victim-survivors and dismissing their experiences.[190]

One transgender victim-survivor told us that the abuse she experienced, as well as the inadequate response she received when she disclosed to the institution and to police, were part of a broader context of her experiences of homophobic and transphobic bullying.[191] We also heard from a non-binary victim-survivor who experienced violence and sexual abuse by several abusers; this was partly linked to the vulnerabilities associated with not conforming to gender norms.[192] Over many years, they also experienced significant difficulties accessing effective services that accounted for gender identity and sexuality.[193]

In the absence of substantial research into effective treatment, at a minimum staff must have an awareness of the challenges faced by victim-survivors who identify as LGBTQIA+ and be adequately trained to meet their needs, either via their own services or effective collaboration. This is an area that warrants more attention from service providers in Tasmania.

4.4.4 Male victim-survivors

We heard from many male victim-survivors of institutional child sexual abuse in Tasmania, such as Robert, who bravely reached out for help.

Robert's experience

> … here I was, 6 foot 6, walk into [the Sexual Assault Support Service], and I was standing behind a lady with her daughter and they moved on, and the lady behind the counter looked up at me and she said, 'Oh, what do you want?', and, yeah, at that time I broke down because it was … and I said, 'I'm here, I've been sexually abused as a kid', and she went, 'Oh, oh', and ran off and grabbed someone, but it was that kind of reaction of, you know, obviously they don't get men or, you know, coming in all that often, let alone maybe sort of tall people that they would consider to be sort of strong enough to not go and get abused; yeah, everyone's a kid at some stage, yeah.[194]

Although overall, more females than males report child sexual abuse, there is still a substantial number of male victim-survivors who need to access the therapeutic service system.[195] Evidence suggests that historically more males than females experienced child sexual abuse in an institutional setting.[196]

The National Royal Commission observed that male and female victim-survivors of child sexual abuse often have different needs, and so sexual assault services must consider the needs of males who seek their services.[197] This could be particularly important for services set up to respond to gendered violence, where males are not immediately considered to be potential victim-survivors. The National Royal Commission heard that the greater number of female counsellors in sexual assault services can restrict males' access to a male counsellor, which some would prefer.[198]

Therefore, it is important that male victim-survivors are included in the adult victim-survivors of child sexual abuse advisory group (refer to Recommendation 19.5 in Chapter 19) and that sexual assault services ensure they are set up to meet the needs of men and boys who seek help. Also, the Government must increase the visibility of sexual assault services as catering to male victim-survivors.

4.4.5 Victim-survivors from culturally and linguistically diverse backgrounds

The National Royal Commission heard that people from culturally and linguistically diverse backgrounds face specific barriers to accessing appropriate services. These include:

- concerns around privacy, confidentiality and conflicts of interest in small communities
- inadequate cultural competence among practitioners, including lack of knowledge of culturally acceptable ways to discuss sex and sexuality
- racism and discrimination from service staff
- mainstream services offering individualised responses where community-based approaches may be more culturally appropriate
- multicultural organisations lacking training in child sexual abuse
- lack of appropriate referral pathways
- scarcity of interpreters able to work appropriately with victim-survivors who are independent of the victim-survivor's community
- failure to provide culturally appropriate information about child sexual abuse and available services in different languages.[199]

We received limited information about victim-survivors from culturally and linguistically diverse backgrounds overall. In Hobart and Launceston, we contacted agencies that

support culturally and linguistically diverse communities.[200] We invited them to speak with us but, unfortunately, none provided information or attended stakeholder consultations.

However, given the findings of the National Royal Commission and our awareness of the needs of culturally and linguistically diverse people in Tasmania, we consider there is room for improvement in creating specialist sexual assault services for victim-survivors that can accommodate people from a variety of backgrounds in a culturally appropriate way, including greater collaboration. The National Royal Commission found that collaboration 'is particularly important for meeting the needs of victims and survivors from culturally and linguistically diverse backgrounds'; this can mean integrating specialist culturally and linguistically diverse services into mainstream services or coordinating victim-survivors' care in different parts of the service system.[201]

4.4.6 Diversity and inclusion at Arch centres

All victim-survivors should have choices and be able to access the specialist knowledge that Arch centres are designed to provide. Therefore, it is essential that Arch centres respect diversity and inclusion.[202] Laurel House Chief Executive Officer, Kathryn Fordyce, said that centres 'should be welcoming and engaging for children and adults regardless of gender, sexuality, disability, cultural background and experience'.[203] Tasmania Police Commissioner Hine indicated that:

> ... there will be services engaged to provide specialised advice and support who are not co-located but are within close proximity to the facility. These will include services specific to the individual needs of people with a disability, culturally diverse and indigenous cultural requirements.[204]

Given the centrality of collaboration to successful therapeutic care, it will be important for Arch centres to carefully consider how services directed at particular groups will work alongside those at the centres. It is not enough to engage specialist services; mainstream services must 'have the skills and capability to respond effectively to diverse needs or collaborate with other agencies to meet those needs'.[205]

Recommendation 21.6

1. The Tasmanian Government should ensure that the needs of particular groups of victim-survivors are met by the therapeutic service system and related contracting of services, including the needs of:
   a. children who are victim-survivors or have displayed harmful sexual behaviours (Recommendation 21.8)
   b. victim-survivors with disability or mental illness

c. victim-survivors who identify as LGBTQIA+

d. male victim-survivors

e. victim-survivors who are from culturally and linguistically diverse backgrounds.

2. The Tasmanian Government should consult on the therapeutic service system with relevant stakeholder groups, including the Interim Disability Commissioner, community groups and representative bodies.

4.4.7 Aboriginal healing centres

The National Royal Commission recommended that federal, state and territory governments fund Aboriginal and Torres Strait Islander healing approaches as part of therapeutic services for victim-survivors of child sexual abuse.[206] Despite this, in Tasmania there are no specific Aboriginal healing services for victim-survivors of child sexual abuse. The Tasmanian Aboriginal Centre provides some therapeutic services via programs such as its health services, family services and children's services.[207] While victim-survivors are generally supported to access mainstream sexual assault counselling services, the Tasmanian Aboriginal Centre also employs some practitioners 'with specialist experience in sexual assault treatment'.[208] Other Tasmanian Aboriginal organisations also support community members in various ways, including with healing from child sexual abuse, but do not have targeted programs.[209]

Heather Sculthorpe, Chief Executive Officer, Tasmanian Aboriginal Centre, told us that some of the barriers to providing Aboriginal healing services include inconsistent government funding as well as 'narrowly targeted funding' that does not 'recognise the importance of ongoing relationships in the Aboriginal community'.[210]

Adding to this, our research found no evidence to suggest that existing sexual assault services have sought to specifically develop culturally appropriate approaches. This may create a barrier for Aboriginal people to access sexual assault services because they appear intrinsically 'white', and limit the effectiveness of counselling provided to those Aboriginal victim-survivors who do engage. Participants in one consultation told us that the 'white' way of counselling not only differs from but it also 'undermines the First Nations approach'.[211] One Aboriginal victim-survivor told us that support services consistently failed to take into account cultural identity, which compounded their trauma.[212] We also heard that existing services do not necessarily have capacity: 'when abuse happens, you need timely support—there is a waitlist for everything'.[213]

When we conducted consultations with Aboriginal communities, we frequently heard about the lack of culturally appropriate therapeutic services in Tasmania. We heard about the following service needs:

- Aboriginal-led therapeutic services across the State that encompass an understanding of intergenerational trauma and are genuinely designed and led by Aboriginal people:

  > It has to be authentic co-design, not Aboriginal people being asked afterwards … You need to listen to our ideas because our communities worked for thousands of years. The government is always trying to come up with these innovative things, but the knowledge is already sitting there in Aboriginal communities … Let us mend and fix our community.[214]

- Aboriginal-run cultural healing centres on Country across the State where children and families can visit or stay to receive support (this is also discussed in Chapter 9): 'We need our kids to have a space where they can be with community members and still looked after'.[215]

- Training and development opportunities to support Aboriginal people to gain therapeutic skills to benefit their communities:

  > We need training for our mob.[216]

  > Our kids want to talk to someone from their community, work with someone from their community.[217]

- Consistent funding for therapeutic programs, including those that are already working well. Organisations 'have to have reliable funding, otherwise you are playing with people's lives'.[218]

Given the over-representation of Aboriginal children in out of home care and in youth detention, and that harmful sexual behaviours often occur in those settings, these therapeutic programs also need to be equipped to address harmful sexual behaviours.

We heard that part of embedding culture is having programs that are Aboriginal-led and -controlled. Ms Sculthorpe stated that successful programs require 'Aboriginal decision-making in the context of Aboriginal community control'.[219] This approach is supported by the Healing Foundation, which, in response to the National Royal Commission, found that:

> … a culturally based approach to understanding trauma and to resourcing healing and recovery is required by Aboriginal and Torres Strait Islander people who have been, or may in the future be, sexually abused in public and private institutions, and that healing is most effective when designed, developed and delivered by Aboriginal and Torres Strait Islander people with and for their own communities.[220]

In Chapter 9 on out of home care, we recommend establishing recognised Aboriginal organisations (Recommendation 9.15). We also recommend implementing all elements of the Aboriginal and Torres Strait Islander Child Placement Principle (Recommendation 9.15).[221] This recommendation includes investing in Aboriginal-led targeted early intervention and prevention services, transferring decision-making authority to

Aboriginal organisations and establishing therapeutic residential programs for Aboriginal children. There is also a need for Aboriginal-led healing programs to be established more widely.

We are pleased that the Tasmanian Government has recognised this service gap and has committed in *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* to Aboriginal-led 'deep collaboration' with Aboriginal organisations to 'agree actions and strategies to prevent and respond to family and sexual violence in the Aboriginal community'.[222]

Models for Aboriginal services can be found nationally and may be useful to inform programs in Tasmania. For example, alongside community members, the Healing Foundation has developed resources, such as a guide to establishing 'healing centres' and a training program for communities working with victim-survivors of child sexual abuse.[223] The central tenets of these resources—such as strengthening connections to community and culture and emphasising design and implementation by and for Aboriginal people—are reflected in the ideas shared with us by local Aboriginal communities.[224]

It became apparent during our community consultations that the healing of Aboriginal victim-survivors is inextricably linked to colonisation and intergenerational trauma, as well as to cultural and family needs: 'when something happens to someone in our mob, it affects all of us'.[225] While this broader landscape extends beyond our terms of reference, we consider that to be effective and culturally appropriate, Aboriginal healing services developed for victim-survivors of child sexual abuse must be broad in scope and enabled to take a holistic approach.

Similarly, we heard from Aboriginal communities about how taxing it can be to be frequently 'consulted' by government, especially when consultation does not result in desired changes. One participant spoke about contributing to numerous consultation processes but never seeing change: 'look where we are. I'm tired. I'm so tired'.[226] In consultation processes, Aboriginal communities nationwide are generally 'asked to do a lot of work, a lot of which is unpaid or un-resourced'.[227] Consequently, developing existing and new healing services must be carefully planned, well-funded and Aboriginal-led to avoid unfairly adding to this burden.

In addition to Aboriginal-led healing approaches, existing sexual assault services should improve their cultural appropriateness for Aboriginal victim-survivors. For a variety of reasons, some Aboriginal people will prefer to seek support from non-Aboriginal-led services, so sexual assault services need to become more comfortable and effective for Aboriginal victim-survivors of institutional child sexual abuse. One important way of achieving this is to ensure these agencies have representation from Aboriginal communities on their boards of management or in their executive structures. In that way, sexual assault services would have an internal source of assistance to improve the cultural appropriateness of their services.

Recommendation 21.7

The Tasmanian Government should improve healing services for Aboriginal victim-survivors and their families and communities by:

a. fully resourcing and supporting recognised Aboriginal organisations across the state to design, develop and deliver Aboriginal-led healing approaches targeted to victim-survivors of child sexual abuse

b. ensuring Aboriginal representation on the boards of management or in the executive structures of sexual assault services.

5 Strengthening services for children who have displayed harmful sexual behaviours

Terminology and definition

We have adopted the National Office of Child Safety National Clinical Reference Group's draft definition of harmful sexual behaviours, which was proposed in December 2022, for general use across Australian jurisdictions:

> Harmful sexual behaviours are 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.[228]

We note that the National Office for Child Safety is continuing to work with the National Harmful Sexual Behaviours Clinical Reference Group, states and territories to finalise a nationally endorsed definition of harmful sexual behaviours. This definition, when finalised, should inform the definition in the whole of government harmful sexual behaviours framework (Recommendation 21.8) and related Tasmanian Government documents, policies and practice guidance.

For the following reasons provided by harmful sexual behaviours researcher Dr Gemma McKibbin, we have also taken care with the use of the terms 'victim', 'victim-survivor' and 'perpetrator' in this section, in keeping with the general view of the sector that children who engage in harmful sexual behaviours need help and assistance:

> The binary between victim and perpetrator in instances of harmful sexual behaviour is not always clear. For example, in situations of sibling sexual abuse that is, where two or more siblings engage in sexual behaviour with one another, the initiator of the behaviour can change, and one sibling can be the perpetrator in one instance and the victim in another. It is important to use person-centred language; this means that we talk about the problem behaviour and not the problem child. It is important that we do not use stigmatising language as this actually inhibits children from recovering from being sexually abusive. I always use the language 'child or young person displaying harmful sexual behaviour'.
>
> Perpetrator is not the right term to use in the context of children and young people who sexually harm because it is stigmatising and obfuscates the harm that children have often experienced themselves. I do tend to use the term 'victim-survivor' for children or young people who have been sexually harmed by other children or young people. However, in some cases of sibling sexual abuse, the victim may also be a child who sexually harms. Further, a child who sexually harms is likely to be a victim of abuse in their own right. In this way the victim/perpetrator binary does not hold in cases of harmful sexual behaviour and more sophisticated thinking is needed in this space that accounts for the complexity of victimisation experiences.[229]

For the purposes of highlighting the specific therapeutic needs of children who have engaged in harmful sexual behaviours, we have distinguished between children who have engaged in harmful sexual behaviours and those who have been subject to them. As mentioned, we have considered those children who have been subject to another's harmful sexual behaviours as 'victim-survivors' in terms of their therapeutic needs—that is, they will likely require sexual assault counselling in the same way as other victim-survivors of child sexual abuse. But the distinction is somewhat artificial because many children who have engaged in harmful sexual behaviours are themselves victim-survivors of sexual abuse. Such children will need a therapeutic approach that addresses both their harmful sexual behaviours and their sexual abuse experiences. Therefore, it is common in other jurisdictions, as in Tasmania, for the harmful sexual behaviours service system to exist within the broader child sexual abuse therapeutic service system.

The National Royal Commission recognised that harmful sexual behaviours can have similar negative effects on a child as sexual abuse by an adult.[230] Recognising the significance of the issue, the National Royal Commission dedicated an entire volume to the issue of harmful sexual behaviours.[231] It made seven recommendations about harmful sexual behaviours in general, which required the Australian and state/territory governments to fund primary and secondary prevention strategies or services, and tertiary therapeutic services. In relation to harmful sexual behaviours, in summary, the National Royal Commission recommended that:

- support services be accessible for all children and young people, regardless of age, incarceration, voluntary status, disability, cultural background, gender, sexual orientation, geographic location, setting or the nature of the sexual behaviour
- support be increased for generalist counselling services to improve their responsiveness to harmful sexual behaviours
- therapeutic services be safe, developmentally appropriate, trauma-informed, culturally informed, have clear referral pathways and provide a systemic intervention, with good staff training and supervision
- therapeutic services be evaluated to ensure effectiveness.[232]

We heard of significant problems with how institutions responded to harmful sexual behaviours in schools, out of home care and Ashley Youth Detention Centre (refer to Chapters 5, 6, 8, 9, 11 and 12). These institutions appear to be the most at risk of harmful sexual behaviours occurring.[233]

A mother's experience—the importance of timely intervention

A mother told us that her two primary-aged children were sexually abused by an older boy from school. They told her that he was coercive and violent. She described her children's traumatised responses of incontinence, emotional outbursts, self-harm and drawing sexual pictures.

Both children have disability, and the mother expressed fear for their mental health because they have told her they should kill themselves. She has experienced difficulty accessing timely and affordable services for them.

The older boy who displayed harmful sexual behaviours also has disability and has experienced violence in his home. The mother said she felt sorry for the boy, but she described the frustration of knowing that other parents had raised concerns about the older boy displaying harmful sexual behaviours before her, but the school took a long time to act, even after her complaint.

The mother said the school, because of privacy reasons, would not tell her if the boy was getting therapeutic help. She felt powerless to protect her children, so she changed schools, but she is worried for other students.[234]

5.1 Understanding harmful sexual behaviours

Understanding harmful sexual behaviours and how to address these behaviours effectively is a rapidly developing field. Most frameworks consider the behaviours as occurring along a continuum of increasing deviation from what is considered normal for a child's developmental age in terms of severity, duration and impact.[235] They also consider that children engage in harmful sexual behaviours for a combination of reasons; these reasons are often called 'pathways' to harmful sexual behaviours.[236]

Due to this variation in severity and motivation, not all children who have engaged in harmful sexual behaviours will benefit from the same form of therapeutic intervention, and responses to harmful sexual behaviours need to be 'both proportionate and appropriate'.[237] For example, for less severe incidents that are motivated by misguided curiosity about sex, setting boundaries and educating about consent and appropriate behaviours are likely to be sufficient interventions to prevent a child engaging in those behaviours again.[238] However, the more severe and persistent the behaviour, the more likely a child will need a more intensive specialised therapeutic response. Often criminal justice and child protection responses are also involved, depending on the circumstances of the behaviour.[239] If the behaviour has occurred in youth detention or in an out of home care or school environment, those settings also will need to be involved in the response.

While research has shown that most adult sex offenders started their offending as teenagers, experts in harmful sexual behaviour interventions generally agree that therapeutic intervention for most children who engage in harmful sexual behaviours is effective in stopping the behaviours.[240]

Therefore, early intervention to address harmful sexual behaviours is paramount to prevent recurrence and minimise harm.[241] Therapeutic intervention for harmful sexual behaviours requires specialist skills and training in addition to that required for counselling for child sexual abuse.[242]

In terms of the intensive specialised response required for children who have displayed behaviours further along the spectrum, recent literature reviews indicate that evidence for using any of the main approaches across a variety of settings is still being established.[243] The experts we heard from suggested that several approaches could be effective when responding to harmful sexual behaviours.[244] Rather than recommending a particular model, Dale Tolliday, a harmful sexual behaviours clinician, recommends that the Tasmanian Government adopts 'best practice principles for therapeutic intervention for children with harmful sexual behaviours, which are relevant to children of all ages', as identified by the National Royal Commission.[245] Mr Tolliday and researcher, Dr Gemma McKibbin, recommended that therapeutic interventions should have certain key characteristics, which we have consolidated and summarised. Interventions should:

- be accessible to all children with harmful sexual behaviours and delivered early
- be based on an individual assessment of each child, with tailored therapy that takes a contextual and systemic approach, recognising other problems in the child's life
- be safe, including through being non-punitive, trauma-informed and culturally safe
- assign accountability and responsibility for the harmful sexual behaviours
- focus on behavioural change and work towards broader outcomes than simply reducing harmful sexual behaviours
- use developmentally and cognitively appropriate interventions based on techniques that are specialised for treating harmful sexual behaviours
- be delivered by staff who have specialist training and supervision
- actively involve the parent or caregiver to support treatment.[246]

Mr Tolliday recommended that in developing its approach the Government considers these characteristics, as well as ensuring the model is suited to the way services are organised.[247]

In keeping with the National Royal Commission's findings, Mr Tolliday said specialist harmful sexual behaviours treatment should sit within a broader public health approach to improve knowledge about harmful sexual behaviours and how to respond to them:

> In particular, building service system capacity should include key general and focused prevention actions (primary and secondary prevention), building generalist service capacity to respond (such as schools, GPs, childcare services, child and youth counselling) as well as specialist services. Building only a specialist service limits [the] response to a limited number of children and families and the scale and scope of [problematic and harmful sexual behaviours] demands a larger and more comprehensive strategy.[248]

We agree.

5.2 The Tasmanian Government's response

The Department of Communities stated that the Government had responded to the National Royal Commission's recommendations by:

- contributing to and signing on to the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (released on 27 October 2021)

- funding the Sexual Assault Support Service for two years from 1 April 2021 to provide a statewide therapeutic program for children with harmful sexual behaviours (called Prevention, Assessment, Support and Treatment, discussed in Section 5.2.1), which the then Department of Communities said fulfils the principles in the National Royal Commission's Recommendation 10.5
- funding the Sexual Assault Support Service for two years from 1 April 2021 to provide primary and secondary prevention programs for children engaging in problematic sexual behaviours (under the Prevention, Assessment, Support and Treatment program)
- funding an independent evaluation of the Sexual Assault Support Service's Prevention, Assessment, Support and Treatment program for harmful sexual behaviours
- the Department of Justice representing Tasmania on the Inter-jurisdictional Working Group on Therapeutic Responses for Children with Problematic and Harmful Sexual Behaviours.[249]

Apart from contributing to the two national initiatives, the Tasmanian Government's primary response to the National Royal Commission's recommendations about harmful sexual behaviours is to fund a non-government organisation (the Sexual Assault Support Service) to deliver the Prevention, Assessment, Support and Treatment program.

While recognising the outstanding efforts of the Sexual Assault Support Service in identifying a service gap and attempting to fill it, we are concerned that this approach is not enough, which we discuss in Section 5.4.

5.2.1 Prevention, Assessment, Support and Treatment program

Before April 2021, as part of their normal service delivery, Laurel House and the Sexual Assault Support Service provided interventions for children up to age 11 or 12 who had displayed harmful sexual behaviours.[250]

In April 2021, the Sexual Assault Support Service received government funding to provide a free, statewide specialist harmful sexual behaviours prevention and therapeutic intervention program for children up to 17 years of age—the Prevention, Assessment, Support and Treatment program.[251] Laurel House also said it will still see children under 12 who have displayed harmful sexual behaviours in northern Tasmania and the North West, but it is not specifically funded for that work.[252] Victim-survivors of harmful sexual behaviours can access supports through the Sexual Assault Support Service's and Laurel House's usual sexual assault counselling services.

The prevention and early intervention element of the Prevention, Assessment, Support and Treatment program involves the Sexual Assault Support Service presenting training sessions for school staff, Child Safety Service staff and other community members about how to prevent harmful sexual behaviours and respond to them appropriately if they occur.[253] The service also presents sessions in primary and high schools about consent and respectful relationships that complement the sessions with school staff.[254]

We consider that the funding for this aspect of the Prevention, Assessment, Support and Treatment program is insufficient. The program is funded to provide the full set of harmful sexual behaviours awareness and response sessions to only four schools per year, although the Department for Education, Children and Young People funds another four.[255] Other schools can purchase the training from the Sexual Assault Support Service.[256] We calculate that, without schools purchasing the training themselves, it would take the Sexual Assault Support Service about 24 years to present government funded harmful sexual behaviours sessions to all 195 government schools in Tasmania.[257] In Chapter 6, we recommend mandatory child sexual abuse prevention education in all schools.

The therapeutic element of the Prevention, Assessment, Support and Treatment program is funded for one specialist harmful sexual behaviours counsellor to work three days a week in each region: southern Tasmania, northern Tasmania and the North West.[258] Mission Australia delivers case management for families alongside the Sexual Assault Support Service's therapeutic intervention to assist with other issues that are assessed as contributing to the behaviours—for example, assisting to gain access to National Disability Insurance Scheme supports for a child with disability whose needs are not being appropriately addressed.[259]

Initially the program was funded for two years as a pilot, but Action 28 of *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* states that the Government will 'continue to deliver' the program.[260] Although Action 28 lacks detail, we hope this means the program will be funded on an ongoing basis.[261]

In the year following the start of the program in April 2021, the Sexual Assault Support Service said it received 90 referrals for children who had displayed harmful sexual behaviours.[262] Many of the referrals were from schools, parents and the Child Safety Service.[263] As of 31 March 2022, the program had 29 active clients engaged with a therapist and an average waiting list of 10 children, who can wait from four-to-10 weeks for therapy.[264]

Despite the recent introduction of this therapeutic service for harmful sexual behaviours, we heard in submissions and at consultations that some people are still concerned about a lack of available therapeutic services in Tasmania for children exhibiting harmful sexual behaviours.[265] Renae Pepper from the Sexual Assault Support Service told us that they have not actively promoted the Prevention, Assessment, Support and Treatment

program due to limited funding and said there have been plenty of referrals since starting the program; promotion would only exacerbate waiting lists.[266]

We consider that although funding the Prevention, Assessment, Support and Treatment program is a welcome start, the Government needs to increase the capacity of the therapeutic component of the service system's response to harmful sexual behaviours. In addition, for all the reasons outlined above in relation to appropriate sexual assault services, these therapeutic services need to be designed to meet the needs of particular groups of children, including those with disability, who identify as LGBTQIA+, who are from a culturally or linguistically diverse background, or who are Aboriginal. It should be accessible to children statewide.

5.2.2 Government agency responses

School-based responses

The Department for Education, Children and Young People has initiated its own response to the issue of harmful sexual behaviours among students in Tasmanian schools, including a flowchart to guide principals' responses, a working group focused on the issue and appointing extra senior support staff.[267] Timothy Bullard, Secretary of the Department, told us that the Department had received extra funding in the 2021–22 State Budget to equip staff to identify and respond to harmful sexual behaviours in schools.[268]

The Department's approach appears to be based on the same model of understanding harmful sexual behaviours as the Sexual Assault Support Service has used for the Prevention, Assessment, Support and Treatment program: Hackett's continuum of harmful sexual behaviours.[269] We anticipate that by using the same model and linking its response to the Prevention, Assessment, Support and Treatment program, the Department can develop a common understanding of harmful sexual behaviours and the roles of schools and Prevention, Assessment, Support and Treatment therapists when coordinating a response.[270]

Unfortunately, the Department's response for schools is not replicated elsewhere in Tasmanian Government institutions, because other areas that are often involved with children who have engaged in harmful sexual behaviours have not taken similar steps to improve their understanding of, or response to, harmful sexual behaviours.

Child protection responses

Many professionals and government employees are mandatory reporters and will advise the Advice and Referral Line of concerns about a child who has displayed harmful sexual behaviours. Concerned parties will also contact the Advice and Referral Line for advice and referral for a child's sexualised behaviours.

The National Royal Commission considered that a child protection response to harmful sexual behaviours (in Tasmania this would involve the Advice and Referral Line referring the matter to the Child Safety Service) is generally only appropriate where other children are at risk and there is no parent who can act protectively.[271]

However, the need for protection is not always immediately clear. While the child's behaviour may imply a risk to other children, research indicates that children who have engaged in harmful sexual behaviours may themselves be at risk of harm and in need of care and protection.[272] Consequently, staff taking calls at the Advice and Referral Line need to have a nuanced understanding of, and ability to enquire into, the circumstances of an incident of harmful sexual behaviours.

Despite this, we heard evidence that suggested Advice and Referral Line staff were not always knowledgeable enough about responding to harmful sexual behaviours, particularly in institutional settings.

In Chapter 8 on out of home care, we report the results of our analysis of the files of 22 children in out of home care and note that Child Safety Officers did appear to refer children for specialist harmful sexual behaviour interventions. However, at our consultation with out of home care providers, they suggested that this is not consistently the case.[273] They also considered that the Child Safety Service relied too heavily on Tasmania Police to respond to instances of harmful sexual behaviours.[274] Given that out of home care is a high-risk institutional environment for children experiencing harmful sexual behaviours, we identify in Chapter 9 that the Child Safety Service and out of home care providers, carers and volunteers should be supported to build their knowledge and skills concerning harmful sexual behaviours.[275]

As established in Chapter 9, the Advice and Referral Line and the Child Safety Service receive little mandatory specialised training in child sexual abuse or harmful sexual behaviours, nor do they have a clear policy to guide staff when assessing and responding to harmful sexual behaviours.[276] The only real direction provided to the Advice and Referral Line staff by the Child Safety Service is the *Assessing and Responding to Sexual Abuse Procedure*.[277] The procedure instructs Advice and Referral Line staff to record a contact about a child's harmful sexual behaviours in the Child Advice and Referral Digital Interface and—if the child is 10 years of age or older—to record it as an 'incident' in the Child Protection Information System.[278] In some circumstances, the procedure suggests the Advice and Referral Line may refer a concern about a child who has engaged in harmful sexual behaviours to the Child Safety Service for assessment and/or to police, although the procedure is not clear about when this might occur.[279]

We are not confident that Advice and Referral Line staff have been supported with the skills and knowledge to ensure children who have engaged in harmful sexual behaviours or who are victim-survivors of harmful sexual behaviours are protected, as well as

referred for appropriate therapeutic supports. The Government should address this gap in developing a whole of government framework to address harmful sexual behaviours and in drafting detailed and specific out of home care policies, protocols and practice guidance to support best responses to harmful sexual behaviours displayed or experienced in out of home care (Recommendation 9.28). There should also be mandatory induction and ongoing professional development about child sexual abuse and harmful sexual behaviours, as well as policy guidance and access to the Harmful Sexual Behaviours Support Unit for assistance (refer to Recommendation 9.28).

Criminal justice responses

A criminal justice response will be relevant only for a minority of harmful sexual behaviours that meet the criteria for a potential criminal offence. These cases require that the child displaying the behaviours is old enough to be considered to have criminal responsibility for their actions under the law and for the behaviour itself to amount to the physical element of a criminal offence.[280] However, Tasmania Police will often need to be involved in a case of harmful sexual behaviours to determine if the behaviour meets the threshold for charges to be laid, and if there is enough evidence for a charge.

Police may receive a report about a child who has engaged in harmful sexual behaviours from the Advice and Referral Line, the Child Safety Service, a school or from a parent.[281] Our analysis of the 22 files of children in out of home care, set out in Chapter 8, confirmed that Tasmania Police and the Child Safety Service regularly refer incidents of harmful sexual behaviours to each other.

However, the Sexual Assault Support Service expressed concern about the coordination of referrals from Tasmania Police for therapeutic support services for victim-survivors of harmful sexual behaviours.[282] It said the service receives very few referrals for harmful sexual behaviours from police and that those they do receive may be inaccurate—for example, when a child is referred for harmful sexual behaviours, but upon inquiry the case is clearly one of child sexual exploitation.[283]

When deciding on a response, Tasmania Police indicated a preference for diversion in instances of harmful sexual behaviours.[284] We agree. But we acknowledge that there will be some children detained in youth justice due to engaging in sexual violence. In Chapter 16, we discuss the usefulness of a therapeutic component forming part of youth justice options for children who have been charged with or convicted of a sexual offence, using the court's diversionary powers.

The *Keeping Children Safe Handbook* outlines how Tasmania Police and the Child Safety Service will interact in response to child protection concerns.[285] Unfortunately, the handbook offers minimal direction to either agency in how to respond to harmful sexual behaviours, outside of referring one to the other in circumstances 'where a child is an alleged offender'.[286]

The use of terms such as 'alleged offender' or 'alleged perpetrator' are commonplace law enforcement terms. However, as discussed in 'Terminology and definition' above, such language stigmatises children who have displayed harmful sexual behaviours and can interfere with providing a trauma-informed response and therapeutic intervention.

To improve the effective response by Tasmania Police and the Child Safety Service to harmful sexual behaviours, the *Keeping Children Safe Handbook* should be updated to include clear directions that are trauma-informed and use language that reflects modern understandings of harmful sexual behaviours. Having shared definitions and understandings of harmful sexual behaviours will also help achieve a consistent response to this behaviour across government agencies.

5.3 Involuntary treatment

Jenny Wing, Chair of the peak body Victorian Harmful Sexual Behaviour Network, told us that most children who receive therapeutic interventions in the Victorian Sexually Abusive Behaviour Treatment Services do so voluntarily.[287] However, occasionally a family and/or their child will not consent to treatment, thus placing other children and the child themselves at more risk because the concerning behaviour goes unaddressed.[288]

If the Child Safety Service decides that a child does not need care and protection and the matter is not pursued by police, it can be difficult to impose interventions without parental agreement.[289] The National Royal Commission identified that 'in most states and territories, there is no express legal basis upon which child protection agencies can respond'.[290] The exception would be if it can be proven that the child is at risk of abuse or harm as required by the *Children, Young Persons and Their Families Act 1997*.[291]

Dale Tolliday, the harmful sexual behaviours treatment expert previously mentioned, told us that compulsory treatment for harmful sexual behaviours can be necessary, but should be a last resort:

> [Treatment] should be therapeutic rather than punitive. More coercive strategies may be required for more serious and/or repeat cases, or where engagement strategies fail, but effectively dealing with these behaviours early on is the best form of prevention.[292]

Where the child is not facing criminal charges for the harmful sexual behaviours, there is a need for a mechanism that would allow children with harmful sexual behaviours to be treated when parents or carers are unwilling to engage voluntarily.

The most logical way would be to amend the *Children, Young Persons and Their Families Act 1997* to provide an explicit legislative power to allow the Magistrates Court (Children's Division) to order a child to receive therapeutic intervention for harmful

sexual behaviours. This has been done successfully in Victoria with the introduction of therapeutic treatment orders and would empower the Child Safety Service to protect the child and other children in the complex context of harmful sexual behaviours.[293]

In Victoria, if a child appears before the Criminal Division of the Children's Court on a criminal charge and the court considers there are grounds to apply for a therapeutic treatment order in respect of the child, the Court can refer the matter to the Secretary of the Victorian Department of Families, Fairness and Housing for investigation.[294] In deciding whether to refer a matter to the Secretary, the Court must consider the seriousness of the child's sexually abusive behaviours, among other matters.[295]

If, on the application of the Secretary, the Family Division of the Children's Court makes a therapeutic treatment order in respect of the child, the Criminal Division must adjourn the criminal proceedings to enable the child to complete the therapeutic treatment order.[296] Once the child has completed the order, and the Criminal Division is satisfied that the child has attended and taken part in the therapeutic treatment program, the Court must discharge the child without any further hearing of the criminal proceedings.[297] We recommend that Tasmania adopts a similar mechanism (refer to Chapter 16).

The introduction of therapeutic treatment orders in Victoria has delivered secondary, and possibly more important, consequences for children with harmful sexual behaviours. Ms Wing observed better collaboration between statutory child protection, police, children's courts and the sexual abuse behaviour treatment services, as well as increased confidence in the effectiveness of harmful sexual behaviour interventions.[298]

5.4 A broader whole of government response

We are concerned that the Government's principal response to the issue of harmful sexual behaviours in Tasmania has been to fund a non-government organisation to provide a limited range of prevention and intervention services that does not meet demand. Apart from the Department for Education, Children and Young People's decision to improve its response to harmful sexual behaviours to align with the Prevention, Assessment, Support and Treatment program, the Government does not have a consistent response across agencies. This is far from sufficient to address the National Royal Commission's recommendations or, more importantly, to meet the needs of children who have displayed harmful sexual behaviours.

Other jurisdictions are working to standardise responses to harmful sexual behaviours, such as New South Wales' *Children First 2022–2031* shared whole of government framework for preventing and responding to problematic and harmful sexual behaviours by children and young people, which provides a sector-wide, multiagency public health approach.[299]

Other examples include Western Australia's *Understanding and Guiding Responses to Harmful Sexual Behaviours in Children and Young People* and South Australia's work towards an 'interagency response framework', which is underway with the University of South Australia (projects in which Commissioner Bromfield is involved).[300]

The Victorian Government has also developed a framework to respond to harmful sexual behaviours that includes prevention, early intervention and therapeutic intervention.[301] The Victorian Government has funded sexual abuse behaviour treatment services across the State since the early 2000s, which it 'attached' to its existing network of government funded non-government organisations that deliver specialist sexual trauma services across Victoria.[302] Ms Wing told us that the Victorian model of assigning harmful sexual behaviours services to geographical regions creates a more cooperative and better quality service system because it avoids the 'hostile environment' that can develop between agencies when funding is competitive.[303]

Ms Wing identified several advantages to harmful sexual behaviour interventions being delivered as part of the sexual assault service system, including harnessing existing expertise in child sexual abuse and the ability to adapt to local contexts.[304]

In addition to increasing the availability and accessibility of therapeutic services for children who have engaged in harmful sexual behaviours, the Tasmanian Government must also lead a whole of government response to harmful sexual behaviours. Undertaking this task will assist government agencies that have the greatest involvement with children who have displayed harmful sexual behaviours to be equipped to prevent and respond to the issue. The response must be coordinated across departments, which requires a common understanding of the issue and an agreed approach between departments and the therapeutic service system for harmful sexual behaviours.

The Tasmanian Government should develop a statewide framework for preventing, identifying and responding to harmful sexual behaviours. The framework should provide a common understanding of harmful sexual behaviours, high-level guidance on how to respond, and clear roles and responsibilities of different government provided and funded agencies in the response. The definition adopted in the framework should be informed by the work of the National Office for Child Safety in developing a revised national definition for harmful sexual behaviours.

In developing the framework, the Tasmanian Government should carefully consider when and for what purpose incidents of harmful sexual behaviours in government institutions should be reported to Tasmania Police and the Advice and Referral Line. This should consider the role of these agencies in responding to harmful sexual behaviours, different responses for children under and over the age of criminal responsibility, and the intention for harmful sexual behaviours to be responded to with diversionary and therapeutic responses in the first instance.

The Government should develop the framework in consultation with stakeholders and include the role of government funded services that form part of the State's harmful sexual behaviour response, such as the Prevention, Assessment, Support and Treatment program.

Services for children displaying harmful sexual behaviours should be considered in the Arch centres. We heard that such services are often co-located in multidisciplinary centres in Victoria, which facilitates collaboration and provides an advantage when dealing with in-family harmful sexual behaviours, because both the child who has experienced harmful sexual behaviours and the child who has displayed harmful sexual behaviours are seen in one location.[305] This means families do not need to 'tell their story multiple times' and staff develop 'a more sophisticated understanding of the dynamics of sexual violence'.[306] This practice would be possible at Arch centres.

The framework should be translated into action through detailed context-specific policies, protocols and guidance, including those we have recommended for education, out of home care and youth justice (refer to Recommendations 6.9, 9.28 and 12.30). We have identified several existing statewide frameworks developed for other jurisdictions above. While we do not recommend a particular framework, we note that the authors of these approaches appear to be open to making their work available and have made materials publicly available.[307] The Department would likely find it cost-effective to adapt material from existing approaches to the Tasmanian context.

Recommendation 21.8

1. The Tasmanian Government, in collaboration with key stakeholders, should develop a statewide framework and plan for preventing, identifying and responding to harmful sexual behaviours. The framework should:
    a. agree on a common definition and understanding of harmful sexual behaviours, including adopting a recognised, contemporary continuum of sexual behaviours from 'developmentally expected' to 'harmful'
    b. use an evidence-informed framework for understanding, preventing, identifying and responding to harmful sexual behaviours
    c. clarify the roles and responsibilities of the various agencies and departments involved in preventing and responding to the full continuum of harmful sexual behaviours, including programs delivered by non-government providers
    d. meet the needs of particular groups of children (Recommendation 21.6)

e. include structures to support ongoing engagement with emerging evidence regarding harmful sexual behaviours

f. include an evaluation framework.

2. The Tasmanian Government should ensure the therapeutic service system for children who have displayed harmful sexual behaviours:

   a. provides sufficient therapeutic services that can be accessed in a timely manner

   b. ensures timely access to therapeutic services for all children who need them, regardless of their age, identity or location in the state (including in youth detention)

   c. ensures specialist interventions for children with disability

   d. ensures all providers of therapeutic interventions for harmful sexual behaviours have Aboriginal representation in their governance structure.

3. The Tasmanian Government should provide ongoing and increased funding for specialist therapeutic interventions for harmful sexual behaviours that:

   a. ensures children who have displayed abusive or violent harmful sexual behaviours and their families need not wait more than two weeks for support when therapeutic treatment is required

   b. provides an advisory service for child-facing organisations, such as independent schools, childcare, disability and at-risk youth services and Tasmania Police (this service is not intended for the Department for Education, Children and Young People, which will have access to an internal Harmful Sexual Behaviours Support Unit (Recommendation 9.28))

   c. contributes to the statewide plan for preventing harmful sexual behaviours and its agencies' responses to children who have displayed such behaviours.

Recommendation 21.9

The Tasmanian Government should introduce legislation to amend the *Children, Young Persons and Their Families Act 1997* and the *Youth Justice Act 1997* to:

a. give the Magistrates Court explicit power to order that a child who has displayed harmful sexual behaviours (and their family) engage in a therapeutic intervention for harmful sexual behaviours

b. ensure the Magistrates Court has the power to divert from the criminal justice system a child who has been charged with a criminal offence and who has engaged in harmful sexual behaviours, by adjourning the criminal proceeding to enable the child to engage in a therapeutic intervention, and discharging the child where the intervention has been completed successfully.

Recommendation 21.10

Tasmania Police and the Department for Education, Children and Young People should update the *Keeping Children Safe Handbook* to reflect the Tasmanian Government's statewide framework and plan for addressing harmful sexual behaviours, including by:

a. modifying the language used when discussing children who have displayed harmful sexual behaviours to align with the definitions developed through the National Office of Child Safety

b. clarifying the roles and responsibilities of the two agencies in responding to incidents involving harmful sexual behaviours, including the conditions under which each agency will lead the response

c. clarifying the involvement of specialist therapeutic services in responses to incidents.

6 Conclusion

Our Inquiry into Tasmania's therapeutic service system for victim-survivors of institutional child sexual abuse and children who have displayed harmful sexual behaviours has revealed scope for improvement.

Specialist services for victim-survivors are few and staffed by hard-working, dedicated professionals who have advocated for increased services and better coordination for many years. Even after the National Royal Commission made many recommendations to create a responsive service system for victim-survivors, the Tasmanian Government has continued to adopt a passive position of responding with piecemeal funding offerings instead of assuming leadership for providing a robust service system.

It is vital that the Tasmanian Government leads the development and funding of a responsive service system. The Government must ensure services reach those who are missing out, such as children in Ashley Youth Detention Centre, victim-survivors with

disability, victim-survivors who identify as LGBTQIA+, victim-survivors from culturally and linguistically diverse backgrounds, male victim-survivors and those in isolated communities or Aboriginal victim-survivors.

For children who have displayed harmful sexual behaviours, the Tasmanian Government has only recently responded to the National Royal Commission's recommendations by funding a single service to provide services across the State. This is not enough, and it lacks the government leadership required to provide a collaborative, effective therapeutic service system for children who have these difficulties. The Tasmanian Government should develop a cross-agency framework to prevent and respond to harmful sexual behaviours.

Notes

1 Statement of Michael Salter, 7 April 2022, 31 [120]–32 [121].

2 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 143 [22]–144 [9].

3 We use the term 'sexual assault' in this section in preference to other common terms such as 'sexual violence' or the specific term 'child sexual abuse', because it is the term most commonly used by specialist sexual assault services to describe adult and child sexual assault.

4 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 9, 15–17.

5 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023* (Report, December 2022).

6 Tasmanian Government, *Second Annual Progress Report and Action Plan 2020* (Report, December 2019) 15–17.

7 Tasmanian Government, *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* (November 2022); Department of Justice, *Fifth Annual Progress Report and Action Plan 2023* (Report, December 2022) 17.

8 Tasmanian Government, *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* (November 2022) 13–23.

9 Tasmanian Government, *Survivors at the Centre: Tasmania's Third Family and Sexual Violence Action Plan 2022–2027* (November 2022) 13–20.

10 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 9, 65–68.

11 Statement of Michael Pervan, 6 June 2022, 6 [41]; Transcript of Zaharenia Galanos, Jurek Stopczynski, Emily Churches and Rachel Hales, 4 May 2022, 331 [19–34].

12 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 142 [32–33].

13 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 135 [1–12].

14 Statement of Jillian Maxwell, 26 April 2022, 2 [8]; Statement of Kathryn Fordyce, 3 May 2022, 3 [13].

15 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 134 [38]–135 [12].

16 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 135 [3–7].

17 Department of Premier and Cabinet, 'Community Family Violence and Sexual Assault', *Community and Disability Services* (Web Page) <https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/community-family-violence-and-sexual-assault>.

18 Submission 069 Laurel House, 5; Submission 073 Sexual Assault Support Service, 3.

19 Statement of Jillian Maxwell, 26 April 2022, 3 [15]; Statement of Kathryn Fordyce, 3 May 2022, 5–6 [18(d)].

20 Laurel House, 'For Someone Else', *Get Help* (Web Page, 2023) <https://laurelhouse.org.au/for-someone-else/>; Sexual Assault Support Service, 'SASS Referral', *Resources* (Web Page, August 2016) <https://www.sass.org.au/sites/default/files/resources/sass-referral-form-v6-aug-2016.pdf>.

21 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 135 [19–29], 142 [20–33].

22 Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 137 [35–39], 142 [27–33].

23 Statement of Jillian Maxwell, 26 April 2022, 2 [11].

24 Laurel House, *Annual Report 2021* (Report, 2021) 14–16.

25 Email from Kathryn Fordyce to Commission, 13 July 2022, 1; Transcript of Jillian Maxwell and Kathryn Fordyce, 3 May 2022, 136 [31–38].

26 Session with Keelie McMahon, 13 March 2022.

27 Enterprising Aardvark, 'Trauma Counselling and Consultancy Services', *Home* (Web Page) <https://enterprisingaardvark.wordpress.com/>.

28 Enterprising Aardvark, 'Enterprising Aardvark is 5 Years Old!', *News* (Web Page, 19 January 2022) <https://enterprisingaardvark.wordpress.com/news/>.

29 Statement of Kathrine Morgan-Wicks, 23 June 2022, 9 [51(d)]; Statement of Sonja Leonard, 21 June 2022, 5 [30], 7 [42]; Statement of Matthew Harvey, 17 June 2022, 26 [146].

30 Statement of Kathryn Fordyce, 3 May 2022, 11 [31–32]; Session with Kylee Pearn, 5 October 2021; refer also to Submission 086 Angela Sdrinis, 75; Submission 099 Anonymous, 1; Session with Anonymous, 30 November 2021; Stakeholder consultation, 23 November 2021.

31 National Redress Scheme, 'Tasmania Redress Support Services', *Free Support* (Web Page) <https://www.nationalredress.gov.au/support/explore/tas-redress-support-services>.

32 Submission 069 Laurel House, 5.

33 Department of Justice Tasmania, 'Counselling and Psychological Care Services', *The Royal Commission Response Unit* (Web Page, 12 September 2022) <https://www.justice.tas.gov.au/carcru/national-redress-scheme/information-for-participants-in-the-national-redress-scheme>.

34 Department of Justice, 'Tasmanian Government's Current Service System', 23 August 2021, 7 [j], produced by the Tasmanian Government in response to a Commission notice to produce.

35 Statement of Kathryn Fordyce, 3 May 2022, 11 [31].

36 Statement of Kathryn Fordyce, 3 May 2022, 11 [31–35].

37 Department of Justice, 'Victims of Crime Service', *Victims Support Services* (Web Page) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

38 Statement of Catherine Edwards, 7 April 2022, 3 [14].

39 Statement of Catherine Edwards, 7 April 2022, 13 [89].

40 Department of Justice, 'Victims of Crime Service', *Victims Support Services* (Web Page) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

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22 Monitoring reforms

1 Introduction

Our Commission of Inquiry shares the hopes we heard in evidence from victim-survivors, and their families, carers and supporters, that our Inquiry will result in meaningful change that benefits Tasmania and its children and young people. The Tasmanian Government has said it will implement our recommendations, and we expect this to occur. It would be a tragedy if our report were treated as the product of 'just another inquiry', to file and forget. The cost to taxpayers, the trust of the community and the toll on victim-survivors and whistleblowers that comes from telling their stories require a forceful and immediate response.

This chapter discusses ways to ensure our recommendations lead to positive change. We hope to see sustainable systemic improvements that will help prevent child sexual abuse in institutions and improve institutional responses to such abuse. We want better outcomes for children and young people who have been abused.

This chapter lists our recommendations and includes suggested timeframes for implementing them. It focuses on the monitoring and reporting needed to effectively implement these recommendations. We recommend the Tasmanian Government establishes the role of the Child Sexual Abuse Reform Implementation Monitor to oversee and report on the Government's progress in implementing our recommendations and the recommendations of previous inquiries and reviews.

2 Our recommendations

Our Commission of Inquiry had three main functions.

The first was to provide a safe place where victim-survivors and their families and carers could share their accounts of child sexual abuse in Tasmanian Government institutions. These accounts informed our understanding of measures to prevent, identify and respond to child sexual abuse in Tasmanian Government institutions.

The second was to investigate the adequacy or otherwise of past and present responses to allegations and incidents of child sexual abuse in Tasmanian Government institutions, and to identify systemic issues. Institutions investigated include schools, out of home care, health services and Ashley Youth Detention Centre.

The third was to recommend concrete and practical reforms to address any inadequacies identified, so children can be better protected against child sexual abuse in Tasmanian government institutions.

Our terms of reference directed us to make any recommendations arising from our Commission of Inquiry we consider appropriate. These include recommendations about any policy, legislative, administrative or structural reforms, and to focus our recommendations on systemic issues.

Our report represents the end of our Commission of Inquiry. We make 191 recommendations. During more than two years of operation, we examined more than 95,000 documents, held more than 120 sessions with a Commissioner, conducted hearings over nine weeks and engaged widely with the Tasmanian community. This enabled us to understand the systemic failings in the Tasmanian Government's response to child sexual abuse in institutional settings and to identify opportunities for lasting reform. Our recommendations represent an extensive reform agenda for Tasmania—the way to achieve a future where children and young people feel safe in government institutions, as they and their families have a right to expect.

Some of our recommendations focus on creating new structures to support a government-wide system where children are kept safe from child sexual abuse and where the Tasmanian Government is held to account for its responses to abuse. Other recommendations concentrate on ensuring the right care and support are available and accessible to children and young people and their families and carers, and to adult and child victim-survivors of child sexual abuse. Others focus on improving processes and procedures regarding child sexual abuse. However, at the core of all our recommendations is the view that the Tasmanian Government and State Service must be accountable for the safety and wellbeing of children and young people in government institutions.

We have articulated a six-year reform agenda that prioritises our recommendations into three waves of reform:

- short-term—by 1 July 2024
- medium-term—by 1 July 2026
- long-term—by 1 July 2029.

We consider this approach balances the need for urgent reforms but also acknowledges that implementing other reforms should and will take careful planning and require long-term investment and support. Our recommendations are listed at the end of this chapter, along with our suggested reform timeframes and role holders or agencies responsible, as a guide for the Tasmanian Government (refer to Table 21.1).

With this report representing the end of our Commission of Inquiry, it is now time for the Tasmanian Government to do the work necessary to implement our recommendations. We acknowledge this will take considerable effort and commitment. In the next section, we recommend establishing the Child Sexual Abuse Reform Implementation Monitor to hold the Tasmanian Government to this task.

3 Monitoring and reporting

The impact of our Commission of Inquiry will depend primarily on the Tasmanian Government implementing the recommendations in our report. Monitoring and publicly reporting on implementation is vital for:

- making real progress in preventing child sexual abuse in government and government funded institutions by learning from experience
- improving institutional responses to child sexual abuse
- improving outcomes for children and young people who have been abused.

This section discusses how implementing our recommendations, and those of other inquiries and reviews, should be monitored and reported against so the public can hold the Tasmanian Government and its institutions to account.

We are mindful the Tasmanian Government has held multiple inquiries and reviews on matters relevant to institutional child sexual abuse. It also has a history of:

- accepting and then not implementing recommendations
- not implementing recommendations in line with the intent of the inquiries or reviews
- failing to implement recommendations in a timely way.

For example, in Volumes 4, 5 and 6 of our report, we discuss how problems identified in previous reviews and inquiries into out of home care, the health system and Ashley Youth Detention Centre have not been addressed over many years. We are also conscious that key recommendations of the National Royal Commission have not been implemented, and it has been more than five years since those recommendations were made. Although the Tasmanian Government has made progress on reforms by introducing the Child and Youth Safe Organisations Bill 2022, which was passed by the Tasmanian Parliament and commenced as the *Child and Youth Safe Organisations Act 2023* in July 2023, the Child and Youth Safe Standards and Reportable Conduct Scheme are still in the implementation stages.[1]

Ongoing monitoring is essential if our recommendations for reform are to be successfully implemented. Monitoring plays an important role in:

- maintaining momentum for reform
- embedding accountability for change
- ensuring progress is transparent
- mitigating and avoiding unintended consequences of reforms
- continuously improving and adapting reform efforts.

Jenny Gale, Secretary, Department of Premier and Cabinet and Head of the State Service, noted the need for independent oversight to ensure change occurs: 'I do think independent oversight is a very important factor in accountability and also in raising public awareness about what is happening and what needs to be improved'.[2]

Ginna Webster, Secretary, Department of Justice, who is responsible for the Child Abuse Royal Commission Response Unit, acknowledged the role public monitoring and reporting can play in building trust in government action:

> I think one of the barriers that I touched on at the beginning was the need to rebuild the trust and the confidence of the community, so I think that work will have to be done as well as we progress, and I think that's through regular reporting and monitoring.[3]

In this section, we discuss our recommended Child Sexual Abuse Reform Implementation Monitor, which would be the key mechanism to hold the Tasmanian Government to account for implementing our recommendations. We also discuss our expectation that the Government reports on its implementation of our and other inquiries' recommendations. Such reports should examine the implementation of particular recommendations, the broader outcomes of new policies, procedures and laws and the interaction between them.

3.1 An implementation monitor

In the final two days of hearings, we invited experts to advise us about the way forward, including how to ensure the Tasmanian Government effectively implements our recommendations for reform. Dr Samantha Crompvoets, Director of the Australian Human Rights Commission, told us it is important to monitor the implementation of recommendations to ensure they result in change:

> I think that it's important for people who are giving recommendations to build in a monitoring and evaluation part of it … Otherwise, what happens is in, say, two to three years after those recommendations come out and issues start to bubble up again and there's another review, and more recommendations, and no one really understands what happened to the initial ones.[4]

Tim Cartwright APM and Jan Shuard PSM shared their observations and experiences as former Family Violence Reform Implementation Monitors in Victoria, a role responsible for monitoring the implementation of the Victorian Royal Commission into Family Violence recommendations. Mr Cartwright was the inaugural Family Violence Reform Implementation Monitor from August 2016 until August 2019 and Ms Shuard held the role from August 2019 until May 2023. The Family Violence Reform Implementation Monitor concluded its monitoring work on 31 May 2023.[5]

The Family Violence Reform Implementation Monitor was an independent statutory body. It was established in 2016 in response to the Victorian Royal Commission into Family Violence recommendation that an independent family violence agency be established to hold the Victorian Government to account.[6] As Mr Cartwright outlined in his statement to our Commission of Inquiry:

> Recommendation 199 concerned the establishment of an independent function to (among other things) monitor and report on implementation of the Commission's recommendations. That function was created through the establishment of the Family Violence Reform Implementation Monitor (Implementation Monitor) *under the Family Violence Reform Implementation Monitor Act 2016* (Vic).[7]

Mr Cartwright and Ms Shuard observed that a key aspect of the Family Violence Reform Implementation Monitor's role is to look at how recommendations have been implemented relative to the intended outcomes of the Victorian Royal Commission into Family Violence.[8] We note that a flexible approach is sometimes needed when assessing whether a recommendation has been effectively implemented. Mr Cartwright said that he sometimes needed to 'go behind' the intent of the Victorian Royal Commission into Family Violence recommendations to work out a better process: 'So that critical question I always asked was what would make this better for victim-survivors … is this working to produce the outcomes that the Royal Commission in that case wanted?'[9]

Importantly, Mr Cartwright and Ms Shuard highlighted to us how the Family Violence Reform Implementation Monitor role allowed them to continue advocating for change on behalf of victim-survivors, beyond the life of the Victorian Royal Commission into Family Violence. Mr Cartwright said:

> The other important part of the role which surprised me a little was eventually becoming, in some ways, not an advocate for victim-survivors, but certainly the middle person between those implementing and those who were affected or advocating for change.[10]

Mr Cartwright's and Ms Shuard's evidence showed that the role of the Family Violence Reform Implementation Monitor was effective in holding the Victorian Government to account and ensuring transparency in government actions.[11] We are of the view that Tasmania needs to establish a similar role to ensure the reform work our Commission of Inquiry and previous inquiries and reviews have begun continues.

We recommend below that a Child Sexual Abuse Reform Implementation Monitor be established. The Implementation Monitor should:

- be independent
- report publicly, through Parliament
- consult and work closely across the child sexual abuse sector, including with government, peak bodies and victim-survivors.

3.1.1 Independence

Mr Cartwright told us that the independence of Victoria's Family Violence Reform Implementation Monitor was essential to the role's success: 'It is critical that the legislation establishing the role of Implementation Monitor gives the Implementation Monitor independence, and the ability to report free from interference'.[12]

When asked to expand on this at our hearings, Mr Cartwright said:

> The legislation removes any doubt that the voice of a critical Monitor or a critical person will be made public regardless of whether the bureaucracy or the government of the day agrees or disagrees with it, so that was very important to me … I still think that some protection of the Monitor's independence and right to speak publicly is very important as a foundational aspect.[13]

The Family Violence Reform Implementation Monitor is a statutory role that reports directly to Parliament.[14] Mr Cartwright explained in his statement that the Implementation Monitor's independence was achieved by:

- the statutory nature of the role and the requirement to report directly to Parliament
- the establishing legislation, which gives the Implementation Monitor independence and the ability to report free from interference from the minister or others

- security of tenure of the role, with appointment by the Governor in Council and limited grounds on which the Implementation Monitor may be suspended or removed.[15]

Ms Shuard agreed about the importance of the Implementation Monitor's independence, while maintaining productive relationships.[16] She said that in order for independence to be maintained it is essential the Implementation Monitor's monitoring and reporting functions be separate from implementation functions: 'I think, if you're in charge of implementation, you can't possibly monitor, or if you're in charge of the framework for implementation and all the elements of it you can't possibly be an independent Monitor'.[17]

3.1.2 Public reporting

Ms Shuard explained the public reporting requirements of the Victorian Family Violence Reform Implementation Monitor role in her statement:

> For the first four years after the Royal Commission [into Family Violence], the legislation required the Implementation Monitor to deliver an annual report to Parliament. The first three reports (tabled in Parliament in May 2018, March 2019 and February 2020) specifically looked at achievements from the previous year but the fourth report, being the last planned report (tabled in May 2021), looked back across all four years. I envisaged that, after delivery of the fourth annual report, the function would cease, as that was all the government had required. However, the Victorian Government has extended the reporting obligation for a further 18 months, although the requirement to table the report in Parliament has been removed and the resources of the office of the Implementation Monitor have been slightly reduced.[18]

We consider this public reporting requirement is essential to the effectiveness of the recommended Child Sexual Abuse Reform Implementation Monitor's role in holding the Tasmanian Government to account.

3.1.3 Consulting and working across government

We consider that the Child Sexual Abuse Reform Implementation Monitor should consult broadly when determining whether the Tasmanian Government has effectively implemented our recommendations and those of other inquiries and reviews. In the family violence context in Victoria, Ms Shuard said it was important for the Family Violence Reform Implementation Monitor to establish strong relationships across the family violence sector and be transparent with all parties. Ms Shuard said:

> I think for me one of the absolute critical roles of the Implementation Monitor is the relationships that you can build with the government agencies, the service providers and the victim-survivors.... The Monitor is a small office relatively to the task, and you couldn't do your work justice without the absolute cooperation, transparency of the agencies that you're working with.[19]

The role of the Family Violence Reform Implementation Monitor was to listen to and reflect all voices in the family violence sector when assessing the effectiveness of the implementation of recommendations, including government agencies, service providers and victim-survivors. Ms Shuard said:

> … I guess it was really important to me … to hear the voices of everybody involved. You know, I say you have the designers and the funders of the system, you have the service providers who deliver the services, and you have the victim-survivors who are most important in terms of experiencing the changes in the system but, more than that, influencing the design of the system so that it meets their needs and I think that's absolutely critical.
>
> I think a view that our job was … to add value to the outcomes for the family violence systems, so therefore to provide an independent view by listening to all of the voices that were involved in the system, and sometimes there's a difference, I guess, of view about how it's going, what's working, whether it's being effective in its implementation, and to be able to represent all of those voices so that the designers of the system and the users of the system and those delivering the services get a shared understanding of our independent view.[20]

Ms Shuard explained how she worked with the Victorian Government in practice:

> … when you form your independent view and you do a report, the process of providing that report to the government agencies that are affected, allowing those government agencies to have input into that report insofar as, not just factual errors, but if they think you've been unduly harsh perhaps or haven't captured a point correctly, then it should be—it's open for them to provide that advice back to the Implementation Monitor.[21]

Mr Cartwright and Ms Shuard emphasised the importance of a formal mechanism to ensure victim-survivors' views on the impacts of reform were heard and acted upon during implementation.[22] In Victoria, this was achieved through the Statewide Family Violence Advisory Committee, which was set up after the Victorian Royal Commission into Family Violence to advise the Government on family violence policy and service provision.[23]

In Chapter 19, we recommend the Tasmanian Government ensures children and young people and adult victim-survivors of child sexual abuse can contribute to policy and reform work through the Premier's Youth Advisory Group and through the establishment of an adult victim-survivors of child sexual abuse advisory group (refer to Recommendation 19.5). We also recommend a peak body for the sexual assault service system in Chapter 21 (refer to recommendation 21.3).
The Child Sexual Abuse Reform Implementation Monitor should consult regularly with these entities about the effectiveness of the implementation of our recommendations and the recommendations of other reviews and inquiries.

3.2 Future reporting

The National Royal Commission recommended that each state and territory government reports on its implementation of the National Royal Commission's recommendations through five consecutive annual reports tabled in their respective parliaments.

Adhering to this recommendation, the Tasmanian Government issued its fifth and final annual report and action plan in December 2022.[24] The report indicated that, while the Government was committed to ongoing annual reporting on implementing reforms for the safety and wellbeing of children, it was considering changing the form of this reporting.[25] The report stated that, given the 'several inquiries and commissions' that have examined child sexual abuse in the Tasmanian institutional context in recent years, it proposed annual reporting shifts from a focus on completing the recommendations to outcomes-based reporting.[26]

While we support a focus on intended outcomes rather than superficial acquittal of recommendations, we are concerned this may result in reducing accountability for implementing individual recommendations, particularly considering evidence we heard from Mr Cartwright and Ms Shuard about the importance of accountability, transparency and reporting at all levels. Any focus on outcomes needs to identify how the intent behind the implementation of individual recommendations has been met.

We consider that implementing recommendations from our Commission of Inquiry and those of other reviews and inquiries across the child sexual abuse sector would benefit from being monitored and reported against by an implementation monitor model similar to the Family Violence Reform Implementation Monitor that was established in Victoria.

Recommendation 22.1

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

and government funded institutions and victim-survivors of child sexual abuse in institutional contexts.

2. Independent evaluations should enable assessment of change over time and involve:
    a. identifying an evaluation framework and baseline data requirements within the first year of the appointment of the Implementation Monitor
    b. commencing collection of data identified in the evaluation framework as soon as possible after the evaluation framework has been developed
    c. assessing the change against the evaluation framework at five- and ten-year intervals following the tabling of this report
    d. making independent evaluations publicly available.
3. The Tasmanian Government should protect the independence of the Implementation Monitor by:
    a. appointing the Implementation Monitor for a fixed term that cannot be prematurely terminated except in extraordinary circumstances
    b. maintaining the role of the Implementation Monitor until implementation of the recommendations identified above is substantively complete
    c. separately and directly funding the Implementation Monitor, rather than through a line agency.
4. The Tasmanian Government, through the Secretaries Board, should be required to report to:
    a. the Implementation Monitor as requested and in the form required by the Implementation Monitor
    b. the public on its implementation and reform activity through the Department of Premier and Cabinet's annual report.
5. The Implementation Monitor should consult as required with:
    a. the Premier's Youth Advisory Council
    b. the adult victim-survivors of child sexual abuse advisory group (Recommendation 19.5)
    c. the peak body for the sexual assault service system (Recommendation 21.3)
    d. the institution-specific advisory groups established within Tasmanian government agencies (Recommendations 9.6, 12.8 and 15.7).

4 Hope for the future

Despite reforms having been made in response to the National Royal Commission, there is much more work to do. These reforms will not be easy. As noted in Chapter 19, the Tasmanian Government has committed to an extensive reform agenda regarding institutional child sexual abuse. The multiple systems involved in responding to institutional child sexual abuse are complex and so, too, are the causes of institutional child sexual abuse. Strong and committed leadership is required across government and institutions for change to occur. We saw this commitment during our Commission of Inquiry—the Premier, along with all major parties, made a public apology in Parliament. The Premier said:

> We have failed you; we are all accountable, and we are sorry.
>
> Our institutions have a responsibility to ensure the safety and wellbeing of children, and our institutions have clearly failed in that responsibility … [27]

In the same apology, the Premier committed to implementing our reforms:

> Over the past eight months—throughout this Inquiry—we have heard about a very dark chapter in Tasmania's history.
>
> It's a chapter no-one should ever, ever forget. And today we give a solemn undertaking to all Tasmanians, to never, ever allow a repeat of this abuse, secrecy and suppression.
>
> To never, ever allow a repeat of the failures that allowed such abuse to occur.
>
> Our Government is acutely aware of the enormous responsibility to act swiftly and decisively to implement the Commission's recommendations …
>
> This Parliament will be defined by the actions we take now to ensure that the injustices perpetrated by Tasmanian Government institutions can never ever happen again …
>
> We know there is still much more work to do, and we are committed to making the changes required to ensure Tasmania is a safer place for all children and young people.[28]

We are pleased the Premier has committed to implementing our recommendations and emphasise that the work is in ensuring that appropriate structures are set up to enable our recommendations and those of other inquiries and reviews to be not only accepted but effectively implemented.

Secretary Gale also committed to achieving change:

> It was difficult to listen to but very important and I sincerely thank all of the brave people who have spoken out as part of the Commission's proceedings, including our state servants, as hearing their stories, their sadness, their frustration, their anger and their feelings of powerlessness has highlighted that there are significant improvements that must be made across the service.

> The traumas that systemic failures has caused children, young people and their families has been palpable, and I commit to doing whatever I can to effect change.[29]

Although our Commission of Inquiry has focused on child sexual abuse in institutions, we also see the potential for our recommendations to have benefits beyond the scope of our Inquiry. These benefits include:

- enhancing responses to all victim-survivors of institutional child sexual abuse
- improving the safety of institutions in relation to all forms of harm that may be experienced by vulnerable people and the responses of institutions when this harm occurs
- providing increased transparency and accountability to change the culture of silence and fear that was so dominant in people who spoke to us.

Throughout our report we have raised the challenges facing a small island state in preventing and responding to institutional child sexual abuse. But these challenges can also be strengths. Having strong, local connections can enable change to be achieved quickly. As Sam Leishman, a victim-survivor, told us (and as we have quoted before):

> … we talk about Tasmania as being a small jurisdiction and a small island, and it's isolating and … we don't have the resources and how difficult all of that is …. 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.[30]

We agree. There is much cause for hope that effective and lasting reform can and will be achieved.

Table 22.1: List of recommendations with suggested reform timeframes and implementation leads[31]

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 6.1	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 6.2	Short term	By 1 July 2024	Office of Safeguarding
Recommendation 6.3	Short term	By 1 July 2024	Department for Education, Children and Young People
Recommendation 6.4	Short term	By 1 July 2024	Department for Education, Children and Young People
Recommendation 6.5	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 6.6	Medium term	By 1 July 2026	Tasmanian Government

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 6.7	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 6.8	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 6.9	Medium term	By 1 July 2026	Department for Education, Children and Young People (Harmful Sexual Behaviours Support Unit)
Recommendation 6.10	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 6.11	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 6.12	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 6.13	Short term	By 1 July 2024	Tasmanian Government
Recommendation 6.14	Short term	By 1 July 2024	Tasmanian Government
Recommendation 6.15	Medium term	By 1 July 2026	Tasmanian Government; Teachers Registration Board
Recommendation 6.16	Short-medium term	By 1 July 2026	Tasmanian Government
Recommendation 9.1	Short term	By 1 July 2024	Tasmanian Government
Recommendation 9.2	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.3	Medium term	By 1 July 2026	Department for Education, Children and Young People; Tasmanian Government
Recommendation 9.4	Short term	By 1 July 2024	Tasmanian Government
Recommendation 9.5	Short-medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.6	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.7	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.8	Medium-long term	By 1 July 2029	Department for Education, Children and Young People
Recommendation 9.9	Short-medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.10	Medium-long term	By 1 July 2029	Department for Education, Children and Young People
Recommendation 9.11	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.12	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.13	Long term	By 1 July 2029	Department for Education, Children and Young People
Recommendation 9.14	Long term	By 1 July 2029	Tasmanian Government
Recommendation 9.15	Long term	By 1 July 2029	Tasmanian Government; Department for Education, Children and Young People

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 9.16	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.17	Medium-long term	By 1 July 2029	Department for Education, Children and Young People; Office of the Chief Practitioner
Recommendation 9.18	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.19	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.20	Medium-long term	By 1 July 2029	Department for Education, Children and Young People
Recommendation 9.21	Medium-long term	By 1 July 2029	Department for Education, Children and Young People
Recommendation 9.22	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.23	Long term	By 1 July 2029	Tasmanian Government; Department for Education, Children and Young People
Recommendation 9.24	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 9.25	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.26	Short-medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.27	Short-medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 9.28	Medium-long term	By 1 July 2029	Department for Education, Children and Young People; Tasmanian Government
Recommendation 9.29	Medium-long term	By 1 July 2029	Department for Education, Children and Young People; Tasmania Police; Office of the Chief Practitioner
Recommendation 9.30	Short term	By 1 July 2024	Tasmania Police
Recommendation 9.31	Short-medium term	By 1 July 2026	Department for Education, Children and Young People; Office of the Chief Practitioner
Recommendation 9.32	Medium term	By 1 July 2026	Department for Education, Children and Young People; Child-Related Incident Management Directorate; Office of the Chief Practitioner
Recommendation 9.33	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 9.34	Long term	By 1 July 2029	Tasmanian Government
Recommendation 9.35	Long term	By 1 July 2029	Tasmanian Government
Recommendation 9.36	Long term	By 1 July 2029	Tasmanian Government
Recommendation 9.37	Short-medium term	By 1 July 2026	Department for Education, Children and Young People; Tasmanian Government

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 9.38	Long term	By 1 July 2029	Tasmanian Government
Recommendation 12.1	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.2	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.3	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.4	Short term	By 1 July 2024	Department for Education, Children and Young People; Office of the State Archivist
Recommendation 12.5	Short-medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.6	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 12.7	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.8	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 12.9	Medium-long term	By 1 July 2029	Department for Education, Children and Young People
Recommendation 12.10	Short term	By 1 July 2024	Department for Education, Children and Young People
Recommendation 12.11	Medium-long term	By 1 July 2029	Tasmanian Government
Recommendation 12.12	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.13	Medium-long term	By 1 July 2029	Tasmanian Government
Recommendation 12.14	Long term	By 1 July 2029	Tasmanian Government
Recommendation 12.15	Medium-long term	By 1 July 2029	Tasmanian Government
Recommendation 12.16	Long term	By 1 July 2029	Tasmanian Government
Recommendation 12.17	Medium term	By 1 July 2026	Tasmanian Government; Commission for Children and Young People
Recommendation 12.18	Medium term	By 1 July 2026	Tasmanian Government; Custodial Inspector
Recommendation 12.19	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.20	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.21	Short term	By 1 July 2024	Tasmanian Government
Recommendation 12.22	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 12.23	Short term	By 1 July 2024	Department for Education, Children and Young People
Recommendation 12.24	Long term	By 1 July 2029	Tasmanian Government
Recommendation 12.25	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.26	Short term	By 1 July 2024	Tasmanian Auditor-General
Recommendation 12.27	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.28	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.29	Medium term	By 1 July 2026	Tasmanian Government; Department for Education, Children and Young People

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 12.30	Medium term	By 1 July 2026	Department for Education, Children and Young People (Harmful Sexual Behaviours Support Unit); Tasmanian Government
Recommendation 12.31	Medium term	By 1 July 2026	Tasmanian Government; Department for Education, Children and Young People
Recommendation 12.32	Medium term	By 1 July 2026	Tasmanian Government; Department for Education, Children and Young People
Recommendation 12.33	Medium term	By 1 July 2026	Tasmanian Government; Department for Education, Children and Young People
Recommendation 12.34	Medium term	By 1 July 2026	Department for Education, Children and Young People; Tasmania Police
Recommendation 12.35	Medium term	By 1 July 2026	Department for Education, Children and Young People
Recommendation 12.36	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.37	Short term	By 1 July 2024	Ombudsman Tasmania
Recommendation 12.38	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 12.39	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 15.1	Short term	By 1 July 2024	Department of Health
Recommendation 15.2	Medium term	By 1 July 2026	Tasmanian Government; Department of Health
Recommendation 15.3	Short term	By 1 July 2024	Department of Health
Recommendation 15.4	Medium term	By 1 July 2026	Department of Health
Recommendation 15.5	Short term	By 1 July 2024	Department of Health
Recommendation 15.6	Medium term	By 1 July 2026	Department of Health
Recommendation 15.7	Short term	By 1 July 2024	Department of Health
Recommendation 15.8	Short term	By 1 July 2024	Department of Health
Recommendation 15.9	Long term	By 1 July 2029	Department of Health
Recommendation 15.10	Medium term	By 1 July 2026	Department of Health
Recommendation 15.11	Short term	By 1 July 2024	Department of Health
Recommendation 15.12	Short term	By 1 July 2024	Department of Health
Recommendation 15.13	Short term	By 1 July 2024	Department of Health
Recommendation 15.14	Short term	By 1 July 2024	Department of Health
Recommendation 15.15	Medium term	By 1 July 2026	Department of Health
Recommendation 15.16	Short term	By 1 July 2024	Department of Health
Recommendation 15.17	Medium term	By 1 July 2026	Department of Health
Recommendation 15.18	Short term	By 1 July 2024	Department of Health
Recommendation 15.19	Medium term	By 1 July 2026	Department of Health

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 15.20	Short term	By 1 July 2024	Department of Health; Launceston General Hospital; Tasmania Police
Recommendation 15.21	Long term	By 1 July 2029	Tasmanian Government
Recommendation 16.1	Medium term	By 1 July 2026	Tasmanian Government; Tasmania Police
Recommendation 16.2	Medium term	By 1 July 2026	Tasmania Police; Department of Justice; Department for Education, Children and Young People
Recommendation 16.3	Medium term	By 1 July 2026	Tasmania Police
Recommendation 16.4	Medium term	By 1 July 2026	Tasmania Police
Recommendation 16.5	Medium term	By 1 July 2026	Tasmania Police
Recommendation 16.6	Medium term	By 1 July 2026	Department of Health
Recommendation 16.7	Medium term	By 1 July 2026	Tasmania Police
Recommendation 16.8	Medium term	By 1 July 2026	Office of the Director of Public Prosecutions
Recommendation 16.9	Short term	By 1 July 2024	Tasmanian Government
Recommendation 16.10	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.11	Short term	By 1 July 2024	Tasmanian Government
Recommendation 16.12	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.13	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.14	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.15	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.16	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.17	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 16.18	Short term	By 1 July 2024	Tasmanian Government; Director of Public Prosecutions
Recommendation 16.19	Short term	By 1 July 2024	
Recommendation 16.20	Medium term	By 1 July 2026	Department of Justice; Sentencing Advisory Council
Recommendation 17.1	Long term	By 1 July 2029	Tasmanian Government
Recommendation 17.2	Short-medium term	By 1 July 2026	Tasmanian Government; Tasmanian Solicitor-General (or the State Litigation Office)
Recommendation 17.3	Short term	By 1 July 2024	Tasmanian Attorney-General; Tasmanian Government
Recommendation 17.4	Short term	By 1 July 2024	Tasmanian Government
Recommendation 17.5	Short term	By 1 July 2024	Tasmanian Government
Recommendation 17.6	Medium term	By 1 July 2026	Department of Justice
Recommendation 17.7	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 17.8	Medium term	By 1 July 2026	Tasmanian Government

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 18.1	Long term	By 1 July 2029	Tasmanian Government
Recommendation 18.2	Short term	By 1 July 2024	
Recommendation 18.3	Short term	By 1 July 2024	Tasmanian Government
Recommendation 18.4	Short term	By 1 July 2024	Tasmanian Government
Recommendation 18.5	Long term	By 1 July 2029	Tasmanian Government
Recommendation 18.6	Short term	By 1 July 2024	Tasmanian Government; Commission for Children and Young People
Recommendation 18.7	Short term	By 1 July 2024	Tasmanian Government
Recommendation 18.8	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 18.9	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 18.10	Short term	By 1 July 2024	Integrity Commission; Ombudsman Tasmania
Recommendation 18.11	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 18.12	Short term	By 1 July 2024	Tasmanian Government
Recommendation 18.13	Short term	By 1 July 2024	Tasmanian Government
Recommendation 18.14	Short term	By 1 July 2024	Commission for Children and Young People; Registrar of the Registration to Work with Vulnerable People Scheme; Integrity Commission; Ombudsman Tasmania
Recommendation 18.15	Medium term	By 1 July 2026	Commission for Children and Young People; Integrity Commission; Ombudsman Tasmania; Registrar of the Registration to Work with Vulnerable People Scheme
Recommendation 19.1	Short term	By 1 July 2024	Tasmanian Government
Recommendation 19.2	Short term	By 1 July 2024	Tasmanian Government
Recommendation 19.3	Short term	By 1 July 2024	Department of Premier and Cabinet
Recommendation 19.4	Short term	By 1 July 2024	Premier of Tasmania; Department of Premier and Cabinet; Heads of Agencies
Recommendation 19.5	Medium term	By 1 July 2026	Tasmanian Government; Department of Premier and Cabinet
Recommendation 19.6	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 19.7	Medium-long term	By 1 July 2029	Tasmanian Government
Recommendation 19.8	Medium term	By 1 July 2026	Department of Premier and Cabinet; Tasmanian Government
Recommendation 20.1	Long term	By 1 July 2029	Tasmanian Government

Recommendation No.	Suggested reform timeframe (short, medium or long-term)	By when	Suggested implementation lead
Recommendation 20.2	Short term	By 1 July 2024	Heads of Agencies; Tasmanian Government
Recommendation 20.3	Short term	By 1 July 2024	Tasmanian Government
Recommendation 20.4	Short term	By 1 July 2024	Tasmanian Government
Recommendation 20.5	Medium term	By 1 July 2026	Department of Premier and Cabinet; Child-Related Incident Management Directorate
Recommendation 20.6	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 20.7	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 20.8	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 20.9	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 20.10	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 20.11	Medium term	By 1 July 2026	Head of the State Service; Heads of Agencies
Recommendation 20.12	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 20.13	Medium term	By 1 July 2026	Head of the State Service
Recommendation 20.14	Short term	By 1 July 2024	Tasmanian Government
Recommendation 20.15	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 21.1	Medium-long term	By 1 July 2029	Department of Premier and Cabinet; Tasmanian Government
Recommendation 21.2	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 21.3	Short-medium term	By 1 July 2026	Tasmanian Government
Recommendation 21.4	Short-medium term	By 1 July 2026	Tasmanian Government; Department of Premier and Cabinet
Recommendation 21.5	Short-medium term	By 1 July 2026	Tasmanian Government
Recommendation 21.6	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 21.7	Medium-long term	By 1 July 2029	Tasmanian Government
Recommendation 21.8	Medium-long term	By 1 July 2029	Tasmanian Government
Recommendation 21.9	Medium term	By 1 July 2026	Tasmanian Government
Recommendation 21.10	Short term	By 1 July 2024	Tasmania Police; Department for Education, Children and Young People
Recommendation 22.1	Short term	By 1 July 2024	Tasmanian Government; Child Sexual Abuse Reform Implementation Monitor

Notes

1 Department of Premier and Cabinet, 'Keeping Children Safer Implementation Status Report', *Keeping Children Safer* (Policy Document, 31 May 2023) Action 10 <https://www.dpac.tas.gov.au/keepingchildrensafer>.

2 Transcript of Jenny Gale, 13 September 2022, 4024 [21–24].

3 Transcript of Ginna Webster, 12 September 2022, 3967 [42–46].

4 Transcript of Samantha Crompvoets, 13 September 2022, 4035 [7–9], [22–26].

5 Family Violence Reform Implementation Monitor, *The Family Violence Reform Implementation Monitor*, (Web Page, 30 May 2023) <https://www.fvrim.vic.gov.au/family-violence-reform-implementation-monitor>.

6 *Family Violence Reform Implementation Monitor Act 2016* (Vic) s 1.

7 Statement of Tim Cartwright, 22 August 2022, 3 [13].

8 Statement of Jan Shuard, 4 September 2022, 3 [18]; Transcript of Tim Cartwright and Jan Shuard, 13 September 2022, 3995 [31–38].

9 Transcript of Tim Cartwright, 13 September 2022, 3995 [40–45].

10 Transcript of Tim Cartwright, 13 September 2022, 3994 [30–34].

11 Transcript of Tim Cartwright and Jan Shuard, 13 September 2022.

12 Statement of Tim Cartwright, 22 August 2022, 3 [16].

13 Transcript of Tim Cartwright, 13 September 2022, 4000 [41]–4001 [3].

14 *Family Violence Reform Implementation Monitor Act 2016* (Vic) ss 23–24.

15 Statement of Tim Cartwright, 22 August 2022, 3 [15]–[17].

16 Transcript of Jan Shuard, 13 September 2022, 3999 [3–5], [12–24].

17 Transcript of Jan Shuard, 13 September 2022, 4011 [29–33].

18 Statement of Jan Shuard, 13 September 2022, 4 [20].

19 Transcript of Jan Shuard, 13 September 2022, 3999 [3–10].

20 Transcript of Jan Shuard, 13 September 2022, 3995 [5–24].

21 Transcript of Jan Shuard, 13 September 2022, 3999 [17–24].

22 Statement of Jan Shuard, 13 September 2022, 6 [30]; Transcript of Tim Cartwright and Jan Shuard, 13 September 2022, 3994 [30–34], 3995 [5–13], 3995 [40–45], 3999 [3–10].

23 State of Victoria, *Royal Commission into Family Violence: Summary and recommendation* (Parliamentary Paper No 132, 2016) 100.

24 Tasmanian Government, *Fifth Annual Progress Report and Action Plan 2023: Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, December 2022).

25 Tasmanian Government, *Fifth Annual Progress Report and Action Plan 2023: Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, December 2022) 11.

26 Tasmanian Government, Fifth Annual Progress Report and Action Plan 2023: *Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, December 2022) 11.

27 Ministerial Statement, Jeremy Rockliff, Premier of Tasmania, 8 November 2022.

28 Ministerial Statement, Jeremy Rockliff, Premier of Tasmania, 8 November 2022.

29 Transcript of Jenny Gale, 13 September 2022, 4016 [37]–4017 [1].

30 Transcript of Sam Leishman, 13 May 2022, 1064 [16–30].

31 This table is intended as a guide, noting the Government and Implementation Monitor may agree to alter the timeframes and leads as reforms progress.

23 Afterword

1 Introduction

This Commission of Inquiry was established to provide the Tasmanian Government with an opportunity to understand how to respond more effectively to allegations and incidents of child sexual abuse in institutional contexts.

In this chapter, we consider how the work of our Commission of Inquiry was shaped by the legislative context within which it operated. This legislative context is relevant to the outcomes of our Inquiry (namely this report and its findings and recommendations) and how we went about our work. We consider we should reflect on how to conduct such inquiries more effectively.

As with all human endeavours, there are aspects to the conduct of our Commission of Inquiry that we could no doubt have done better. Ultimately, this is for the judgment of others.

The *Commissions of Inquiry Act 1995* ('Commissions of Inquiry Act') governed the way our Inquiry was established and conducted, although other legislation was also relevant. Given the experience of conducting our Inquiry, we consider it is appropriate and useful to reflect on the ways in which the Commissions of Inquiry Act (and other legislation) could be improved for the benefit of future inquiries and the entire Tasmanian community.

2 Background

Our Commission of Inquiry is the first since the Commission of Inquiry into the Death of Joseph Gilewicz ('Gilewicz Commission of Inquiry') reported in 2000.[1] During its inquiry, the Gilewicz Commission of Inquiry identified difficulties with the Commissions of Inquiry Act.[2] As a result, the *Commissions of Inquiry Amendment Act 2000* was introduced. The Gilewicz Commission of Inquiry went on to note other practical problems with the amended Commissions of Inquiry Act in its final report.[3]

In March 2002, the then Attorney-General requested the Tasmania Law Reform Institute ('Law Reform Institute') examine and report on the operation of the Commissions of Inquiry Act, including considering the experience of the Gilewicz Commission of Inquiry. In August 2003, the Law Reform Institute published its final report, recommending further amendments to the Commissions of Inquiry Act.[4]

In 2013, the Commissions of Inquiry Act was again amended to facilitate the work of the Royal Commission into Institutional Responses to Child Sexual Abuse.[5]

In anticipation of establishing our Commission of Inquiry, the Tasmanian Government had preliminary conversations with the Honourable Marcia Neave AO about the Commissions of Inquiry Act. A range of possible amendments to the Act—including because of the Gilewicz Commission of Inquiry's report, the Law Reform Institute's report and the experience of inquiries in other jurisdictions—were discussed ahead of our Inquiry. Ultimately, it was a matter for the Tasmanian Government and Parliament to decide the amendments that should be made to the Commissions of Inquiry Act.

On 1 March 2021, the *Justice Miscellaneous (Commissions of Inquiry) Act 2021* came into force ('Justice Miscellaneous (Commissions of Inquiry) Act'). This Act amended the Commissions of Inquiry Act, including in response to the Law Reform Institute's report and in anticipation of establishing our Commission of Inquiry.[6] Among other changes, the amended Commissions of Inquiry Act enabled regulations to be made that disapplied other Acts (or certain provisions of those Acts) to any information collected or used by or on behalf of a commission of inquiry.[7]

On 15 March 2021, the Governor of Tasmania established the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, appointing us as Commissioners and enabling our Inquiry to begin.[8]

In early May 2021, our Commission of Inquiry proactively engaged with the Tasmanian Government regarding provisions we recommended should be disapplied (that is, those that would not operate) to enable our Inquiry to do its work and to make it easier for people, including State Service employees, to share information with us.

On 14 July 2021, the *Commissions of Inquiry Regulations 2021*, which disapplied certain Acts in relation to our Commission of Inquiry, commenced.

The amended Commissions of Inquiry Act and the regulations made up the legal framework within which our Inquiry operated.

The Law Reform Institute's report commented that the fact the Gilewicz Commission of Inquiry identified aspects of the Commissions of Inquiry Act as being problematic was 'a familiar chain of events'.[9] Other royal commissions and inquiries have routinely identified in their reports challenges with the legislation under which they operated and opportunities for reform, with the goal of improving the conduct of future inquiries.[10] Indeed, given the limited time available to royal commissions and inquiries to undertake their work and, therefore, the need for them to focus on the subject matter of their inquiry, it is impractical for them to pursue legislative reforms during their term. In this context, we consider it is appropriate for us, at the end of our Inquiry, to also reflect on opportunities for reform.

3 A commission's conduct of its own inquiry

A commission of inquiry should be empowered to decide how it conducts its inquiry subject to the legislation and orders under which it is established, other relevant legislation and common law rules such as procedural fairness. In recognising the need for the Commissions of Inquiry Act to offer greater flexibility, the Justice Miscellaneous (Commissions of Inquiry) Act introduced provisions that gave a commission of inquiry the power to conduct its inquiry and obtain information in 'any manner that it considers appropriate' and to 'determine its own procedure in conducting its inquiry'.[11]

Importantly, the July 2021 regulations also provided that certain confidentiality provisions and other restrictions on sharing information in other Acts did not apply to information collected or used by or on behalf of our Commission of Inquiry.[12] As indicated, this removed barriers to State Service employees sharing information with us.

We recognise there is a delicate balance to be achieved between the important purposes of other Acts and whether such Acts should be disapplied in relation to a commission of inquiry to improve the conduct of its inquiry. This is a decision for the Tasmanian Government rather than any individual commission of inquiry, although the views of a commission of inquiry should be sought and carefully considered. The new regulations materially assisted our Inquiry, but we reflect below in Section 3.2 on the challenges presented by one particular provision that was not disapplied.

3.1 Adverse findings and misconduct findings

In Chapter 1, Section 2.3.4, we discuss the requirements imposed by the Commissions of Inquiry Act for a commission of inquiry to make findings of misconduct (section 18) and adverse findings (section 19), despite a commission of inquiry also being required by the Commissions of Inquiry Act and the common law to comply with the rules of procedural fairness. In a practical sense, these specific requirements make it more difficult to make such findings, where these requirements may be unnecessary, and indeed counterproductive, to appropriately protecting the rights and interests of those who might be affected by such findings. We do not repeat that discussion here.

In summary, we consider a commission of inquiry should be able to make any findings it wishes, subject to complying with the rules of procedural fairness. We do not consider that the legislation needs to set out any specific procedural requirements. It is not clear to us why the Commissions of Inquiry Act needs to have a specific regime for findings of misconduct, particularly when the equivalent legislation in other Australian jurisdictions does not have any such regime. This approach is inconsistent with contemporary inquiry practices. Ultimately, we are concerned that the Commissions of Inquiry Act creates legal complexities that prevent inquiries from being as effective and efficient as they might otherwise be.

We consider it appropriate and necessary for the Commissions of Inquiry Act to expressly provide that the rules of procedural fairness apply to a commission of inquiry.[13] However, one of the practical challenges of the specific procedural requirements for findings of misconduct in the Commissions of Inquiry Act is that it limited the ability of our Inquiry to determine how we conducted ourselves, as explained further below.

Under the current Act, a commission of inquiry must give a person notice of any allegation of misconduct (section 18(1)) and allow that person an opportunity to respond (section 18(3)). We consider giving a person notice about potential findings concerning them and an opportunity to respond is appropriate, but note that this would be required by the rules of procedural fairness anyway. The practical challenge is that the rights in relation to responding under section 18(3) could allow that person to effectively control the commission of inquiry's processes. Under section 18(3), the person may choose to make oral or written submissions, give evidence to a commission of inquiry, cross-examine the person who made the allegation or call witnesses. As a result, a person may compel a commission of inquiry to:

- conduct more hearings, even where the commission of inquiry's planned hearings have concluded
- call or re-call witnesses for cross-examination, even in circumstances where there may be other important reasons why this is not appropriate (for example, this could be retraumatising for some witnesses and the nature of the cross-examination may be inconsistent with trauma-informed practice).

The scheduling of hearings is complicated, requiring a wide variety of factors to be considered—among them, the availability of a venue, Commissioners, witnesses, parties, lawyers for all relevant parties, technical operators and other relevant supports (such as counselling). Hearings are resource-intensive, expensive and time-consuming. Therefore, it is better that commissions of inquiry control the calling of any hearings. Also, given that most inquiries continue to discover information throughout their term that may be relevant to findings they wish to make, the risk is that inquiries would need to hold repeated section 18 hearings to make findings that might constitute findings of misconduct, or otherwise artificially and prematurely conclude their information-gathering phases to allow enough time if any hearings related to section 18 may be required. It is also possible information that emerges from one section 18 hearing gives rise to new potential findings of misconduct that might require more section 18 hearings, meaning there is the potential for endless hearings unless the inquiry determines not to pursue findings based on information that is already before it. In addition, under the current Commissions of Inquiry Act, there is the risk that an individual might seek to 'run the clock' and delay providing information until after the commission's planned hearings conclude, and to then require a further hearing if the commission were to propose making a misconduct finding based on the information they subsequently provide.

While a commission of inquiry should certainly be required to consider a response from a person in relation to potential adverse content or findings about them, this could be achieved through written submissions and written evidence without requiring the substantial expense, delay and potential trauma of further public hearings. A person affected by a potential finding will usually only be motivated to consider their own position and possibly the position of any employer or organisation they represent. In contrast, a commission of inquiry must consider a raft of factors, including how to advance its inquiry for the benefit of the public, how to appropriately manage the public cost of its inquiry, how to sequence its work to meet its reporting deadline, how to weigh the information and position of each party and, of course, how to comply with the rules of procedural fairness. It is for these reasons that it is appropriate for a commission of inquiry to be able to control its own proceedings.

In this context, we consider section 18 does not achieve an appropriate balance between facilitating a commission of inquiry controlling its own proceedings (while complying with the rules of procedural fairness) and protecting the rights of a person subject to an allegation or potential finding of misconduct. We consider that further amendments to section 18, or the definition of 'misconduct', will not redress this imbalance. The Tasmanian Government should consider simply repealing section 18 and that definition.

Similarly, a commission of inquiry must give a person a notice of any adverse finding and allow the person at least 10 business days to respond (section 19).[14] While less prescriptive and, therefore, less problematic than the specific procedural requirements

for findings of misconduct, we do not consider it is necessary for this procedure to be specified in the legislation. Our Commission of Inquiry complied with these requirements in relation to all people subject to an adverse finding. Indeed, we provided the State with the opportunity to comment on content even where it was not an adverse finding. We also routinely provided the State and other people and entities with much more than 10 business days in which to respond, recognising that a longer period was sometimes fair and reasonable in the circumstances. Therefore, these are matters that a commission of inquiry should determine as part of its compliance with the rules of procedural fairness.

As stated above, we consider it appropriate and necessary for the Commissions of Inquiry Act to expressly provide that the rules of procedural fairness apply to a commission of inquiry.[15] We do not, however, consider the relevant legislation should set out any specific procedural requirements for making findings or complying with such rules of procedural fairness. We consider section 18, in particular, imposes requirements that are unnecessary, counterproductive, onerous and not in the public interest.

3.2 Legislative restrictions on certain information

Given the subject matter of our Commission of Inquiry, there was a range of other legislation that applied to the sensitive information (including about child sexual abuse) that we considered. Some of this legislation appropriately imposes restrictions on dealing with such information in the interests of achieving important purposes, while other provisions limited our Inquiry's effectiveness.

The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth)* ('National Redress Scheme Act') limits the use and disclosure of protected information in relation to the National Redress Scheme but allows it to be used and disclosed in certain circumstances.[16] As the National Redress Scheme Act is a Commonwealth Act, the Commissions of Inquiry Act and any regulations under it cannot override or disapply the National Redress Scheme Act. Our Commission of Inquiry complied with these limitations and relevant exceptions to them where appropriate.

The *Evidence Act 2001* also imposes relevant restrictions. Originally, section 194K created an offence for a person, in relation to any proceeding in any court, to publish identifying information about a person in respect of whom specific crimes involving a sexual offence were alleged to be committed (that is, a victim-survivor) and any witness or intended witness in those proceedings, without a court order. In 2020, a new section 194K was introduced making it an offence for a person, in relation to any proceeding in any court, to publish identifying information in respect of certain specified crimes involving a sexual offence.[17] The offence applies regardless of whether the criminal proceedings have been finally determined.[18] It is a defence to this offence

if the information is about a person against whom the crime is alleged to have been committed (that is, a victim-survivor) and that person consents to the disclosure (and the information does not identify any other victim-survivor unless that person has also consented). The change flowed from a campaign led by victim-survivors who wanted to speak about their own experiences of child sexual abuse. The legislation still does not, however, allow any witness or intended witness in those proceedings (other than the defendant) to be identified without a court order (that is, even if the victim-survivor and the witness both consent to being identified).

In conducting our Commission of Inquiry, our approach was to appropriately empower and protect victim-survivors; this included respecting their preferences for how their information would be shared and used. As part of our engagement with victim-survivors, if we proposed to identify them in our hearings or our report, and section 194K might apply, we asked for their consent.

Similar provisions to section 194K apply in other Australian jurisdictions and aim to achieve the important purpose of providing victim-survivors with the ability to share their experiences and control whether they are identified. As our Commission of Inquiry worked through applying section 194K, we identified a range of challenges. These included limitations on our ability to conduct hearings and include content in this report in circumstances where such limitations were not necessary to achieve the purpose of the provision (including empowering victim-survivors with the choice to be identified and how they can share their experiences).

First, a range of terms used in section 194K are not defined and are, therefore, uncertain. Section 194K does not spell out what constitutes 'proceedings in any court' and continues to apply regardless of whether the proceedings have been discontinued, finally determined or otherwise disposed of. Section 194K applies to any witness or intended witness in the proceedings. These terms are also not defined. It is not always readily apparent who is, or was, a witness or intended witness in any proceeding, and there can be practical difficulties in identifying all people for whom section 194K might apply. For example, James Griffin was charged with sexual offences against young people, but following his death by suicide, these proceedings were never finally determined. Relevantly, however, section 194K continues to apply in relation to those proceedings and anyone who was an intended witness in them.

Second, there is no way for a witness or intended witness to be identified (without a court order), even in circumstances where the relevant victim-survivor has consented to being identified in line with section 194K and might wish for the relevant witness to also be identified. This could lead to the strange outcome that a victim-survivor could be identified but an immediate family member who gave (or might have given) evidence in the proceedings (and who might also wish to be identified) or a professional witness, such as a police officer, could not be identified. It would also seem possible

to identify professional witnesses without necessarily identifying a victim-survivor or other witnesses, so would not be inconsistent with the purpose of the provision, but this would also not be permitted without a court order.

Third, section 194K specifies that only a victim-survivor aged 18 years or older can provide consent. Unlike other Australian jurisdictions, there is no way younger victim-survivors with appropriate capacity can give consent.[19]

Finally, although an application can be made to the Supreme Court for an order to allow identifying information to be published, this process risks being expensive, time-consuming and potentially traumatic for multiple parties. In circumstances where the relevant inquiry is directly engaging with the victim-survivor and any relevant witnesses, and the purposes of the provision are being facilitated, it appears to us that it would be better to avoid applying for such an order.

Two solutions to these practical challenges could be considered. First, section 194K could be redrafted to address the issues we have identified above, taking into account the more precise drafting in other Australian jurisdictions. Second, section 194K should be disapplied by regulations relating to any relevant commission of inquiry.

Our Commission of Inquiry complied with section 194K. We adopted a cautious approach and did not identify anyone if there was a risk that section 194K might apply and it was not possible to seek their consent to identification under section 194K.

We liaised with the Director of Public Prosecutions to consider any issues with section 194K applying to our work, as well as to try to avoid, in keeping with the order establishing our Commission of Inquiry, prejudicing any current or future criminal proceedings. We are grateful to the Director and his office for their assistance with these matters.

4 Flexibility with powers and privileges

In October 2009, the Australian Law Reform Commission ('ALRC') conducted a review of the *Royal Commissions Act 1902 (Cth)* and presented its findings in its *Making Inquiries: A New Statutory Framework report.*[20] Although the ALRC's review focused on the Commonwealth Act, it led to legislative reform in other Australian jurisdictions.[21] The review is relevant to reforms to the Commissions of Inquiry Act, including because the Justice Miscellaneous (Commissions of Inquiry) Act was said to implement the work undertaken by the Law Reform Institute and the ALRC.[22] Relevantly, the Justice Miscellaneous (Commissions of Inquiry) Act did not implement all the recommendations of either.

One important recommendation of the ALRC was to establish two tiers of public inquiry—namely, royal commissions and official inquiries—within a single statute.[23]

It was suggested this would 'enhance clarity, transparency and accountability, and preserve, as far as possible, the rights of individuals'.[24]

As the ALRC noted in its report, a royal commission is the highest form of inquiry, established to look into matters of substantial public importance, whereas an official inquiry looks into other matters of public importance.[25]

The ALRC noted key differences between these two tiers:

- A royal commission has a wide range of coercive powers of entry and search and seizure, whereas an official inquiry has fewer powers.
- A royal commission overrides legal professional privilege and the privilege against self-incrimination, but these continue to apply in an official inquiry.[26]

We agree that the purpose and nature of each inquiry is different and the powers and privileges that apply to each inquiry might also need to differ, so each inquiry can appropriately conduct its work while also appropriately balancing the rights of those involved with, or potentially affected by, its processes.[27]

In New South Wales, Victoria and the Australian Capital Territory, relevant legislation provides for these different tiers of inquiry.[28] For example, the *Inquiries Act 2014* (Vic) provides for establishing a royal commission, a board of inquiry or a formal review, with each having different powers. A royal commission overrides legal professional privilege and the privilege against self-incrimination, but a board of inquiry does not.[29] A royal commission and a board of inquiry also generally override statutory secrecy provisions in other legislation.[30] A formal review preserves legal professional privilege, the privilege against self-incrimination and statutory secrecy provisions. Other Australian jurisdictions also expressly override legal professional privilege and the privilege against self-incrimination in relevant inquiries.[31]

In Tasmania, commissions of inquiry have been far less frequent than in other Australian jurisdictions. Possibly because of this, the Commissions of Inquiry Act does not reflect the ALRC report approach of having different tiers of inquiry with flexibility in the powers and privileges that might apply to those different tiers.

While the Justice Miscellaneous (Commissions of Inquiry) Act amended the Commissions of Inquiry Act to empower a commission of inquiry to decide if a claim of privilege is valid, it does not expressly override legal professional privilege (although it does override the privilege against self-incrimination).[32]

Our Commission of Inquiry worked with the Tasmanian Government to manage State claims of privilege and was grateful for the approach adopted by the Tasmanian Government of seeking to confidentially share such material with us and, in some cases, waive privilege where it was possible to do so. Otherwise, we respected the State's claims for privilege. Nonetheless, it would be appropriate to consider whether

the Commissions of Inquiry Act should be amended to create greater flexibility in the powers and privileges that apply to future inquiries, including abolishing legal professional privilege in relevant inquiries.

5 Other opportunities for reform

As noted, the Commissions of Inquiry Act was amended in 2021 to empower a commission of inquiry to conduct its work and obtain information in any way it considers appropriate.[33] As reflected in this report, our Commission of Inquiry informed itself in several ways, including through public hearings.

The Commissions of Inquiry Act was originally enacted when public hearings were a—possibly *the*—primary vehicle by which evidence was obtained. Part 3 [Conduct of Inquiries], Division 1 [General powers and procedures] reflects this historical focus on public hearings. While amendments to the Commission of Inquiry Act make it clear that commissions of inquiry can get information in other ways, the Act still has various terms including 'information', 'evidence', 'documents' and 'thing'. None of these terms are defined.

In conducting our Inquiry and considering the relevant protections and offences that apply under the Commissions of Inquiry Act, we approached these terms broadly to ensure all who provided information, gave evidence or produced a document or thing—whether at a public hearing, during a session with a Commissioner, in a submission or as part of a consultation—were afforded these protections and rights.

More generally, however, the Act using different terms raises the question of whether any legal difference between them is intended. This requires careful consideration of each use of the different terms and creates the possibility of different interpretations and, therefore, greater legal complexity. Given a commission of inquiry can obtain information in any way it considers appropriate, we do not consider using different terms is necessary. The legislation could be simplified by using the same terminology consistently.

A commission of inquiry also has powers to control its proceedings, determine whether its hearings are open to the public, and prohibit or restrict the public reporting of a hearing or the publishing of any evidence it takes or receives.[34] A few comments might be made about these provisions. First, by their language, they reflect the historical focus of the Commissions of Inquiries Act on hearings, as opposed to empowering a commission of inquiry to make orders (including prohibitions or restrictions) relating to any information that it might receive. Second, before a commission of inquiry decides to close its hearings, or to make a prohibition or restricted publication order, it must announce that intention or make such an order at a hearing that is open to the public.[35]

While our Commission of Inquiry was able to close hearings and to make orders to prohibit or restrict the publication of evidence as part of our main hearings, such processes could be disruptive and inefficient. In the context of contemporary inquiry practices, we consider there may be more efficient ways of making such decisions and orders public without needing to do so during public hearings. For example, it might be possible to require such notices to be published at any relevant commission of inquiry office or hearing venue, or on the commission of inquiry's website, a reasonable period before they take effect.[36]

6 Conclusion

Our experience in conducting our Commission of Inquiry highlighted several ways in which the Commissions of Inquiry Act should be improved to enable future inquiries to achieve their objectives effectively, efficiently and in a way that is fit for purpose. We see opportunities for holistic reform of the Commissions of Inquiry Act rather than piecemeal amendments or amendments that react to circumstances surrounding establishing any given commission of inquiry. We hope our experiences and reflections might usefully inform any such reform for the benefit of future inquiries.

We encourage the Tasmanian Government to actively pursue the following potential framework for legislative reform:

1. Amend the *Commissions of Inquiry Act 1995* to:
    a. establish greater flexibility in the powers and privileges applying to different inquiries, including expressly abrogating legal professional privilege in relevant inquiries
    b. repeal the definitions of 'adverse finding' and 'misconduct' (section 3) and sections 18, 19(2A) and (2B)
    c. use consistent terminology and achieve drafting coherence across the various ways in which a commission of inquiry might obtain, manage and protect those who provide information
    d. provide for more practical ways in which to make decisions about closing hearings and making prohibition or restricted publication orders.
2. Amend section 194K of the *Evidence Act 2001*, considering equivalent provisions in other Australian jurisdictions and the practical challenges identified in this report.

Notes

1 *Commission of Inquiry into the Death of Joseph Gilewicz* (Report, 2000).

2 Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995* (Final Report No. 3, August 2003) 7.

3 *Commission of Inquiry into the Death of Joseph Gilewicz* (Report, 2000) vol 3, Annexure 17, 3–7.

4 Tasmania Law Reform Institute, Report on the *Commissions of Inquiry Act 1995* (Final Report No. 3, August 2003).

5 *Commissions of Inquiry Amendment Act 2013*.

6 Tasmania, *Parliamentary Debates*, House of Assembly, 18 March 2021, 48 (Elise Archer, Minister for Justice).

7 *Commissions of Inquiry Act 1995* s 7A(2).

8 Order of the Governor of Tasmania made under the *Commissions of Inquiry Act 1995*, 15 March 2021 (Refer to Appendix A).

9 Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995* (Final Report No. 3, August 2003) 7.

10 Refer to, for example, *Royal Commission into the Management of Police Informants* (Final Report, November 2020) vol 4, ch 16.

11 *Commissions of Inquiry Act 1995* s 5(3)(a).

12 *Commissions of Inquiry Act 1995* s 7A(2).

13 *Commissions of Inquiry Act 1995* s 5(3)(b)(i), noting this is also repeated in s 19(2B). Refer also to *Royal Commissions Act 1991* (ACT) s 23(a); *Inquiries Act 2014* (Vic) s 12(a).

14 *Commissions of Inquiry Act 1995* s 19(2A).

15 *Commissions of Inquiry Act 1995* s 5(3)(b)(i), noting this is also repeated in s 19(2B). Refer also to *Royal Commissions Act 1991* (ACT) s 23(a); *Inquiries Act 2014 (Vic)* s 12(a).

16 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) pt 4.3.

17 *Evidence Amendment Act 2020; Evidence Act 2001* s 194K(1).

18 *Evidence Act 2001* s 194K(2).

19 Refer to *Evidence (Miscellaneous Provisions) Act 1991* (ACT) s 74(2); *Crimes Act 1900* (NSW) s 578A(4)(b); *Children (Criminal Proceedings) Act 1987* (NSW) s 15D(b); *Criminal Law (Sexual Offences) Act 1978* (Qld) s 10(2); *Evidence Act 1929* (SA) s 71A(4); *Judicial Proceedings Reports Act 1958* (Vic) s 4(1BB); *Evidence Act 1906* (WA) s 36C(6). In the Northern Territory, there is an exception provided there are no pending court proceedings: *Sexual Offences (Evidence and Procedure) Act 1983* (NT) s 6(2)(b).

20 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* (Report No 111, October 2009).

21 Refer to, for example, *Inquiries Act 2014* (Vic).

22 Tasmania, *Parliamentary Debates*, House of Assembly, 18 March 2021, 48 (Elise Archer, Minister for Justice).

23 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* (Report No 111, October 2009) 108 (Recommendation 5-1).

24 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* (Report No 111, October 2009) 34–35.

25 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* (Report No. 111, October 2009) 31.

26 Refer to, for example, *Inquiries Act 2014* (Vic) div 6, ss 32, 33.

27 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* (Report No. 111, October 2009) 31.

28 *Royal Commissions Act 1991* (ACT); *Inquiries Act 1991* (ACT); *Royal Commissions Act 1923* (NSW); *Special Commissions of Inquiry Act 1983* (NSW); *Inquiries Act 2014* (Vic).

29 *Inquiries Act 2014* (Vic) ss 32–33.

30 *Inquiries Act 2014* (Vic) ss 34, 74.

31 *Royal Commissions Act 1902* (Cth) ss 6A, 6AA; *Royal Commissions Act 1991* (ACT) s 24; *Inquiries Act 1991* (ACT) s 19; *Royal Commissions Act 1923* (NSW) s 17(1); *Special Commissions of Inquiry Act 1983* (NSW) s 23(1); *Commissions of Inquiry Act 1950* (Qld) s 14(1A); *Inquiries Act 2014* (Vic) ss 32(1), 33(1).

32 *Commissions of Inquiry Act 1995* s 23A and s 26.

33 *Commissions of Inquiry Act 1995* ss 5(3)(a)(i), (ii).

34 *Commissions of Inquiry Act 1995* ss 12–14.

35 *Commissions of Inquiry Act 1995* ss 13(3), 14(2).

36 Refer to, for example, *Inquiries Act 2014* (Vic) s 24(2).

Appendices

Appendix A: Order establishing the Commission of Inquiry

Order Under the

Commissions of Inquiry Act 1995

WHEREAS all children deserve a safe and happy childhood.

AND Tasmania recognises that Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's rights to this protection and a crime under Tasmanian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND government institutions, including child-care, educational, and other non-government institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures or responses by government and non-government institutions in relation to allegations and incidents of child sexual abuse are explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those affected by child sexual abuse can share their experiences to assist with healing and to inform the development of strategies and reforms in relation to systemic failures by government institutions in relation to child sexual abuse and related matters.

AND noting that the Royal Commission into Institutional Responses to Child Sexual Abuse did not specifically examine, make findings or recommendations about Tasmanian Government institutions.

AND noting that the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse substantially addressed issues relating to matters outside government institutional contexts.

AND as the Tasmanian Government expected from the findings and recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse the Tasmanian Government continues to receive reports of child sexual abuse in government institutions.

AND noting that, it is also important to continuously improve the response to all forms of child sexual abuse in all contexts.

AND the Tasmanian Government has expressed its support for, and undertaken to cooperate with, an inquiry into its responses to child sexual abuse and related matters.

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the Advice of the Executive Council, being satisfied that it is in the public interest and expedient to do so, by this my order made under Section 4 of the *Commissions of Inquiry Act 1995* –

(a) Direct that an Inquiry be made into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

(b) Establish a Commission to conduct and report, with such recommendations as it may consider appropriate, on Inquiry.

(c) Appoint

The Honourable Marcia Neave AO

Professor Leah Bromfield

The Honourable Robert Benjamin AM

as members of the Commission.

(d) Appoint the Honourable Marcia Neave AO as President of the Commission.

AND I require and authorise you, to inquire into the Tasmanian Government's responses to allegations and incidents of child sexual abuse in institutional contexts, and in particular, without limiting the scope of your inquiry, the following matters:

(i) what the Tasmanian Government should do to better protect children against child sexual abuse in institutional contexts in the future;

(ii) what the Tasmanian Government should do to 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;

(iii) what the Tasmanian Government should do to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse in institutional contexts, including addressing failures in, and impediments to, reporting, investigation and responding to allegations and incidents of abuse;

(iv) what the Tasmanian Government should do to address, or alleviate the impact of, past and future child sexual abuse in institutional contexts, including, in particular, in ensuring justice for victims through, processes for referral for investigation and prosecution and support services.

AND I direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND I direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

(i) the experience of people directly or indirectly affected by child sexual abuse in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

(ii) the adequacy and appropriateness of the responses by the Tasmanian Government, and its officials, to reports and information about allegations, incidents or risks of child sexual abuse in institutional contexts, including, without limiting the generality of your inquiry:

i. the adequacy and appropriateness of the responses by the Department of Education to allegations of child sexual abuse in Tasmanian Government Schools;

ii. the adequacy and appropriateness of the responses of the Tasmanian Health Service and the Department of Health to allegations of child sexual abuse, particularly in the matter of James Geoffrey Griffin (deceased 18 October 2019);

iii. the adequacy and appropriateness of the responses of the Department of Communities Tasmania to allegations of child sexual abuse at Ashley Youth Detention Centre;

(iii) the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you may be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

(iv) changes to laws, policies, practices and systems that have improved over time the ability of government institutions to better protect against and respond to child sexual abuse in institutional contexts.

AND I further declare that you are not required by this Order to inquire, or to continue to inquire, into a particular matter to the extent that the matter has been sufficiently and appropriately dealt with by the Royal Commission into Institutional Responses to Child Sexual Abuse or another inquiry or investigation or criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you consider appropriate, I direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and I authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

(i) the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 34A of the *Commissions of Inquiry Act 1995* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

(ii) the need to establish investigation units to support your inquiry;

(iii) the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

(iv) the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary trauma to witnesses;

(v) the need to ensure that government and non-government institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archival material.

AND I declare that in this Order:

child means a child within the meaning of the *Convention on the Rights of the Child* of 20 November 1989.

child sexual abuse means

i. any act which exposes a child to, or involves a child in, sexual processes beyond their understanding or contrary to accepted community standards. Sexual abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, and exhibitionism and exposing a 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.

Department of Communities Tasmania means the Government department referred to in Part 1 of Schedule 1 of the *State Service Act 2000* as the Department of Communities Tasmania, including its predecessors.

Department of Education means the Government department referred to in Part 1 of Schedule 1 of the *State Service Act 2000* as the Department of Education, including its predecessors.

Department of Health means the Government department referred to in Part 1 of Schedule 1 of the *State Service Act 2000* as the Department of Health including its predecessors, and includes Ambulance Tasmania within the meaning of the *Ambulance Service Act 1982* and all other publicly funded health services other than health services provided by the Tasmanian Health Service under the authority of the *Tasmanian Health Service Act 2018*.

government institution means any agency or statutory authority of the Crown in right of Tasmania, or local government entity.

non-government institution means any non-government institution that undertakes, or has undertaken, activities on behalf of the Tasmanian Government or is funded by the Tasmanian Government to provide services for children.

institutional context: 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 an 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 you consider that 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 you consider that a government or non-government institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official means:

(i) any member, officer, employee, associate, contractor or volunteer (however described) of a government or non-government institution; and

(ii) any other person who you consider is, or should be treated as if the person were, an official of a government or non-government institution.

related matters means

(i) any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse;

(ii) assisting a person to avoid detection for child sexual abuse or any other unlawful or improper treatment within the meaning of paragraph (i) of this definition.

statutory authority means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority and includes the governing authority of a statutory authority.

Tasmanian Government means the executive government of Tasmania, and includes its agencies and statutory authorities.

Tasmanian Health Service means:

(a) the Tasmanian Health Service within the meaning of the *Tasmanian Health Service Act 2018*, and includes any subsidiary of the Tasmanian Health Service and all its predecessors;

(b) a Health Organisation under the *Tasmanian Health Organisations Act 2011*.

AND I:

(a) require you to begin your inquiry as soon as practicable; and

(b) require you to make your inquiry as expeditiously as possible; and

(c) require you to report to appropriate authorities where you have identified a risk or potential risk to the welfare of a child or children generally; and

(d) require you to submit to me:

(i) as soon as possible, and in any event not later than 31 August 2022, your final report of the results of your inquiry and your recommendations; and

(ii) authorise you to submit to me any recommendations or interim reports that you consider appropriate.

Dated 15 MAR 2021

Governor

By Her Excellency's Command

Elise Archer MP

Attorney-General

ENCLOSURE REFFERRED TO IN EXECUTIVE COUNCIL
MINUTE NO. 6 DATED 07 FEB 2022

CLERK EXECUTIVE COUNCIL

Order Under the

Commissions of Inquiry Act 1995

TO

The Honourable Marcia Neave AO
Professor Leah Bromfield
The Honourable Robert Benjamin AM

GREETING

WHEREAS I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council by order made 15 March 2021 ("the order") established a Commission of Inquiry under the Section 4 of the *Commissions of Inquiry Act 1995* and appointed you as a Commission of Inquiry.

AND it is desired to amend the order

NOW THEREFORE I, acting with the advice of the Executive Council, by this further order made under Section 4 of the *Commissions of the Inquiry Act 1995* and Section 22 of the *Acts Interpretation Act 1931.*

AMEND the order

(a) by omitting from paragraph (d)(i) "31 August 2022" and substituting "1 May 2023".

Dated 07 FEB 2022

Governor

By Her Excellency's Command

Hon Elise Archer MP
Attorney-General

Order Under the

Commissions of Inquiry Act 1995

TO

The Honourable Marcia Neave AO
Professor Leah Bromfield
The Honourable Robert Benjamin AM

GREETING

WHEREAS, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council by order made 15 March 2021 ("the order") established a Commission of Inquiry under the Section 4 of the *Commissions of Inquiry Act 1995* and appointed you as a Commission of Inquiry.

AND it is desired to amend the order

NOW THEREFORE I, acting with the advice of the Executive Council, by this further order made under Section 4 of the *Commissions of the Inquiry Act 1995* and Section 22 of the *Acts Interpretation Act 1931.*

AMEND the order

(a) by omitting from paragraph (d)(i) "1 May 2023" and substituting "31 August 2023".

Dated 26 APR 2023

Governor

By Her Excellency's Command

Hon Elise Archer MP
Attorney-General

Appendix B: Terms of reference

TERMS OF REFERENCE

The Commission is to inquire into the Tasmanian Government's responses to allegations and incidents of child sexual abuse in institutional contexts, and in particular, without limiting the scope of its inquiry, what the Tasmanian Government should do to:

I. better protect children against child sexual abuse in institutional contexts in the future
II. 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
III. eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse in institutional contexts, including addressing failures in, and impediments to, reporting, investigation and responding to allegations and incidents of abuse, and
IV. address, or alleviate the impact of, past and future child sexual abuse in institutional contexts, including, in particular, in ensuring justice for victims through, processes for referral for investigation and prosecution and support services.

For the purposes of its inquiry and recommendations, the Commission is to have regard to:

I. the experience of people directly or indirectly affected by child sexual abuse in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs
II. the adequacy and appropriateness of the responses by the Tasmanian Government, and its officials, to reports and information about allegations, incidents or risks of child sexual abuse in institutional contexts, including, without limiting the generality of its inquiry, the adequacy and appropriateness of:
    i. the responses by the Department of Education to allegations of child sexual abuse in Tasmanian Government schools
    ii. the responses of the Tasmanian Health Service and the Department of Health to allegations of child sexual abuse, particularly in the matter of James Geoffrey Griffin (deceased 18 October 2019)
    iii. the responses of the Department of Communities Tasmania to allegations of child sexual abuse at Ashley Youth Detention Centre
III. the need to focus its inquiry and recommendations on systemic issues, recognising nevertheless that it may be informed by individual cases and may need to make referrals to appropriate authorities in individual cases, and
IV. changes to laws, policies, practices and systems that have improved over time the ability of government institutions to better protect against and respond to child sexual abuse in institutional contexts.

The Commission is directed to make any recommendations arising out of its inquiry that it considers appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

The Commission is required to submit its report by no later than 1 May 2023.

Appendix C: Commission of Inquiry staff list

Commissioners

The Honourable Marcia Neave AO

Professor Leah Bromfield

The Honourable Robert Benjamin AM SC

Commission of Inquiry staff

Sarah Burne

Peta Carlyon

Sarah Darcey

Janet Dawson

Allan de Weys

Rachael Garrett

Anita George

Stephanie Glade-Wright

Dr Zoë Gill

Sarah Henderson

Tilda Hum

Anna Kay

Claire Leyden-Duval

Jill Murphy

Bruce Newey

Dana Rechtman

Cameron Rodger

Joanna Rolfe

Clair Shepherd

Andrew Smart

Bradley Wagg

Counsel Assisting

Elizabeth Bennett SC

Rachel Ellyard

Maree Norton

Alexandra Darcey

Georgina Rhodes

Legal Team

Suchira Chauhan

Betty Choi

Natalie Cooper

James D'Alessandro

Michelle Dean

Laura Deschamps Ferrari

Meagan Dujela

Amanda Dunn

Caitlyn Georgeson

Jared Heath

Bronte Howlett

Jesse Jin

Jessica Kiff

Harry Kim

Marin Kraljevic

Nicholas Laurie

Jarrod Mitchell

Philippa Munton

Mairead O'Connor

Emanuela Radulescu

Heidi Roberts

Fiona Ryan

Emily Steiner

Elena Stojcevski

Elly Sturgeon

Sophie Uhlhorn

Deborah White

Shana Webster

Ying Wong

Contractors, individuals and organisations providing assistance to our Commission of Inquiry

Donna Abela

Bruce Alston

Travis Atkins

Rowena Austin

Kathryn Bloom

Sarah Campbell

David Cocker

Matt Davies

Dr Simone Deegan

Rebecca Grant

Sam Horsfield

Fiona Hughes

Andrew Macrae

Tracey Matters

Emeritus Professor Morag McArthur

Associate Professor Timothy Moore

Sandra Muller

Keren Murray

Rebecca Nguyen

Renata Pasieczny

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Converge International

Department of Justice

icourts

MSS Security

Riawunna Centre for Aboriginal Education

Sexual Assault Support Service

Tasmanian Civil and Administrative Tribunal

Tasmania Legal Aid

Tasmania Prison Service

WOO Agency

Appendix D: Tasmanian Government's *Keeping Children Safer* Interim Response to the Commission of Inquiry (actions)

1. Announce and implement Keeping Children Safer Premier's Priority.
2. Improve the Right to Information process, including providing training across the State Service to ensure more consistent responses.
3. Explore options to expand the scope of regulated activities under the Registration to Work with Vulnerable People legislation to ensure Tasmania's worker screening scheme for people who work or volunteer with vulnerable people.
4. Make arrangements in Heads of Agency Performance Agreements to clarify expectations and improve accountability, making sure child safety and wellbeing is embedded in organisational leadership, governance and culture.
5. Investigate rolling out trauma-informed training across the State Service starting with those in leadership positions including Heads of Agency.
6. Encourage and support staff to raise child safety concerns.
7. Review the structure and processes across civil litigation to ensure our approach is trauma informed and that all our legal practitioners recognise evidence-based understandings of the nature and impact of child sexual abuse.
8. Review and rewrite Employment Direction 5.
9. Fast track response to the remaining recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.
10. Develop a Child and Youth Safe Organisations Framework including comprehensive legislated standards and the establishment of a Reportable Conduct Scheme.
11. Appoint a Safeguarding Officer in every Government school.
12. Require mandatory professional development for all Department for Education, Children and Young People (DECYP) staff.
13. Employ an additional four full time equivalent senior support staff (two psychologists and two social workers) to increase support for children and young people affected by harmful sexual behaviours or child sexual abuse.
14. Employ additional professional support staff, including eight full time equivalent psychologists and eight full time equivalent social workers to further support student wellbeing and safety.
15. Establish an Out of Home Care Accreditation Framework and an independent statutory body for accrediting and monitoring Out of Home Care Services, and develop a Carers' Register.

16. Draft legislation to create a new crime of 'failing to protect a child or young person' for people in authority within an organisation who fail to safeguard a child from substantial risk of sexual abuse by an adult associated with that organisation.
17. Amend the Criminal Code to introduce a new crime of 'penetrative sexual abuse of a child [or young person] by a person in authority', including a presumption that children under the age of 18 cannot consent to sexual intercourse when a person is in a position of authority over them.
18. Consider legislative solutions and other initiatives that will make it easier to share information about risks to children, including looking at whether issues of custom, practice and culture are creating unnecessary barriers.
19. Develop clear information regarding the circumstances where Agencies can and should share information about the status of investigations and/or investigative material.
20. Make trauma informed practice professional learning mandatory for investigators and other state servants involved in ED5 investigation processes.
21. Create a shared capability for the investigation of serious Code of Conduct breaches. Ensure the pool has a gender balance.
22. Establish a central register of employees who have been terminated as a result of an ED5 investigation.
23. Draft a formal apology on behalf of the parliament.
24. Provide information to all state servants on special two-day Commission of Inquiry leave.
25. Establish a Whole-of-Government Commission of Inquiry Response Unit.
26. Undertake a Child Safe Governance Review of the Launceston General Hospital and its Human Resources department informed by an advisory panel consisting of independent experts in child trauma, governance and hospital administration and human resources.
27. Establish a central complaints office to handle all future complaints about misconduct—including claims of child sexual abuse.
28. Establish two pilot multidisciplinary centres, one in the north and one in the south. Youth Justice Reform.
29. Develop a website to publicly report progress on implementation of the interim response actions and expected delivery dates.

Reproduced from: Department of Premier and Cabinet, Tasmanian Government's Interim Response to the Commission of Inquiry (Report, 31 July 2023) <https://www.dpac.tas.gov.au/__data/assets/pdf_file/0022/310576/Commission-of-Inquiry-Interim-Response-Report-as-at-31-July-2023.pdf>.

Appendix E: South Australian Guideline (May 2023)

Managing allegations of sexual misconduct in SA education and care settings guideline

This is a mandated policy under the operational policy framework. Any edits to this policy must follow the process outlined on the creating, updating and deleting operational policies page.

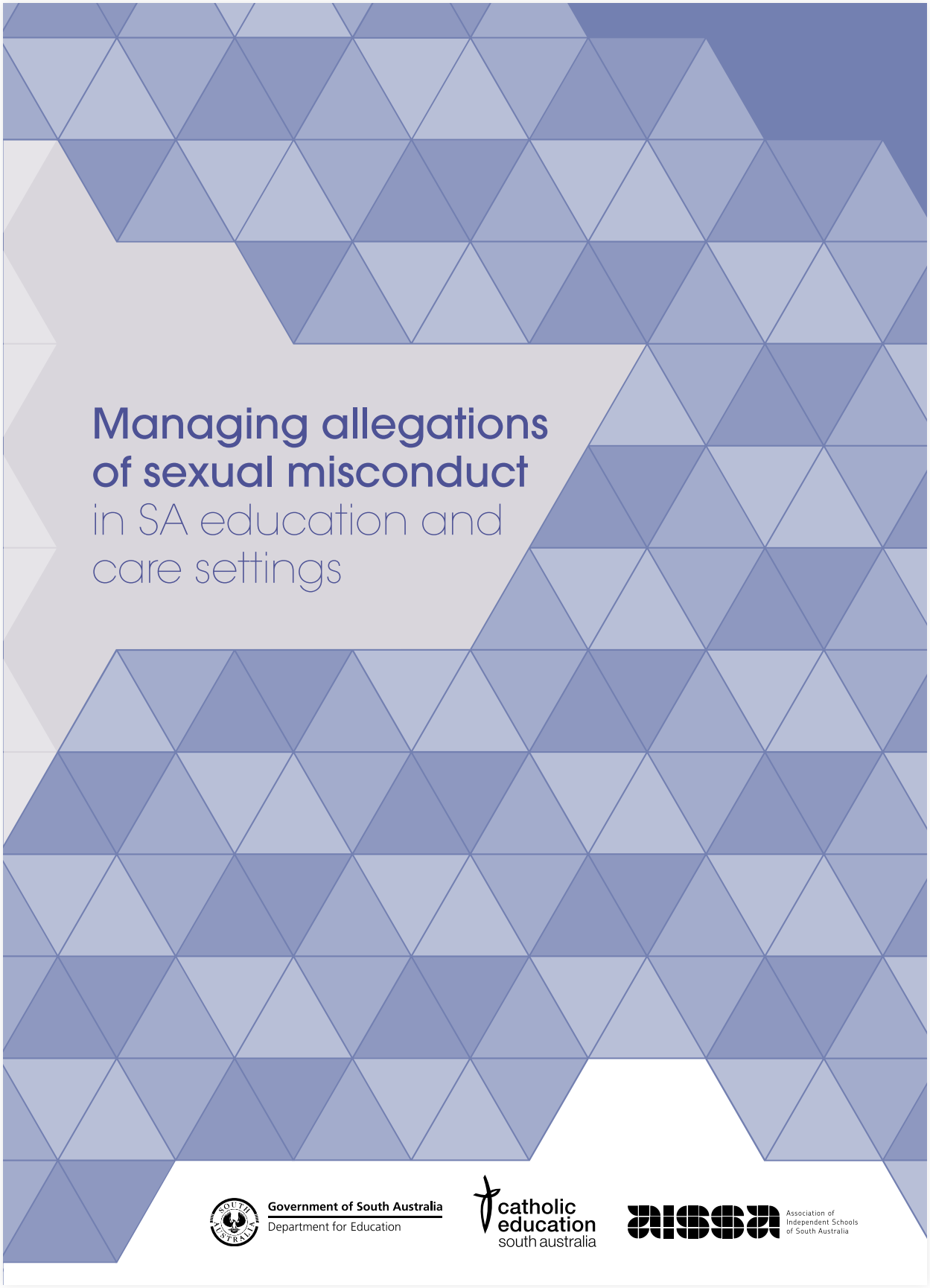
The reference to Section 26 of the Education Act 1972 in section 3.3.7 of this guideline is replaced by Section 114 of the Education and Children's Services Act 2019, as of 1 July 2020.

https://www.legislation.sa.gov.au/LZ/C/A/Education%20and%20Childrens%20Services%20Act%202019.aspx

The Education Regulations 2012 or Children's Services Regulations 2008 become the Education and Children's Services Regulations 2020 as of 1 July 2020.

https://www.legislation.sa.gov.au/LZ/C/R/EDUCATION%20AND%20CHILDRENS%20SERVICES%20REGULATIONS%202020.aspx

Government of South Australia
Department for Education


Managing allegations of sexual misconduct
in SA education and care settings
Government of South Australia
Department for Education
catholic education south australia
aisSA
Association of Independent Schools of South Australia

Acknowledgments

This document is very closely adapted from Chapter 15 of the *Royal Commission 2012–2013 Report of Independent Education Inquiry*. The adaptations give effect to recommendation 39 of the Report that the guideline be applicable to government, Catholic and independent education sectors. Grateful acknowledgment is made of the advice provided by the Hon Bruce Debelle AO QC in his drafting of Chapter 15, specifically his setting out of the application of various laws to the considerations to be made by education and care sites when responding to allegations of sexual misconduct by adults against children or young people.

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FOREWORD

The South Australian government and non-government education sectors have jointly developed all policies of a child protection nature since an agreement established in 2004. The policies and practices developed under that agreement help ensure that staff, children and parents can expect the same standards of child protection practice no matter which sector they access. This document joins that collection of guidelines and affirms that learning about child safety in education and care settings will continue to be shared across the government and non-government sectors.

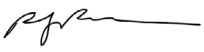
This document is very closely adapted from Chapter 15 of the *Royal Commission 2012–2013 Report of Independent Education Inquiry*. The adaptations give effect to recommendation 39 of the Report that the guideline be applicable to government, Catholic and independent education sectors. Grateful acknowledgment is made of the advice provided by the Hon Bruce Debelle AO QC in his drafting of Chapter 15, specifically his setting out of the application of various laws to the considerations to be made by education and care sites when responding to allegations of sexual misconduct by adults against children or young people.

An important feature of these incidents is that they involve the concerted and coordinated efforts of a number of professionals from different agencies. For this reason, it is unlikely that a site leader will undertake responses to an incident of this kind in isolation from other professionals. Site leaders can expect a high level of support and advice from their relevant sector office.

Education and care settings are meant to be safe environments for everyone who attends them. A range of processes and systems are utilised by the education sectors to prevent unsuitable individuals from working or volunteering in those settings. As leaders of the education sectors, we strongly support the ongoing development of legislative schemes to enable the most thorough assessments of an individual's suitability to work or volunteer with children and young people.

However, the best screening schemes are unlikely to remove all possibility of an adult exploiting his or her role in order to offend against children or young people. Education and care communities can help in limiting this risk by recognising and reporting *all* inappropriate adult behaviour towards children and young people. The introduction that follows strongly reinforces this responsibility and outlines the place of this guideline alongside other child protection responsibilities.

Finally, allegations against adults of sexual misconduct towards children and young people are complex matters. This guideline cannot be assumed to provide the appropriate directions for every case. It does not cover the full range of circumstances that an education or care site will encounter when assessing whether an individual is suitable to work or volunteer with children and young people. Therefore, in any situation of this kind, it may be necessary to seek legal advice. Nevertheless, it is hoped that this guideline will provide general assistance by removing confusion about the matters to be considered and actions that may need to be taken at different stages when allegations of sexual misconduct are made. In doing so, it is hoped that the guidance will help reduce any additional trauma for the affected children, young people, families and staff.



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CONTENTS

SECTION 1: Introduction

1.1 A note for site leaders

Managing an allegation of adult sexual misconduct is a highly complex task for a site leader to face. This guideline document is designed to provide site leaders, their parent community and their respective sector offices with improved clarity about the actions to be taken and matters that require considerations at each stage. It is important to remember that the obligation to report and respond to allegations of sexual misconduct applies irrespective of whether the accused person is still working, volunteering or undertaking a role in connection to an individual site. The person may have moved, resigned, taken leave, or may be deceased. The obligation to report and respond remains.

In managing situations of this kind, site leaders can assume that sector office decisions impacting their school or care community will be made consultatively and that their local knowledge and professional judgment will contribute to those decisions. They can also assume that they will be kept informed of new information as it becomes available and of relevant actions undertaken by others. No two cases will be identical so matters such as whether and when to send a letter to parent communities, who signs letters, the content of letters or the facilitation of a parent meeting may differ in every circumstance and will always require consultation. Site leaders of independent schools should expect the same kind of collaboration with those from whom they seek support.

The information in Section 3 and the checklists provided as Appendices 1 and 2 give site leaders the scope and general sequence of actions they and their sector office will need to undertake. At the time parents of a victim are informed that a matter of this kind is being managed, they should also be informed that this guideline will be followed. If and when other parents are informed of the matter, they should also be advised that the guideline is being followed.

1.1.1 Associated responsibilities

This guideline is closely linked with two other intersectoral child protection policies summarised below. The role of these two policy documents in helping prevent inappropriate adult conduct and in contributing to safe environments **cannot be over-emphasised**. Both documents are incorporated in the mandatory staff training used by the three sectors. However, it is assumed that site leaders routinely refer to these documents as part of their site-based professional development programs. Copies of both documents should be held in all education and care sites and can be downloaded from each sector's website.

Protective practices for staff in their interactions with children and young people

The Protective Practices document outlines the professional boundaries within which all staff members are expected to operate in their relationships with children and young people. Meeting the requirements outlined in Protective Practices is critical to helping prevent the circumstances of adult sexual misconduct. The Protective Practices policy requires all staff to act if they observe or are told about adult behaviour that represents a breach of a professional boundary. This point cannot be overstated: 'It is not acceptable to minimise, ignore or delay responding to such information. For the wellbeing of all members of the education or care community, the site leader must be informed as a matter of urgency …' (p 14).

Immediate actions in response to inappropriate behaviour may enable more serious underlying behaviour to be identified, and may prevent sexual misconduct. The more vigilant and transparent an education or care community is in complying with the Protective Practices document the more likely it will be that sexual misconduct can be prevented—through early identification, intervention, and deterrence.

Responding to problem sexual behaviour involving children and young people

This guideline is to be followed in all circumstances where a child or young person is alleged to have engaged in problem sexual behaviour. The responsibilities staff members have in these circumstances are significantly different from those involving allegations of sexual misconduct by adults. They reflect the different rights and needs of children and young people and the different legislation within which staff must operate. The guideline applies to and is available in all sectors.

1.1.2 Differences between the sectors

One significant difference between the three sectors' implementation of this guideline is in the seeking of **legal advice**. In the government and Catholic sectors, seeking legal advice will occur through the respective sector office. An independent school can seek legal advice on its own behalf. Generally, the different responsibility that is carried by the site leader and governing authority of an independent school is identified, wherever appropriate, throughout the guideline and in the definition of 'sector office' in Section 1.3.

1.2 Purpose

This guideline document:

- Informs leaders in education and care settings of the procedures for managing and reporting allegations of sexual misconduct at an education or care site.
- Ensures that parents are informed at the appropriate time of allegations of sexual misconduct by an adult against a child or young person enrolled or previously enrolled, where relevant, at an education or care site.
- Assists parents to understand the process that is followed in managing allegations of sexual misconduct by an adult against a child or young person enrolled or previously enrolled, where relevant, at an education or care site.
- States the respective duties of site leaders and sector offices in managing allegations of sexual misconduct at a site.
- Provides a transparent policy that enables early intervention, effective management and provision of the support required in these complex and serious matters.

1.3 Definitions

'accused person' means a current or past employee of an education or care site or any other adult who has a connection to a site against whom allegations of sexual misconduct have been made

'an adult who has a connection to a site' means and includes current and past employees of the education or care site; current and past volunteers, contractors, professional service providers, other paid education and care participants, governing authority members, and tertiary students and supervisors; and any adult who has engaged with children and young people enrolled at the site

'CARL' means Child Abuse Report Line

'child or young person' means persons up to the age of 18 years and includes young adults with developmental disabilities attending education settings

'governing authority' means a site or service's Governing Council or School Board

'parent' means and includes natural parents, step parents, foster parents, guardians, grandparents and any other relative or other person caring for a child

'relevant date' means the relevant date as defined in section 71A(5) of the *Evidence Act 1929*, provided in Section 2.3.1 below

'sector office' in this document means the policy, legal, case management support and/or direction provided through the:

- central office of the South Australian Department for Education
- central office of Catholic Education South Australia
- Office of the Association of Independent Schools of South Australia

Note: The relationship between sites and their sector offices differs. It may be one of direct governance and accountability or a partnership in which the individual site retains ultimate responsibility with its governing authority.

'site' means a school; preschool; children's centre; a junior primary, primary, secondary or senior secondary school; an Out of School Hours Care service; and the home of a Family Day Care provider

'site leader' means the principal or director and any other person who has ultimate responsibility for the welfare of children and young people on that site

'staff' means all adults who have a duty of care to children and young people at the site and includes volunteers

'victim' means the child or young person against whom an act of sexual misconduct by an adult who has a connection to a site has been alleged

1.4 Scope

The procedures in this guideline apply to allegations of sexual misconduct made against any adult who has a connection with the site where the allegations affect the suitability of that adult to work or volunteer with children and young people.

These procedures apply to allegations of sexual misconduct where any of the following situations exist:

- the allegation is disclosed at or off the site
- the incident is alleged to have occurred at or off the site
- at the time of the alleged incident, the victim was or was not in the direct care of the site.

This guideline applies only to allegations of sexual misconduct by an adult against a child or young person. For incidents involving sexual harm between children and young people, please refer to the document *Responding to problem sexual behaviour in children and young people*, available at each site and located on each sector's website.

1.5 Sexual misconduct

Sexual misconduct may take many forms. It includes, but is not limited to, sexual assaults of all kinds and other forms of unlawful sexual behaviour including such offences as being in possession of child pornography and acts of gross indecency. A sexual assault ranges from indecent assault through a number of offences to rape.

In some cases, a particular behaviour may become unlawful only by virtue of repeated instances.

*Note: This definition is provided for general information. It is not necessary for staff to determine whether an alleged behaviour is sexually motivated. It is simply necessary that staff report **all** inappropriate behaviour as per the Protective Practices guidelines. Those guidelines identify any behaviour of a potentially sexual nature between an adult and a child or young person as a breach of professional conduct. In meeting that reporting obligation, it is then the site leader's task to consult with his or her sector office regarding all allegations so that the appropriate response is made at all times.*

SECTION 2: Legislative framework

2.1 Underlying principles

Teachers and site leaders owe to the children and young people in their care a duty to take reasonable care to protect them from a reasonably foreseeable risk of injury. That duty is not necessarily confined to events on the site or during site hours. In addition to observing sector policy, staff must comply with a number of statutory duties or obligations.

Note: Appendix 8 provides links to relevant legislation.

2.2 Mandatory notification

Section 31 Children and Young People (Safety) Act 2017 (SA) imposes a duty on employees and volunteers in education and care settings to notify CARL if, in the course of their work, they suspect on reasonable grounds that a child or young person is, or may be, at risk. The child or young person will be taken to be at risk if the child or young person has suffered harm or there is likelihood that the child or young person will suffer harm (being harm of a kind against which a child or young person is ordinarily protected). In practical terms, the duty to notify the Department for Child Protection is a duty to notify the Child Abuse Report Line (CARL) on 131 478.

If an allegation is made to staff, or the staff member has a suspicion on reasonable grounds that a child has been or is being abused or neglected, he or she must notify CARL as soon as practicable after he or she forms that suspicion or learns of the allegation. It is an offence to fail to do so.

All staff members in government, Catholic and independent schools are required to undertake training in their child protection responsibilities, both when they are first employed and every three years thereafter. This training is jointly developed by the three education sectors and describes this responsibility in detail.

An outline of the process for documenting mandatory notifications in education and care settings is provided at <https://www.education.sa.gov.au/child-protection>.

2.3 Prohibitions on disclosure of identity

2.3.1 Restrictions on publication of identity

When a person has been, or is about to be, charged with a sexual offence, it is necessary to comply with the legal obligations imposed by section 71A of the *Evidence Act 1929*. Section 71A restricts publication of the identity of the alleged victim and of the alleged offender who, in this guideline document, will be called 'the accused person'.

Where the alleged victim is a child or young person under the age of 18, the name of the alleged victim or anything that might identify the victim can never be published. Therefore, care must be taken to ensure that nothing is said or published that might identify the alleged victim.

The name of the accused person can be published but only after certain events have occurred and if there are no suppression orders in force (see section 2.3.2 "suppression orders"). Those events are identified in section 71A(5) of the Evidence Act. They are called 'the relevant date'. The definition of 'relevant date' in the Evidence Act is as follows:

relevant date means

(a) in relation to a charge of a major indictable offence or a charge of a minor indictable offence for which the accused person has elected to be tried by a superior court—the date on which the accused person is committed for trial or sentence; or

(b) in relation to a charge of any other minor indictable offence or a charge of a summary offence—the date on which a plea of guilty is entered by the accused person or the date on which the accused person is found guilty following trial; or

(c) in any case—the date on which the charge is dismissed or the proceedings lapse by reason of the death of the accused person, for want of prosecution, or for any other reason.

The relevant dates are listed below according to the kind of offence with which the accused person has been charged.

The relevant sector office will be informed by SA Police of the kind of offence with which the accused person has been charged, that is, whether it is a major indictable offence or other kind of offence. This information should be provided to the site leader.

It is lawful to publish the name of the accused person after any of the following relevant dates.

- Major indictable offences
  1. The date on which the accused person is committed for trial or to be sentenced.
  2. The date on which the charge is dismissed or that proceedings lapse by reason of the death of the accused person or for want of prosecution or for any other reason.

  These dates are also applicable to minor indictable offences for which the accused person has elected to be tried in the District Court.

- Minor indictable offences and summary offences
  1. The date on which the accused person pleads guilty.
  2. The date on which the accused person is found guilty following a trial.

3. The date on which the charge is dismissed or that proceedings lapse by reason of the death of the accused person or for want of prosecution or for any other reason.

Appendix 7 to this document gives a brief outline of the steps in a criminal prosecution. That outline will assist in understanding the relevant dates.

2.3.2 Suppression orders

Suppression orders are made by a court pursuant to section 69A of the Evidence Act. A suppression order is an order forbidding publication of whatever is the subject matter of the order. The order will state that it forbids publication of the subject matter of the order. For example, the order might read:

> *The name or anything tending to identify the accused be suppressed from publication in the interests of justice until further order.*

A suppression order is not a statement made by a judge or magistrate that he or she does not intend to name a person or a school in order to protect the victim.

Before sending a letter to parents, the relevant sector office should inquire of the Registrar of the relevant court whether a suppression order exists. If an order exists, the sector office should examine the terms of the order and consider whether the order forbids the kind of letter under consideration. If there is any uncertainty about what is prohibited, legal advice should be sought.

It is still possible to give some information to staff, the governing authority and parents while complying with these restrictions. Section 3 of this guideline provides advice as to how and when that information is to be provided.

2.3.3 Avoiding defamation

When allegations of sexual misconduct have been made, care must be taken to avoid stating anything that might defame the person against whom the allegations have been made. If a site wishes to send a letter before a person has been arrested and charged with an offence, it is desirable to obtain legal advice as to the terms of the letter to ensure that nothing is said that defames that person. If that person has been arrested and charged, it is lawful to state that fact but nothing should be said that would suggest the person is in fact guilty of the alleged misconduct.

SECTION 3: Managing allegations of sexual misconduct

Allegations might be made against a member of the teaching staff, administration or other support staff, employees of a governing authority, or against volunteers at a site. In most cases, the steps to be taken by the site leader will essentially be the same.

It must be emphasised that these are guidelines only. The manner in which a site will learn of allegations will vary. Different circumstances may require a variation of the sequence of these actions. It is not possible to draft guidelines that will address every possible variation of fact. The fundamental steps that should always be observed are to notify immediately:

- SA Police
- Child Abuse Report Line
- parents of the victim, unless a parent is the accused person, and with due regard for the victim's wishes
- the relevant sector office.

3.1 Importance of note taking

Memories fade and recollections of events will be difficult at a later date when site leaders or members of staff are asked to recall events or conversations.

It is essential that site leaders and all other members of staff involved keep a written record of all conversations relating to the allegations. The notes should, if possible, be made in the course of the conversation or immediately after. In addition, site leaders and other members of staff should complete the 'Record of allegation' and 'Record of meeting' forms contained in Appendices 3 and 4. They can be downloaded from the sector's website. These forms should be completed in addition to the site leader's own notes of conversations.

Staff and volunteers should be aware that they may be called to give evidence in court proceedings. Contemporaneous notes will then be very helpful in assisting the recollection of events and conversations. It is also important to be aware that notes may be subpoenaed for court proceedings and, therefore, should be completed in a legible and professional manner.

The notes and forms should be placed in a file marked 'Confidential' and held in a secure cabinet. The only person with access to the cabinet should be the site leader or the site leader's delegate. At a relevant time, the site leader will provide this documentation to the sector office, if required by that office.

3.2 Immediate action

Allegations of sexual misconduct might be made either to the sector office or directly to a member of staff at the site or to the site leader. The allegations may be made by a child or young person, a staff member, a parent, a volunteer or a member of the public. On other occasions, the first knowledge that either the sector office or anyone at the site has of the allegations is when police state that they have arrested a person and charged him or her with a sexual offence.

The following is a list of the steps that should be taken by the site leader when allegations of sexual misconduct have been made. Which step a site leader begins with will vary according to whether the site leader is responding to the allegation 'first hand' or acting on information and instructions from the police or the sector office. Nevertheless, all the steps are important and need to be attended to immediately. The site leader has responsibility to undertake or, if tasks are undertaken by others, to oversee and confirm the execution of all the steps. Some steps can be taken simultaneously and most will be undertaken through consultation with, or by direction from, police and the sector office.

3.2.1 Actions of site leader

Reminder: The steps outlined are not necessarily sequential (see above).

Step 1: Obtain medical assistance for child or young person if required

The site leader should attend immediately to any medical treatment that the victim might require and attend to the victim's emotional needs in all ways appropriate until he or she is in the care of parents.

Step 2: Receive report of allegation

If an allegation of sexual misconduct is made to a member of staff or a volunteer at the site, it should be reported to the site leader immediately. The member of staff or the volunteer to whom the allegation is reported should record the allegations on the form in Appendix 3.

If the allegation involves the site leader, the report should be made to the relevant sector office or, in the case of an independent school, the chairperson of the governing authority.

Step 3: Report to SA Police

Once the site is aware of an allegation of sexual misconduct, the site leader must immediately report the allegations to police on 131 444. If the site leader is the person against whom the allegation is made, it is the sector office (or governing authority of an independent school) that has responsibility to make this report to police.

During this report, the site leader should seek and note SA Police's immediate advice on:

- restricting the staff member's access to children and young people (very important to executing step 7)
- preservation of evidence
- contact with parents of the victim
- police contact number to provide to parents of victim.

This will help inform the strategy discussions that the sector office, the site and police will undertake. Site leaders should expect that police will not normally interview children or young people at a site except as a matter of urgency or immediate necessity. In the ordinary course, children and young people should be interviewed at a place nominated by police that is off-site.

Step 4: Notify the Child Abuse Report Line

The site leader should, as soon as practicable, notify CARL on 131 478 and ensure the report is documented using the mandatory report form used by the relevant education sector and securely stored in the site leader's file.

Step 5: Preservation of evidence (if applicable)

The site leader should immediately take basic steps to secure the place where the alleged offending occurred, if that is on the site, until police arrive. An example is blocking access to the site's network if an allegation regarding child pornography is made, or locking the room in which an incident is alleged to have occurred. Electronic material of any kind **must not be deleted** but must be quarantined as far as practicable for handover to SA Police. The police will properly secure the crime scene on arrival. The site leader should seek advice from police on this issue when making the initial report.

Step 6: Inform the sector office and establish who will be assisting

The site leader should inform the relevant sector office and establish who will be assisting the site (eg a nominated case manager) in its management of the allegation and begin discussions immediately regarding the steps below.

Step 7: Preventing access to children and young people

When it is necessary to prevent the accused person from having any further contact with children or young people at the site, the site leader should take steps to prevent the accused person from attending the site, on directions **from SA Police and the sector office**. The responsibility of SA Police and the relevant education sector to work together in managing this circumstance is outlined in Appendix C of the *Interagency Code of Practice—Investigation of suspected child abuse or neglect*.

In some circumstances, the sector office or SA Police may ask the site leader not to indicate to the accused person that an allegation has been made until SA Police are able to complete their own preparations. The site leader will discuss with the sector office the most appropriate plan to either re-direct the individual from their teaching or care duties or to allocate another adult to the teaching or care situation in order to provide supervision until the end of the day. Each situation will provide different options and challenges for site leaders and their sector office to consider in managing this situation.

Step 8: Inform parents of victim

Unless a parent is the accused person, the site leader should immediately seek the approval of SA Police to inform the parents of the victim of the allegations if the parents are not already aware. This should be done in a sensitive manner, taking into consideration the victim's wishes. Information about counselling services and support for the victim and family should be provided at this time.

When the victim is a child under the Guardianship of the Chief Executive Department for Child Protection, the Chief Executive and his or her delegates are responsible for case management and planning for the safety, care and wellbeing of that child or young person. The Department for Child Protection has the additional responsibility to advise the Guardian for Children and Young People about sexual abuse involving children under the Guardianship of the Chief Executive Department for Child Protection. For these reasons, it is essential that the social worker is immediately informed so the special circumstances of the child or young person can be properly considered and managed.

Step 9: Inform the accused person of his or her immediate work requirements

In consultation with the relevant sector office and SA Police, the site leader should determine which leave/employment/contract options are appropriate and available for the accused person. These will vary across the three sectors but the intent is that the accused person does not attend the site while an investigation proceeds.

Step 10: Complete sector specific reporting requirements

These reporting requirements vary across the three sectors:

- Department for Education: critical incident report through the Incident Response Management System
- Catholic Education SA: critical incident report through the relevant Principal Consultant
- independent schools: school-based procedure.

Step 11: Document all information/ discussions/observations

The template provided in Appendix 3 should be used to document all information, discussions and observations relating to the incident. They should be signed, dated and placed in a confidential, secure site leader's file and provided to the sector office as required.

3.2.2 Actions of sector office

Step 1: Liaise with SA Police

Under the Interagency Code of Practice, SA Police will provide the relevant sector office with the following information:

- the name, date of birth and address of the person who has been charged
- details of the charge and apprehension report
- the condition upon which the accused person has been bailed
- the court bailed to and the date of the first court appearance
- the education or care site involved whether there is a reasonable suspicion that there might be other victims
- whether there are any complicating factors that would affect disclosure to parents
- the contact details of the investigating officer
- whether the offence is a major or minor indictable offence or a summary offence.

Step 2: Create a central file and appoint a manager

The sector office, through its relevant divisions or personnel, will ensure that a central file is established and that a case manager is identified to support the site in its management of the allegation. In an independent school, this will be the responsibility of the school principal.

Step 3: Assist the site in establishing appropriate leave for the accused person

The sector office will assist the site leader to manage these arrangements. It will ensure that the accused person is directed not to attend the site but it will assist the accused person to have personal materials delivered to him or her that have been approved by SA Police as appropriate. In an independent school, this will be the responsibility of the school principal.

Step 4: Check that all immediate responsibilities have been met

The sector office needs to check that the immediate responsibilities of the site have been met; for example:

- contact with parents
- contact with a social worker if the alleged victim is under the Guardianship of the Chief Executive Department for Child Protection
- provision of counselling
- report to the Child Abuse Report Line
- documented notes and secure file established.

In an independent school, this will be the responsibility of the school principal.

Step 5: Alert others as required

This responsibility varies across the three sectors but will include, as appropriate:

- relevant Minister (confirmed in writing)
- relevant Chief Executive/Director
- chairperson of the governing authority
- other education sectors, as per the Intersectoral Information Sharing Protocol
- Education Standards Board in the case of early childhood and care settings
- any other agency/organisation where risks to children's or young people's safety are identified.

Step 6: Alert media unit

The sector office should alert its media unit or advisor as appropriate:

- Department for Education: 8226 7904
- Catholic Education SA: 8210 8147
- Association of Independent Schools of South Australia: 8179 1400.

Step 7: Collate notes

The sector office should ensure that the site leader and other staff have made notes of any relevant events and conversations, using the record templates provided as Appendices 3 and 4, and ensure copies are placed on the sector office's central file.

In an independent school, this will be the responsibility of the school principal.

3.3 Further action

As soon as the sector office has satisfied itself that the steps listed in Section 3.2 'Immediate action' have been carried out, liaison should occur with the site in considering the following:

- the future employment of the accused person
- providing counselling and support
- undertaking a risk assessment
- responsibly giving out appropriate information.

The previous section (Section 2 Legislative Framework) outlines actions that must be taken immediately. The tasks under this 'further action' section should be undertaken as promptly as possible without compromising the consultation, risk assessment and information gathering that is required for those tasks to be undertaken appropriately. It is understood that maintaining an unqualified focus on the protection of children and young people will mean varying lengths of time are taken to complete the required actions. However, the guiding principle for sites and sector offices is that all the steps outlined in Section 3.3 must be maintained as priority actions and shown to be so by the records kept.

3.3.1 Future employment of accused person

Where the accused person is a staff member, the site leader should consult the relevant sector office to ascertain whether the accused person can be suspended from duty pending the outcome of the investigations.

If the accused person is suspended, the site leader or sector office should send that person a formal letter of suspension.

If the accused person is a volunteer, the services of that person should be terminated immediately.

If the accused person is a contractor, legal advice should be obtained whether the contract can be terminated.

If the accused person is an employee of the governing authority, the site leader and the governing authority should seek advice from the sector office on suspending that person.

In the event of the charges being withdrawn or in the event of an acquittal, the sector office should inform the site leader about what is to occur in relation to the future employment of the accused person.

In an independent school, this will be the responsibility of the school principal.

3.3.2 Counselling and support

Appropriate support should be provided as required to:

- the victim and his or her parents
- other children or young people and parents of the school or care community
- staff members
- relatives of the accused person who are employees or enrolled students at the site or in the sector and who identify their needs.

Generally speaking, that support will be in the form of counselling.

Victim and victim's parents

The site leader should meet with the parents of the victim to discuss continuing support for him or her. Details of counselling services with contact numbers should be provided to the victim and his or her parents as part of this first meeting. After the meeting, the site leader should complete a written record and have it signed by the parents. A sample is provided as Appendix 4.

Over the following days, a support and safety plan should be finalised covering all aspects of the victim's and the family's ongoing needs and agreed actions (see Appendix 6). Copies of the plan, and all updated versions, should be provided to the victim and the family. A copy of the plan/s should also be provided to the sector office as required. The verbal offer of counselling to the victim and the family should be followed by a letter re-stating the offer and the specific service options. If these services have been taken up by the victim and the family and recorded as part of the support and safety plan, the letter should simply confirm those agreed arrangements and attach the support and safety plan. The site leader should consult with the sector office on drafting this letter.

The site and the sector office must continue to monitor the wellbeing of the victim and his or her family through regular reviews of the support and safety plan. Particular attention must be given to significant dates where court proceedings are likely to prompt further stress and emotional burden.

Other children or young people and parents of the school or care community

The nature of the support or counselling that may be appropriate for other children or young people and parents in the school or care community will vary depending on the circumstances of each incident. If the risk assessment indicates the appropriateness of informing a wider group of parents then, generally speaking, the same services as outlined above should be offered. This may happen via a letter, face-to-face meeting or small-group meeting, as appropriate. These actions will be undertaken in consultation with SA Police, the sector office and an appropriate provider of such counselling, for example Child and Adolescent Mental Health Services. Copies of letters and records of meetings must be stored with the site leader and provided to the sector office as required.

Staff members

Staff members may be profoundly impacted by sexual misconduct allegations. Consideration must continue to be given to the wellbeing of staff, particularly those who were in some way associated with the accused person (eg co-class teachers, friends, relatives), and to the site leader on whom the additional burden of ultimate responsibility for the safety of the site rests.

Particular care should be taken in explaining the restrictions that may be placed on the accused person to staff who are friends of the accused. Individual staff members may need specific help in knowing how to respond to requests for emotional or other support from the accused person without complicating their own obligations at the site or unwittingly complicating matters for the accused. It is reasonable and important that staff members are able to offer emotional support to others and that accused persons have access to the support of friends. However, staff will need clear guidance on how to respond to particular requests such as acting as a witness. Site leaders should seek sector office support in clarifying the advice they give in these circumstances.

As with any other kind of serious critical incident, the site or sector office may need to deploy additional personnel to the site to ensure that it can operate without placing staff wellbeing or the care of children and young people at risk. Staff members may not immediately appreciate the impact on their wellbeing so reminders about the availability of the relevant sector counselling service should be given to staff on a number of occasions in the weeks or months that follow. Important events such as the outcome of court proceedings can trigger new points of stress and need which the sector office must anticipate and monitor.

Relatives of the accused person who are employees or enrolled students at the site or in the sector

A sensitive plan of support may need to be developed with and for relatives of the accused person who make their needs known to the site leader or sector office. Each circumstance will differ but the site leader and sector office will need to consider the best ways to support relatives who identify their needs, including the provision of counselling and the option of alternative placements if requested.

In some instances, relevant information may need to be shared between the sector office and site leaders so that appropriate monitoring of an employee's or enrolled student's safety and wellbeing is maintained. The impact on relatives of media coverage or letters to the community should be anticipated and protected against wherever possible. The details of support plans for relatives should be provided to the sector office as required and filed by the site leader.

3.3.3 Risk assessment

A risk assessment will be made by the relevant sector office in consultation with the site leader and will draw on information provided by SA Police. In an independent school, this will be the responsibility of the school principal. The risk assessment will consider whether there is a reasonable suspicion that there might be other victims and the most appropriate way of addressing that risk through informing identified people. Where necessary, the relevant sector office or independent school principal should consult experts.

Note: It is likely that processes for identifying and assessing risk will change as the work is informed by further research and experience. Sectors will share learning and updated risk assessment resources to inform practice and maintain consistency.

The risk assessment should consider relevant factors, including:

- the nature of the offending
- the circumstances in which the offending occurred
- the place or places where the offending occurred
- the age and gender of the victim
- the age and gender of the accused person, whether the accused person had regular and frequent contact with other individual children or young people, or a group or groups of children or young people, and the nature and circumstances of that contact
- the opportunities that were available to the accused person on which to offend against other children or young people.

3.3.4 Informing responsibly

Although a suppression order and section 71A of the Evidence Act forbid publication of the name of the accused person generally to the public, it is proper for those with a legitimate interest in the matter to be informed of the alleged offending. Those who have a legitimate interest in the offending are the staff at the site, the members of the governing authority of the site and parents of children or young people who are likely to have been in contact with the accused person.

As considerable care must be taken when informing staff, the governing authority and parents of the incident, site leaders and sector offices should follow the advice below.

It is necessary to consider the question of providing information at three stages. They are:

1. when no more is known than what is contained in the allegations
2. after the accused person has been charged
3. after the committal or other appropriate relevant date.

Note: As with all other parent communications, site leaders should ensure that, wherever required, letters

are translated and interpreters are available at meetings. Written communications should be marked 'Confidential' and signed either by the site leader or a senior official of the relevant sector office. The decision about who signs letters will be taken consultatively and will respond to the unique circumstances of each case.

Stage 1: When allegations only are known

Informing staff

It might be necessary for the site leader to make arrangements to replace the accused person who has been placed, for example, on special leave, and to make other consequential administrative arrangements. The site leader is at liberty to inform the staff involved in the administrative arrangements of the allegations but should not inform other staff at that stage. Those staff members who are informed of the allegations should be asked to keep the information confidential and if contacted by the accused person they should not discuss the allegation. Other staff members should be told that the member of staff is on special leave, or another kind of leave using a neutral term applicable to processes utilised in the relevant sector.

Once the decision of the relevant sector has been taken to suspend the accused person, the site leader should call a staff meeting and inform all staff that the accused person has been suspended.

It might be necessary to state that the accused person has been suspended because his or her conduct is being investigated but nothing should be said that might indicate that allegations of sexual misconduct had been made against the accused person.

Staff should be informed that the accused person is not allowed on the site and if the accused person is seen at the site to report it to the site leader. See Section 3.3.2 regarding support for staff in managing this circumstance. Staff should be instructed to keep the information confidential and to refer any parents with questions to the site leader (see section on managing rumour, misinformation and curiosity below).

Staff members should be instructed that, if they have any information that will assist the police investigation, they should contact police and provide that information. If that information is relevant to the safe operation of the site, it should also be provided to the site leader. If the identity of the victim is known and consent is obtained from the victim or the victim's parents, specific staff members such as the victim's class teacher or school counsellor may be told who the victim is on a confidential basis in order to provide appropriate support for the victim.

Informing governing authority

The members of the governing authority should be informed by the site leader. They should be given the same information as staff, namely, that the accused person has been suspended until further notice and that the accused person has been directed not to attend the site. They should be asked to keep the information confidential and to refer any questions from parents to the site leader.

Informing parents

Generally speaking, while allegations are being investigated, it is not appropriate to inform parents of those allegations. The allegations might prove to be false, may not be substantiated, or there may be insufficient evidence to warrant criminal proceedings. A letter that named the accused person and reports what are no more than allegations has a real potential to be defamatory. As a general rule, the site should not, therefore, inform parents of allegations.

Generally speaking, if there is an occasion when it is necessary to send a letter to parents referring to allegations, for example as a means of managing serious and harmful misinformation, that letter should not name the person against whom the allegations have been made. Legal advice through the sector office should be obtained before sending such a letter. It will be necessary, also, to consult SA Police.

Managing rumour, misinformation and curiosity

In some cases, sites can anticipate that discussion will occur within their parent community once a member of staff has been suspended. It is appropriate that staff be provided with instructions for dealing with potential queries or comments. That instruction should be to refer all inquiries to the site leader.

If an inquirer asks the site leader why the suspended person is no longer at the site, the site leader should give the inquirer an answer that is as neutral as possible and one that does not disclose the nature of the alleged offending. One example of an appropriate answer is 'The person has been suspended. I am sorry I cannot give you any further information at this stage. As soon as I am in a position to do so, I will let you have more information'. If the inquirer persists, the site leader should do no more than state that the person has been suspended because his or her conduct is being investigated by police and more information will be given when the outcome of the police investigation is known.

Staff members should also be instructed to alert the site leader immediately if they become aware of accusations or threats by community members that pose risks to the safety or wellbeing of individuals or the broader site community. The site leader should consult with the sector office and SA Police about the best course of action. In some circumstances, this may prompt the need for a letter to the whole community. However, as stated above, this should occur only through consultation with the sector office and SA Police and legal advice must be sought.

The prompt actions of the site leader and sector office in facilitating all of the actions required in this guideline will help prevent rumour and misinformation in the community.

Stage 2: After accused person has been charged

Informing staff

Following the arrest of a member of staff, the site leader should convene a meeting of staff for the purpose of:

- informing them that a member of staff has been arrested and to name that person and the offence
- informing them of changes to staff required by the absence of the accused person
- informing them that the accused person is not permitted on the site
- asking staff to inform the site leader if the accused person is seen at or near site grounds so that the site leader may take appropriate action
- informing them that, if they have any information that will assist the police investigation, to report that information to police and to the site leader if relevant to the safe operation of the site.
- informing them that if they are contacted by the accused person they should not discuss the allegation.

Staff should also be instructed to keep the matter confidential in order to protect the confidentiality and identity of the victim and also instructed that it is an offence to publish any material identifying the accused person at this stage of the criminal proceedings.

See Section 3.3.2 regarding advice for staff members in managing their contact with or support of the accused person.

If new staff join the site, the site leader should give the same information to those new members of staff. Information should be given to a relieving teacher only if that teacher will be teaching the victim.

If the identity of the victim is known and consent is obtained from the victim or the victim's parents, specific staff members, such as the victim's class teacher or school counsellor, may be told on a confidential basis who the victim is in order to provide appropriate support for him or her.

Informing governing authority

The most suitable means by which to inform the governing authority is at an extraordinary general meeting called for that purpose. The site leader is at liberty to inform members of the governing authority of the same facts as revealed to staff members. Governing authority members should be given the same instructions regarding the requirement to maintain confidentiality and to inform SA Police and the site leader of any information relevant to the safety of the site.

The site leader should also advise the governing authority of parent communications (see below). Wherever practicable, this advice should be given ahead of the communications occurring.

Informing parents

The manner in which information is given to parents and the kind of information given to parents will depend on the result of the risk assessment (see Section 3.3.3).

Particular care must be taken when informing parents of the fact that a staff member has been arrested and charged with an offence. Parents will be advised either by letter, email or at a meeting, as described below.

Letters

As a general rule, the accused person should not be named in the letter to parents. The letter must be sent as soon as reasonably practicable.

There is no one letter that will be suitable for all occasions. With the assistance of the sector office, the site leader will have to prepare a letter suitable to the occasion in question.

Before finalising the contents of the letter with the site leader, the sector office must consult with police as to the timing and content of the letter.

The letter to be sent to parents should have regard for the following five factors:

- the presumption of innocence
- the fact that section 71A of the Evidence Act restricts publication of the name of the alleged offender until committal or 'relevant date' pursuant to section 71A of the Evidence Act. If, contrary to the recommendation in this guideline document, it is decided to name the accused person and, if the letter is to be sent to a large number of parents, advice should be taken as to whether the letter is permitted by section 71A
- the fact that a person who receives the letter might post it on Facebook or another internet site
- the fact that the name of the person alleged to have committed the offence can lawfully be published once that person has been committed for trial or sentence or after the 'relevant date'
- whether a suppression order has been made by a court.

The purpose of a letter is twofold: to inform parents of the fact that a person connected to the site has been charged with a sexual offence and to state whether there is any concern for the safety and welfare of children and young people other than the victim.

The letter should be sent by post or email as per the sector's or site's established process. It should not be sent home with the child or young person. It should not be posted on the site's noticeboard or published in a newsletter. It is strongly recommended against placing these communications on any social media or internet platform.

No other victims

If the result of the risk assessment is that there is no suspicion that there might be other victims, a letter should be sent to all parents at the site stating that fact. The letter should state that a person connected to the site has been arrested and charged with an offence, naming the offence but not naming that person. An example of this type of letter and a list of the topics the letter should contain are set out in Example 1 of Appendix 5.

When a group is identified

If the result of the risk assessment is that there is a group of children or young people who might include victims, two letters should be sent to parents. Neither letter should name the accused person.

The first of these two letters should be sent to the parents of those children or young people in the group in which it is suspected that there might be other victims. It will inform those parents of the fact that a person connected to the site has been arrested and charged with committing an offence, naming the offence but not naming that person. It would inform those parents if a meeting is being called to give information to parents, or if parents are being invited to meet personally with the site leader. At the same time, the letter should not suggest that the children or young people of those parents who received the letter are, in fact, victims.

An example of this type of letter and a list of the topics the letter should contain are set out in the first letter of Example 2 of Appendix 5.

The second letter to be sent should be addressed to all other parents at the site. It will contain essentially the same information as the first letter except that it will state that, while there is no evidence that any child or young person at the site apart from the victim is involved, a group meeting or individual meetings are occurring with parents whose children or young people have been in contact with the accused person. The letter may state that the site is holding such a group meeting and the recipient may attend the meeting if he or she wishes to do so.

An example of this type of letter and a list of the topics the letter should contain are set out in the second letter of Example 2 of Appendix 5.

When a particular group cannot be identified

In those cases where there is a reasonable suspicion of other victims but it is not possible to narrow down the group of children or young people because the accused person has had contact with most of the children or young people at the site, a communication process with all parents must be planned.

It will be necessary for only one letter to be sent to all parents. An example of this type of letter is Example 3 of Appendix 5.

Contact with parents

Where, as a result of the risk assessment, there is a reasonable suspicion that there might be other victims, contact should be made with the parents of those children or young people. Through that contact (eg telephone, individual meetings, group meetings), parents should be given information and instruction that cannot be given in a letter.

The information and instruction provided should deal with such matters as informing parents of the kind of behaviour that is indicative of a child having been the victim of abuse, the appropriate way to provide opportunities for the child or young person to talk about what has been a traumatic experience, and how to support the child or young person and manage the situation. The information and instruction should be directed to the type of offending that had been alleged. It should include a strong message that the parents should be available to their child but not to interrogate him or her.

The discussions should be planned with and attended by a qualified and experienced expert such as a psychologist with experience in assisting children who have been victims of child abuse and who would be able to answer any questions parents might have. The discussions should include giving parents appropriate advice on how to deal with any disclosures made by their child. Parents should be provided with the contact details for the relevant support services.

The site leader may name the accused person and answer any questions parents might have.

The site leader should ask parents to treat the information as confidential. They can be told that publication of the name of the accused person would be in breach of section 71A of the Evidence Act. It is recommended to encourage parents to treat that information as confidential by stating that it is in the interests of the victim and the parents of the victim to keep the matter confidential.

It should be stressed in the discussions that nothing should be said or done that might identify the victim.

Following the discussions, parents should be provided with an information sheet containing information about good parenting practice when dealing with a victim or possible victim of sexual abuse. That document should also include guidance as to how best to respond to a disclosure by a child or young person who has been abused.

The information sheet should also be made available to those parents who cannot or do not wish to attend the site.

Stage 3: After committal (or other relevant date)

After the accused person has been committed to stand trial or been sentenced, or after any other relevant date, there are no restrictions on informing either staff, members of the governing authority or parents of the fact that the accused person has been charged with a sexual offence. Any information given to people in those groups can name the accused person and state the offence with which the accused person has been charged. At this stage, there is no need for confidentiality about any of those facts.

However, if a suppression order has been made, legal advice should be obtained on the question as to whether it is possible to give information to staff, members of the governing authority or parents. It should also be noted that publication of any information that tends to identify a victim may still be prohibited under section 71(A) of the Evidence Act.

Informing parents of previous students

In consultation with the sector office and where appropriate based on the risk assessment undertaken earlier, a site leader should ascertain the names of children or young people who in previous years would have been in contact with the accused person. Having done so, the site leader should send a letter to the parents of those children or young people whose addresses are known or to the young people themselves if they are now adults.

This information should be given to those parents after committal or other relevant date, unless their child is identified during the risk assessment as being at risk of having been abused. They should then be informed in accordance with the procedure in the last part of Stage 2 above.

Informing other sites

Where the accused person has been employed at other education and care sites, the sector office will notify those other sites so that they can consider whether it is necessary to inform parents in the same way as described in Stage 2 above.

Informing other authorities

This responsibility to inform other authorities about changes to the situation and actions taken varies across the three sectors but will include, as appropriate:

- relevant Minister (confirmed in writing)
- relevant Chief Executive/Director
- chairperson of the governing authority
- other education sectors, as per the Intersectoral Information Sharing Protocol
- the Education Standards Board in the case of early childhood and care settings
- any other agency/organisation where risks to children's or young people's safety are identified.

3.3.5 Monitoring court proceedings

The sector office should monitor the court proceedings and inform the site leader of the stage the prosecution has reached. In an independent school, this will be the responsibility of the school principal.

Unless a suppression order has been made, the site leader should inform parents by letter of the fact that the prosecution has reached any of the following stages:

- when a plea of guilty has been made
- at the end of a trial, whether the accused person has been acquitted or convicted
- after the accused person has been sentenced
- after any appeal.

Any letters should be drafted in consultation with the sector office. Before sending any letters, it is necessary to check whether a suppression order has been made.

3.3.6 Responding to the media

All media inquiries should be referred to the relevant sector's media unit or advisor:

- Department for Education: 8226 7904
- Catholic Education SA: 8210 8147
- Association of Independent Schools of South Australia: 8179 1400.

3.3.7 Reporting the outcome

It is desirable to inform the staff, members of the governing authority and parents of the outcome of the criminal proceedings.

If the accused person is acquitted or if the charges against him or her are withdrawn or if the proceedings lapse for any reason, it is essential to inform staff, members of the governing authority and parents of the fact. The letter should be drafted by the sector office and signed by a very senior leader. In an independent school, this will be the responsibility of the school principal.

Should the accused person be acquitted or if the charges against him or her are withdrawn or if the proceedings lapse for any other reason, the sector office or the independent school principal will have to make a number of decisions in relation to the future employment of the accused person. They include:

- whether the accused person will be subject to any disciplinary proceedings under section 26 of the *Education Act 1972*, or any other sector specific policies or contractual arrangements
- whether the accused person will return to the site where he or she had been employed
- whether the accused person should be employed at another site.

APPENDIX 1: Checklist for site leaders

Note: These steps are not necessarily sequential. Different circumstances will dictate a variation in the sequence of actions. It is assumed site leaders will delegate responsibilities to ensure they are undertaken in a timely fashion. Many of the actions are undertaken under advice from SA Police or the sector office.

1. Attend to immediate welfare needs of victim. (Section 3.2.1) ❑
2. Receive report of allegation and make notes of complaint. (Appendix 3) ❑
3. Call SA Police on 131 444 to report allegations. Obtain appropriate police contact number for parents to use, and seek advice re steps 4, 5 and 6. ❑
4. If SA Police approves, take steps to preserve evidence. (Section 3.2.1) ❑
5. Following SA Police/sector office advice, prevent accused person from having access to children and young people. (Section 3.2.1) ❑
6. Following SA Police advice, contact parents of victim, taking into consideration victim's views. (Section 3.2.1) ❑
7. Notify CARL on 131 478. ❑
8. Inform victim and victim's parents of counselling and support options. Inform social worker if victim is under the Guardianship of the Chief Executive Department for Child Protection. Document allegations, meetings and support and safety plan. (Section 3.3.2 and Appendices 3, 4 and 6) ❑
9. Follow sector reporting procedures regarding critical incidents. (Section 3.2.1) ❑
10. Place accused person on sector specific leave as per sector office guidance. (Section 3.2.2) ❑
11. Consider the support needs of relatives of the accused person who work or are enrolled at the site and who identify their needs. (Section 3.3.2) ❑
12. Consider the support/advice needs of staff, in particular those closely associated with the accused person. (Section 3.3.2) ❑
13. Provide written offer of counselling support to victim and victim's family and formalise the support and safety plan for the victim. (Section 3.3.2 and Appendix 6) ❑
14. Inform staff and governing authority, in consultation with the sector office and in accordance with guideline (Section 3.3.4) ❑
15. Write letters to parents, in consultation with sector office and SA Police, and in accordance with the guideline. (Section 3.3.4 and Appendix 5) ❑
16. If appropriate, hold meeting of parents as outlined in the guideline. (Section 3.3.4) ❑
17. Inform site community, staff and governing authority of progress of the prosecution. This is especially important if there is an acquittal. (Section 3.3.4) ❑
18. Ensure all documentation is stored in a locked, confidential file and copies are provided to sector office as required. (Appendices 3, 4, 5 and 6) ❑

APPENDIX 2: Checklist for sector office

Note: These steps are not necessarily sequential. Different circumstances will dictate a variation in the sequence of actions. The involvement of Association of Independent Schools of South Australia in supporting its independent member schools will be at each individual school's request, however the Association of Independent Schools of South Australia recommends that its member schools adopt this checklist as best practice.

1. Receive the following information from SA Police, as per the Interagency Code of Practice:
   - (a) the name, date of birth and address of the person who has been charged ❑
   - (b) details of the charge and apprehension report ❑
   - (c) the condition upon which the accused person has been bailed ❑
   - (d) the court bailed to and the date of the first court appearance ❑
   - (e) the school or schools involved ❑
   - (f) whether there is a reasonable suspicion that there might be other victims ❑
   - (g) whether there are any complicating factors that would affect disclosure to parents ❑
   - (h) the contact details of the investigating officer ❑
   - (i) whether the offence is a major indictable offence, a minor indictable or a summary offence. ❑
2. Create file and appoint a person to supervise and manage the matter to its conclusion. ❑
3. Assist site leader to manage the immediate placement of the accused person including preventing him/her from having access to children/young people as necessary. ❑
4. Meet reporting obligations to other authorities and information sharing with other sectors/organisations in accordance with the guideline. ❑
5. Inform media unit. ❑
6. Conduct risk assessment drawing on SA Police information and decide whether letter should be sent to parents in accordance with guideline. ❑
7. Determine employment status of accused person. ❑
8. Ensure site leader has met all responsibilities, including notification to CARL and offer of counselling to victim and parents of victim. The offer should be made orally and be confirmed in writing. ❑
9. Assist site leader to support/advise relatives of the accused person, who identify their needs and staff who are friends of the accused person as appropriate. ❑
10. Check that relatives of the accused person who are employed or enrolled at different sites, and who identify their needs are supported as appropriate. ❑
11. Work with site and SA Police to draft letter/s to parents. ❑
12. Consider whether legal advice is needed on letter/s, especially if the matter is complex. ❑
13. Collate notes of site leader and other staff and place copies of these and victim's support and safety plan on central file. ❑
14. Assist site leader and other relevant child health professionals to facilitate a meeting with parents as relevant. ❑
15. Notify parents of children/young people of past years and other sites as relevant. ❑
16. Monitor court proceedings and the existence of suppression orders, and continue to consider the appropriateness of all actions as matters progress or new information comes to light. ❑
17. Inform site leader of the progress of the prosecution, and assist site leader in keeping staff, governing authority members and relevant parents similarly informed. ❑
18. Continue to meet reporting obligations to other authorities. ❑

APPENDIX 3: Record of allegation

Note: The staff member who first received information regarding the allegation must complete this record. It must be stored in a secure, confidential file in the site leader's office.

Record of allegation of sexual misconduct

Name of person making the allegation (complainant)

Date and time that allegation was reported

Age, gender and role of complainant

Name of accused person

Role of accused person

Name of victim (if not the complainant)

Age and gender of victim

Allegation details

Do not interrogate the victim. Complete in direct speech what was reported to you.

Name: (person who received the complaint)

Signature: Date:

APPENDIX 4: Record of meeting

Note: This record should be completed after all meetings or conversations relating to the management of allegations of sexual misconduct by adults and stored in a confidential file.

Date of meeting		
Location of meeting		
Attendees	Include full names and titles of attendees *Example: John Smith Principal, Ms Jones mother of Marcus*	
Purpose of meeting	*Example: Discuss allegation of sexual misconduct towards Ms Jones' son Marcus by staff member/volunteer* *Discuss as much of support and safety plan as possible* *Discuss options for changed enrolment, if considered appropriate by any party*	
Actions taken to date	*Example: Police contacted, referral to CAMHS*	
Contact names and contact details	Include all relevant contact details *Example: Contact number for Principal, contact number of SA Police investigating officer*	
Future actions	List future actions to be taken and person responsible Set date for finalising the support and safety plan	
Signature of site leader	Name:	Signature:
Signatures of other attendees	Name:	Signature:
	Name:	Signature:

APPENDIX 5: Sample letters to parents

Example 1: Where no other victims are suspected

The letter to all parents when there is no suspicion that there might be other victims would deal with the following topics:

1. a statement that the accused person has been arrested and charged but not naming the accused person
2. a statement of the offence with which the accused person has been charged
3. a statement indicating that the site does not suspect that there are other victims
4. an assurance that the Department/Catholic Education SA/Association of Independent Schools of South Australia will keep parents informed
5. a request to keep the matter confidential in order to protect the victim and the victim's family
6. contact numbers of support services for concerned parents
7. a statement that those who have questions or concerns may contact the site leader
8. a statement that the accused person has been removed from the site
9. an assurance that the site is managing the issue without impairing the provision of education and care at the site
10. a request that parents with information that may assist the police investigation to contact police and provision of a contact number.

The letter below uses a teacher as an example of an 'accused person'.

Confidential

Dear Parent/Caregiver

I regret to inform you that a teacher from our school has been arrested by police and charged with [NAME THE OFFENCE].

Police are investigating the matter. The teacher has been suspended from duty pending the outcome of the police investigation and prosecution. The teacher has been instructed not to attend the school. I will keep you informed of the progress of the prosecution.

The information available to the school suggests that there is no need for any concern for any other children at the school.

For the sake of the victim and the victim's family and especially to protect the identity of the victim, please keep this information confidential. I ask you not to distribute this letter, to post it or to display it in any public way including on Facebook or on any other internet site.

If you have any information that may assist the police investigation, please contact [PROVIDE NAME AND TELEPHONE NUMBER OF INVESTIGATING OFFICER].

A relief teacher has been appointed and the classes will proceed as normal.

If you have concerns about the safety and welfare of your child, please feel free to contact me directly at the school. Alternatively, you may seek advice from one of the services below:

- Child and Adolescent Mental Health Services (CAMHS) on 8161 7198
- Kids Helpline on 1800 55 1800.

If you have any questions or concerns, please do not hesitate to contact me.

Yours faithfully
Principal

Example 2: When a group is identified

Where the risk assessment has determined that there is a reasonable suspicion there might be other victims among a group of children or young people who have had contact with the accused person, two letters will be sent.

One letter will be sent to parents of the children or young people who have been identified in the risk assessment process as possible victims.

The other letter will be sent to all other parents at the school.

Both letters will refer to the meetings to be held to give information and instruction to parents. Both letters would deal with the following topics:

1. a statement that the accused person has been arrested and charged but not naming the accused person
2. a statement of the offence with which the accused person has been charged
3. a statement that the accused person has been suspended from duty and directed not to attend the site
4. a statement that a meeting is being called for parents whose children had contact with the accused person, including the purpose of the meeting
5. a statement that there is no evidence at this stage that, apart from the victim, any other child or young person at the site is involved
6. a statement that any parent with information that may assist the investigation should contact police, with provision of contact details of the investigating officer
7. a statement that the site is managing the issue without impairing the provision of education and care at the site
8. a request to keep the matter confidential in order to protect the victim and the victim's family
9. contact numbers of support services for concerned parents
10. a statement that parents who have a concern should contact the site leader or, if the site has one, the school counsellor.

The letters below use a teacher as an example of an 'accused person'. The first letter (to parents of the identified group) can be in the following or similar terms.

Confidential

Dear Parent/Caregiver

I regret to inform you that a teacher from our school has been arrested by police and charged with [NAME THE OFFENCE].

Police are investigating the matter. The teacher has been suspended from duty pending the outcome of the police investigation and prosecution. The teacher has been instructed not to attend the school. I will keep you informed of the progress of the prosecution.

There is no evidence at this stage that any child at the school other than the victim is involved. However, I am concerned about the welfare of those children who have had contact with the teacher. Your child might have had contact with the teacher. I invite you to attend a meeting which will be held at 6.00pm on [INSERT DATE] in the School Hall.

I appreciate that this is short notice but I urge you to attend the meeting. Alternatively, if you are more comfortable meeting with me privately, please contact the school directly.

The meeting will be addressed by a psychologist who has experience working with victims of child abuse. The psychologist will inform you of behavioural signs and possible effects of child abuse and will answer any questions you might have.

For the sake of the victim and the victim's family and especially to protect the identity of the victim, please keep this information confidential. I ask you not to distribute this letter or post this letter on Facebook or on any other internet site.

A relief teacher has been appointed and classes will proceed as normal.

If you have any information that may assist the police investigation, please contact [PROVIDE NAME AND TELEPHONE NUMBER OF INVESTIGATING OFFICER].

If you have concerns about the safety and welfare of your child, please feel free to contact me directly at the school. Alternatively, you may seek advice from one of the services below:

- Child and Adolescent Mental Health Services (CAMHS) on 8161 7198
- Kids Helpline on 1800 55 1800.

If you have any questions or concerns, please do not hesitate to contact me.

Yours faithfully
Principal

The second letter (the letter to all other parents at the school) can be in the following or similar terms.

Confidential

Dear Parent/Caregiver

I regret to inform you that a teacher from our school has been arrested by police and charged with [NAME THE OFFENCE].

Police are investigating the matter. The teacher has been suspended from duty pending the outcome of the police investigation and prosecution. The teacher has been instructed not to attend the school. I will keep you informed of the progress of the prosecution.

There is no evidence at this stage that any child at the school other than the victim is involved. However, I am concerned about the welfare of some children who have had contact with the teacher and am writing separately to their parents and inviting them to attend a meeting. The meeting will be held at 6.00pm on [INSERT DATE] in the School Hall. If you wish, you may also attend the meeting.

The meeting will be addressed by a psychologist who has experience working with victims of child abuse. The psychologist will inform parents of behavioural signs and possible effects of child abuse and will answer any questions parents might have.

For the sake of the victim and the victim's family and especially to protect the identity of the victim, please keep this information confidential. I ask you not to distribute this letter or post it on Facebook or on any other internet site.

If you have any information that may assist the police investigation, please contact [PROVIDE NAME AND TELEPHONE NUMBER OF INVESTIGATING OFFICER].

A relief teacher has been appointed and the classes will proceed as normal.

If you have concerns about the safety and welfare of your child, please feel free to contact me directly at the school. Alternatively, you may seek advice from one of the services below:

- Child and Adolescent Mental Health Services (CAMHS) on 8161 7198
- Kids Helpline on 1800 55 1800.

If you have any questions or concerns, please do not hesitate to contact me.

Yours faithfully
Principal

It might be necessary to adapt each of these letters to the particular circumstances of each case.

Example 3: When a particular group is not identified

When a risk assessment determines that there is a reasonable suspicion of other victims but it is not possible to identify a specific group because all children and young people at the site might have had contact with the accused person, the letter to parents should be in the following or similar terms.

The letter below uses a teacher as an example of an 'accused person'.

Confidential

Dear Parent/Caregiver

I regret to inform you that a teacher from our school has been arrested by police and charged with [NAME THE OFFENCE].

Police are investigating the matter. The teacher has been suspended from duty pending the outcome of the police investigation and prosecution. The teacher has been instructed not to attend the school. I will keep you informed of the progress of the prosecution.

There is no evidence at this stage that any child at the school other than the victim is involved. However, I am concerned about the welfare of all children at the school because they have all been in contact with the teacher at one time or another. For that reason, I invite you to attend a meeting to be held at 6.00pm on [INSERT DATE] in the School Hall.

I appreciate that this is short notice but I urge you to attend the meeting.

The meeting will be addressed by a psychologist who has experience working with victims of child abuse. The psychologist will inform you of behavioural signs and possible effects of child abuse and will answer any questions you might have.

For the sake of the victim and the victim's family and especially to protect the identity of the victim, please keep this information confidential. I ask you not to distribute this letter or post it on Facebook or any other internet site.

A relief teacher has been appointed and classes will proceed as normal.

If you have any information that may assist the police investigation, please contact [PROVIDE NAME AND TELEPHONE NUMBER OF INVESTIGATING OFFICER].

If you have concerns about the safety and welfare of your child, please feel free to contact me directly at the school. Alternatively, you may seek advice from one of the services below:

- Child and Adolescent Mental Health Services (CAMHS) on 8161 7198
- Kids Helpline on 1800 55 1800.

If you have any questions or concerns, please do not hesitate to contact me.

Yours faithfully
Principal

APPENDIX 6: Support and safety plan for child/young person

Support and safety plan

Note: The following is a guide to the actions and considerations that should be made in supporting a victim. It should be adapted to the age and needs of the victim.

Support categories	Support strategies	Responsible person/s
Internal support	Who has discussed, as appropriate for age, all features of this plan with the child/young person? Has the child/young person been given full opportunity to share his/her view and has this view been respected to the fullest degree possible? What changes to the child/young person's routine are in place to support him/her? For example: – yard duty arrangements – before/after school – timetable – work expectations (special provisions if year 11/12) – attendance arrangements – site-based counselling support. What is the child/young person advised to do if he/she feels unsafe at any time at the site? For example: – advise yard duty teacher – move to front office – report directly to director/principal – go to counsellor's office – access nominated friend – contact parent/caregiver. Which adult at the site will be available for the child/young person to talk with at any time and act as the 'support person'? How does the child/young person access the support person? What signs of stress in the child/young person will be reported immediately by staff to parents/caregivers? How will this communication be made and by whom? What is the agreed verbal response the child/young person will make to questions from others (eg staff, students, parents, friends)? What information is to be given to other relevant staff who must support the child/young person but for whom it isn't necessary or appropriate that they know the details of the underlying event? For example: – other class teachers – relief staff – yard duty staff – front office staff. Who is responsible for informing other relevant staff? Who will keep the child/young person's support person informed of upcoming events, such as court hearings?	

Support categories	Support strategies	Responsible person/s
	How will the child/young person's support person and the parent/caregiver contact person (see below) liaise with each other, if the one staff member does not undertake both roles? Has the child/young person consented to external professionals sharing information with the support person at the site, where relevant to the child/young person's safety and wellbeing?	
Parent/caregiver support and liaison	Who has provided parents/caregivers with counselling support services, verbally and in writing? Which staff member is the contact person for parents/caregivers on all matters associated with the support for the child/young person? How can parents/caregivers contact/access this staff member? What actions are being taken at home to help restore the child/young person's sense of safety and wellbeing? Are the actions at the site complementary to the parents/caregivers' actions? What signs of stress in the child/young person will parents/caregivers immediately report to the nominated parent/caregiver contact? Have parents/caregivers given permission for external professionals to share information with the support person at the site, where relevant to their child/young person's safety and wellbeing?	
Teaching and learning support	Are there any curriculum issues that need to be addressed? For example: – a proposed teaching plan that must be modified to avoid distress to the child/young person – the introduction of a teaching program in order to reinforce particular behaviour. Have these plans been discussed with other professionals supporting the child/young person?	
External support	Which other agencies or professionals are involved with the child/young person or his/her family? What is the nature and length of their support? For example: – How do they liaise with the site? – Have they contributed to the development of this plan/been given a copy? – Have they agreed to liaise with the site? – How is this liaison to occur and through which staff member?	
Plan review	When will the plan be reviewed? Who is responsible for setting a review date? How can the site, child/young person or parents/caregivers initiate a meeting outside of the scheduled review? Have parents/caregivers and child/young person been informed of whom they can raise concerns with if they are not happy with the actions of the site in providing support? Do they have the contact details?	

Support categories	Support strategies	Responsible person/s
Others with a duty of care	Who else needs to know about the plan? For example: – OSHC/vacation staff – Family Day Care provider – boarding/residential staff. What do the child/young person and parents/caregivers agree will be the information given to these individuals? What is necessary or relevant for them to know in order to follow the plan?	
Signatures	The plan is signed by key stakeholders, in particular: – child/young person – parent/caregiver – site leader.	

APPENDIX 7: Course of a criminal prosecution

Note: This is a brief overview only of the steps involved in prosecuting a person accused of a criminal offence. A more detailed account can be found in Chapter 3 of the Royal Commission 2012–2013 Report of Independent Education Inquiry. *The accused person is called 'the defendant'.*

Common to any criminal offences

1. Police investigation

SA Police will investigate alleged crimes that have been reported to them. In the ordinary course of an investigation, police will take statements from the victim/s involved and other witnesses and will interview the defendant. Police need sufficient evidence before the defendant can be prosecuted.

2. Defendant is charged

When the police have reached the stage that they have reasonable cause to suspect that the crime has been committed, they will either arrest and charge the defendant or summons the defendant to appear in the Magistrates Court on a date stated in the summons.

When the defendant has been arrested and charged, he or she will be either remanded in custody or bailed to a date to appear in the Magistrates Court.

3. Classification of the charge

Criminal offences can be classified as summary offences, minor indictable offences and major indictable offences. Generally, summary and minor indictable offences are tried in the Magistrates Court, unless joined with a major indictable offence. Major indictable offences are tried in the District Court and in the Supreme Court.

Summary and minor indictable offences

4. Magistrates Court

The defendant may either plead guilty or not guilty. If he or she pleads guilty, the magistrate will then determine the appropriate penalty.

If the defendant pleads not guilty, the matter will be adjourned for a pre-trial conference. At the pre-trial conference, the magistrate will endeavour to clarify and limit the matters in dispute between the prosecution and the defendant and list the matter for trial on another date. The court may grant such adjournments as are necessary prior to the trial.

A magistrate will conduct the trial and decide whether the defendant is guilty or not guilty. If the magistrate finds the defendant guilty, the magistrate will then determine the appropriate penalty.

The prosecution has a right to appeal against acquittal where the magistrate has made an error of law or fact. A defendant has a right to appeal against his or her conviction, sentence or both. Appeals against a decision made by a magistrate will be heard by a judge of the Supreme Court.

Major indictable offences

5. First appearance in Magistrates Court

Although trials for major indictable offences are heard in either the District Court or the Supreme Court, the first step in the prosecution of a person charged with a major indictable offence is the preliminary examination which is conducted in the Magistrates Court. The purpose of a preliminary examination (or committal hearing) is to determine whether there is sufficient evidence to put the defendant on trial for a major indictable offence.

6. Declarations date

This is the date, usually within ten weeks from the first appearance of the defendant in the Magistrates Court, set for the prosecution to file in court and serve on the defendant the statements of all the witnesses on whom the prosecution relies to establish the guilt of the defendant. Those statements are called 'declarations'.

The court may grant the prosecution more time to obtain declarations. When all the declarations have been filed, the magistrate will set a date, four weeks after the declarations date, for the defendant to answer the charge/s. That date is referred to as the 'answer charge date'.

7. Answer the charge

On the answer charge date, the defendant will be asked to enter a plea. If the plea is guilty, the defendant will be sentenced by the magistrate* or be committed for sentence to the District Court or the Supreme Court.

If the defendant pleads not guilty and the magistrate finds that the prosecution has established a case to answer, the defendant will be committed for trial in the District Court or the Supreme Court.

If the magistrate is not satisfied that the evidence is sufficient to put the defendant on trial, the magistrate will reject the information and discharge the defendant.

8. Arraignment

The first appearance of the defendant in the District Court or the Supreme Court is called the arraignment. That is when the defendant is charged formally. The charge stated on the information is read out and the defendant will be asked to plead guilty or not guilty. The arraignment will be fixed four weeks after the committal.

If the defendant pleads guilty, the matter will usually be adjourned to a later date for submissions to be made as to the appropriate sentence to be ordered against the defendant.

If the defendant pleads not guilty, the matter will be adjourned to a directions hearing which is held four to six weeks after the date of the arraignment.

9. Directions hearing

Directions hearings are held for the purpose of resolving all the procedural matters that must be attended to before the trial begins. Directions hearings also give the judge the opportunity to explore with the prosecution and the defendant whether the matter can be resolved without having to go to trial. If it cannot be resolved, a trial date will be set. The judge will also hear any preliminary applications; for example, an application by the defendant to be tried by a judge alone. Directions hearings involve only the judge, legal counsel and the defendant. It is not uncommon for a number of directions hearings to take place before the trial.

10. Trial

The prosecutor has to present sufficient admissible evidence to the jury (or judge in a 'judge alone' trial) to prove beyond reasonable doubt that the defendant committed the offences with which he or she has been charged. If not, the defendant will be found not guilty.

If the defendant is found guilty, the judge will hear sentencing submissions from both the prosecutor and the defence lawyer and will then sentence the defendant.

When the jury is not able to agree on a verdict ('hung jury'), there will be a re-trial.

Occasionally, a trial may result in a mistrial because some prejudicial event has occurred during the trial. The trial will then start again with a new jury.

**The relevant parts of the* Statute Amendment (Courts Efficiency Reforms) Act 2012*, which makes provision for the defendant to be sentenced by a magistrate in certain circumstances, commenced on 1 July 2013.*

11. Appeals

The rights of appeal against a conviction or sentence are a little complicated. Broadly speaking, a defendant has to apply for permission to appeal against the conviction and the sentence. The appeal is heard by the Court of Criminal Appeal (CCA), which comprises three judges of the Supreme Court.

The Director of Public Prosecutions (DPP) has no right to appeal against a jury verdict of acquittal. The DPP may, in certain circumstances, apply for permission to appeal against the decision of a judge acquitting a defendant. The DPP may apply for permission to appeal against a sentence that is manifestly inadequate.

Where the CCA allows an appeal against conviction, the conviction will be quashed and the court will either order an acquittal or that the defendant be tried again.

In exceptional circumstances, the High Court of Australia will grant permission to appeal against a decision of the CAA.

APPENDIX 8: Relevant legislation

Note: All relevant legislation can be found at <http://www.legislation.sa.gov.au>.

Children's Protection Act 1993
http://www.legislation.sa.gov.au/LZ/C/A/CHILDRENS%20PROTECTION%20ACT%201993.aspx

Children and Young People (Safety) Act 2017 (SA)
https://www.legislation.sa.gov.au/LZ/C/A/Children%20and%20Young%20People%20(Safety)%20Act%202017.aspx

Criminal Law Consolidation Act 1935
http://www.legislation.sa.gov.au/LZ/C/A/CRIMINAL%20LAW%20CONSOLIDATION%20ACT% 201935.aspx

Education Act 1972
http://www.legislation.sa.gov.au/LZ/C/A/EDUCATION%20ACT%201972.aspx

Education Regulations 2012
http://www.legislation.sa.gov.au/LZ/C/R/EDUCATION%20REGULATIONS%202012.aspx

Evidence Act 1929
http://www.legislation.sa.gov.au/LZ/C/A/EVIDENCE%20ACT%201929.aspx

Summary Offences Act 1953
http://www.legislation.sa.gov.au/LZ/C/A/SUMMARY%20OFFENCES%20ACT%201953.aspx

Summary Procedure Act 1921
http://www.legislation.sa.gov.au/LZ/C/A/SUMMARY%20PROCEDURE%20ACT%201921.aspx


This guideline provides advice for leaders in education and care settings when responding to allegations of sexual misconduct by adults against children and young people. It outlines the actions to be taken and matters to be considered at different stages of the response. The guideline is designed to provide a transparent process to help support the people impacted by sexual misconduct incidents.

Record history

Published date: May 2023

Approvals

OP number: 139
File number: DECD17/12783-1
Status: approved
Version: 2.1
Policy officer: Manager, Critical Incident Response, IMD
Policy sponsor: Director, Incident Management Directorate
Responsible executive director: Chief Operating Officer
Approved by: Director, Incident Management Directorate
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Next review date: 16 May 2026

Revision record

Version: 2.1
Approved by: Director, Incident Management Directorate
Approved date: 16 May 2023
Next review date: 16 May 2026
Amendment(s): No policy amendments required currently, policy can continue to be used. Contact details changed.

Version: 2.0
Approved by: Director, Incident Management Directorate
Approved date: 16 June 2020
Next review date: 16 June 2023
Amendment(s): Reference to Section 26 of Education Act 1972 in section 3.3.7 replaced by Section 114 of the Education and Children's Services Act 2019 as of 1 July 2020. The Education Regulations 2012 or Children's Services Regulations 2008 become the Education and Children's Services Regulations 2020 as of 1 July 2020.

Version: 1.0
Approved by: Director, Incident Management Directorate
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Next review date: 11 April 2022
Amendment(s): Change of department name and Chief Executives.

Contact

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Source: Department for Education, Managing Allegations of Sexual Misconduct in SA Education and Care Settings Guideline (May 2023) <https://www.education.sa.gov.au/__data/assets/pdf_file/0006/260475/managing-allegations-of-sexual-misconduct-in-sa-education-and-care-settings.pdf>.

Appendix F: Information on the Teachers Register that can be made publicly available under the *Teachers Registration Act 2000*

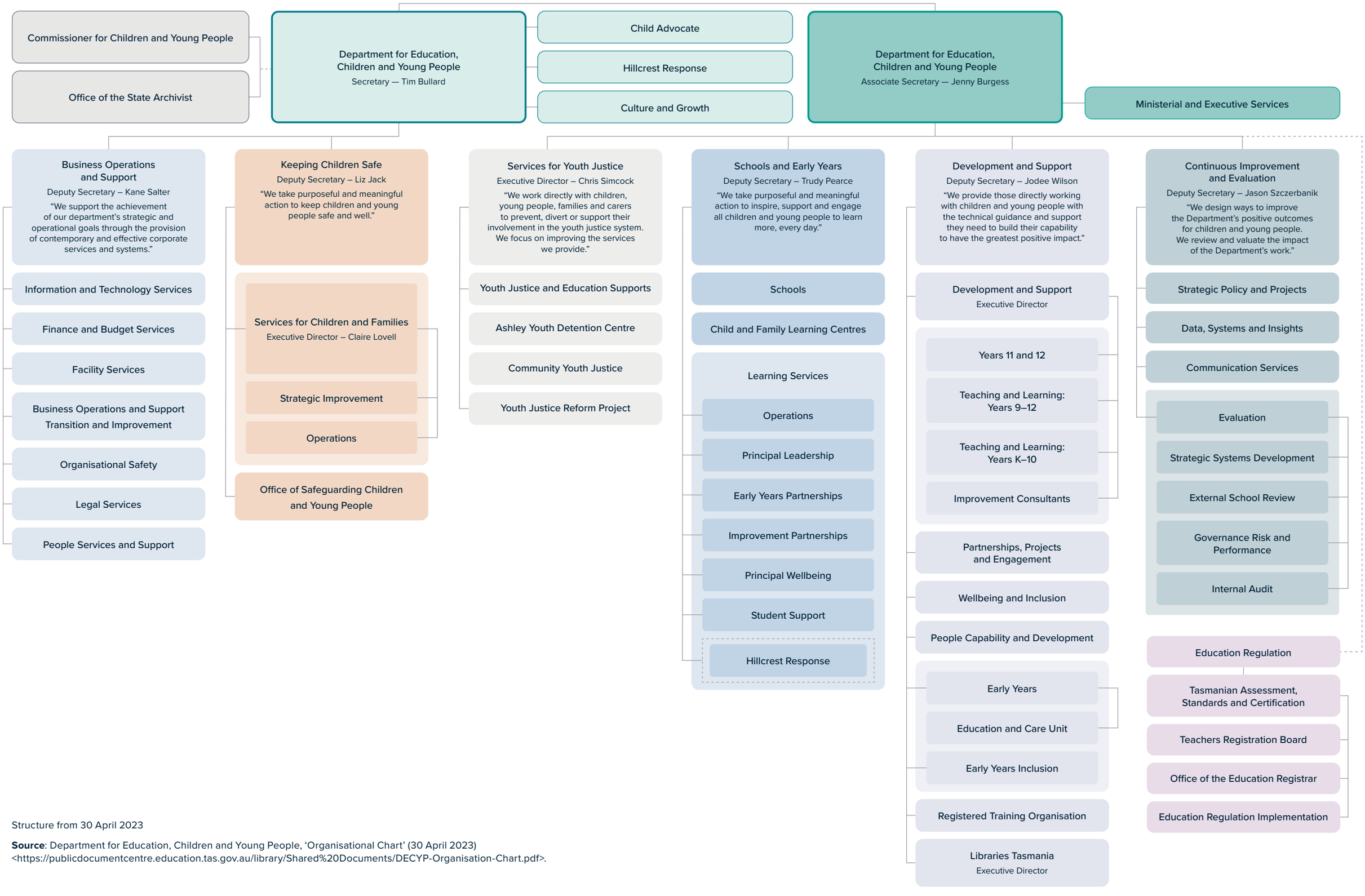
Information that must be in the Register (s 25(2))	Particulars that may be included in the published register (s 25(6)(b))	Particulars that are to be made available to 'any person' on the request of that person (s 25(4)(a))	Particulars that may be made available to 'any person' on the request of that person, if the Board considers it appropriate to do so (s 25(4)(b))	Particulars that may be made available to a 'teacher employing authority'* (s 25(4)(c))
(a) full name	●	●		
(b) any former name				
(c) residential address				
(d) date of birth				●
(e) qualifications				●
(f) teaching experience at the time of application				
(g) registration number or limited authority number	●	●		
(h) whether fully registered, provisionally registered or specialist vocational education and training registered	●	●		
(i) date on which registration or limited authority takes effect				
(j) expiry date of registration or limited authority	●	●		
(k) any conditions to which the registration or limited authority is subject			●	
(l) particulars of a limited authority	●	●		
(m) particulars of any suspension of registration or limited authority				●
(n) any other particulars the Board considers appropriate				

* The Teachers Registration Board may provide any other particulars to a teacher-employing authority to which a teacher (or limited authority holder) consents (Teachers Registration Act 2000 s 25(4)(c)(ii)).

Appendix G: Out of home care—Organisational structure of the Department for Education, Children and Young People (30 April 2023)

On foldout →

Appendix G: Out of home care—Organisational structure of the new Department *for* Education, Children and Young People 30 April 2023



Structure from 30 April 2023

Source: Department for Education, Children and Young People, 'Organisational Chart' (30 April 2023) <https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/DECYP-Organisation-Chart.pdf>.

Appendix H: Methodology used for the calculation of disciplinary process numbers referred to in our report

1 Source data

During our Commission of Inquiry, the State provided us with nine Excel spreadsheet Employment Direction trackers labelled 'ED trackers'.[1] These ED trackers contain department-specific information on disciplinary processes conducted in response to allegations of child sexual abuse and related conduct. We used the latest versions of the ED trackers from the three child-facing agencies—Department of Communities, Department of Education and Department of Health—to calculate numbers in relation to the following:

- Suspensions (both since January 2000 and the announcement of our Inquiry in November 2020)
- Preliminary assessments
- Employment Direction No. 4—Suspension (defined by the State as a subset of the overall number of suspensions)
- Employment Direction No. 5—Breach of Code of Conduct
- Employment Direction No. 6—Inability.[2]

The ED trackers all included the same information:

- Relevant Agency (Column A)
- Agency's internal reference (Column B)
- Name of alleged perpetrator (Columns C and D)
- Output of Agency (Column E)
- Name of complainant(s) (victim-survivor) (Column F)
- Source of complaint (Column G)
- Date Agency received complaint (Column H)
- Date alleged conduct occurred (Column I)
- Preliminary assessment undertaken (Y/N) (Column J)
- Date of preliminary assessment (Column K)
- Date recommendation of ED4, ED5 or ED6 to Head of Agency (Column L)

- Type of ED—ED4, ED5 or ED6 (Column M)
- Date stood down (Column N)
- Position title (Column O)
- Primary location of employment at time of stand down (Column P)
- Describe process of standing down (Column Q)
- Provide reasons for stand down (Column R)
- Provide terms of stand down (Column S)
- Describe allegation(s) against employee (Column T)
- Action taken or outcomes after stand down (Column U)
- Date of action taken or outcome (Column V)
- Associated actions (for example, referral to Tasmania Police or the Registrar of the Registration to Work with Vulnerable People Scheme) (Column W)
- Date of associated action (Column X)
- Investigator (Column Y)
- Status (finalised, ongoing) (Column Z).

There were, at times, discrepancies between the data provided to us by the Tasmanian Government through the ED trackers and the numbers provided by Secretaries of the Departments in their evidence and statements, or differences in the methodology adopted to calculate figures.[3] We have highlighted these discrepancies throughout our report as relevant.

2 Suspension numbers from January 2000 to February 2023

We applied the following methodology to determine the number of suspensions that occurred from the period January 2000 to February 2023 by respective department.

2.1 Department of Communities

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Communities.[4] Column 'S' (labelled 'Provide terms of stand down') was filtered to include all cells referencing the terms 'suspended', 'suspension', 'CD8' (which was the predecessor to ED4) or 'ED4', and to exclude all blank cells and cells containing the terms 'NA', 'N/A' or 'alternative duties' as it was unclear whether those entries recorded a suspension.

The number obtained was 23.

To obtain the number of suspensions specifically relevant to out of home care, column 'S' (labelled 'Provide Terms of Stand Down') was filtered to include all cells with references to the terms 'suspended', 'suspension', 'CD8' or 'ED4'. Blank cells and cells containing the terms 'NA', 'N/A' or 'alternative duties' were excluded as it was unclear whether those cells recorded a suspension. Then column 'E' (labelled 'Output of Agency') was filtered to include all cells referencing the terms 'Child Protection', 'Child Safety Services' or 'Rostered Carer and Support Worker', and to exclude all cells referencing the term 'AYDC'.

The number obtained was 4.

2.2 Department of Education

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Education.[5] Column 'S' (labelled 'Provide Terms of Stand Down') was filtered to include all cells referencing the terms 'suspended', 'suspension', 'CD8', 'ED4' or 'remain away from workplace', and to exclude all blank cells and cells containing the terms 'N/A', 'NA', 'RWVP registration suspended' or 'advised of substance allegation, asked to immediately leave workplace' as it was unclear whether those entries recorded a suspension.

The number obtained was 43.

2.3 Department of Health

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Health.[6] Column 'S' (labelled 'Provide Terms of Stand Down') was filtered to include all cells referencing the terms 'suspended', 'suspension' or 'ED4', and to exclude all blank cells, cells containing the term 'N/A', 'NA' and cells where there was no mention of suspension or ED4 as it was unclear whether those entries recorded a suspension.

The number obtained was 26.

Refer to Figure H.1 for a graphical representation of these numbers.

3 Suspension numbers from November 2020 to February 2023

We applied the following methodology to determine the number of suspensions that occurred from the period November 2020 (the date of the announcement of our Inquiry) to February 2023 by respective department.

3.1 Department of Communities

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Communities.[7] Column 'S' (labelled 'Provide Terms of Stand Down') was filtered to include all cells referencing the terms 'suspended', 'suspension', 'CD8' (which was the predecessor to ED4) or 'ED4', and to exclude all blank cells and cells containing the terms 'N/A' 'NA' or 'alternative duties' as it was unclear whether those entries recorded a suspension. Then column 'N' (labelled 'Date Stood Down') was filtered and all dates from November 2020 onwards were selected.

The number obtained was 10.

3.2 Department of Education

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Education.[8] Column 'S' (labelled 'Provide Terms of Stand Down') was filtered to include all cells referencing the terms 'suspended', 'suspension', 'CD8', 'ED4' or 'remain away from workplace', and to exclude blank cells and cells containing the terms 'N/A', 'NA', 'RWVP registration suspended' or 'advised of substance allegation, asked to immediately leave workplace' as it was unclear whether those entries recorded a suspension. Then column 'N' (labelled 'Date Stood Down') was filtered and all dates from November 2020 onwards were selected.

The number obtained was 20.

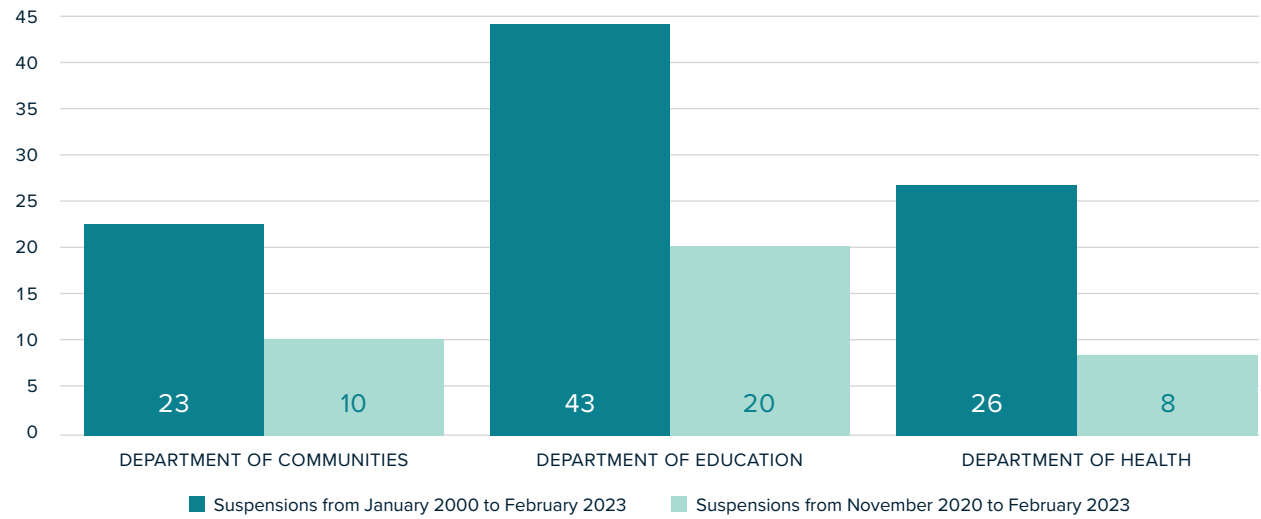
3.3 Department of Health

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Health.[9] Column 'S' (labelled 'Provide Terms of Stand Down') was filtered to include all cells referencing the terms 'suspended', 'suspension' or 'ED4', and to exclude blank cells, cells containing the term 'N/A', 'NA' and cells where there was no mention of suspension or ED4 as it was unclear whether those entries recorded a suspension. Then column 'N' (labelled 'Date Stood Down') was filtered and all dates from November 2020 onwards were selected. The entry '05/05/2021 Note employee was already stood down for separate matter (not child related)' was included.

The number obtained was 8.

Refer to Figure H.1 for a graphical representation of these numbers.

Figure H.1: Suspensions by department for the period January 2000 to February 2023 and for the period November 2020 to February 2023[10]



Source: Tasmanian Government, *ED trackers supplied by the Tasmanian Government in response to Commission notices to produce*, 2023.

4 Preliminary assessment numbers

We applied the following methodology to determine the number of preliminary assessments from the period January 2000 to February 2023 by respective department.

4.1 Department of Communities

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Communities.[11] Column 'J' (labelled 'Preliminary assessment undertaken (Y/N)') was filtered to include 'Yes', 'No', 'unknown' and blank cells were excluded.

The number obtained was 24.

4.2 Department of Education

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Education.[12] Column 'J' (labelled 'Preliminary assessment undertaken (Y/N)') was filtered to include 'Y' and 'Yes'. Blank cells, 'NA' and 'N' were excluded.

The number obtained was 48.

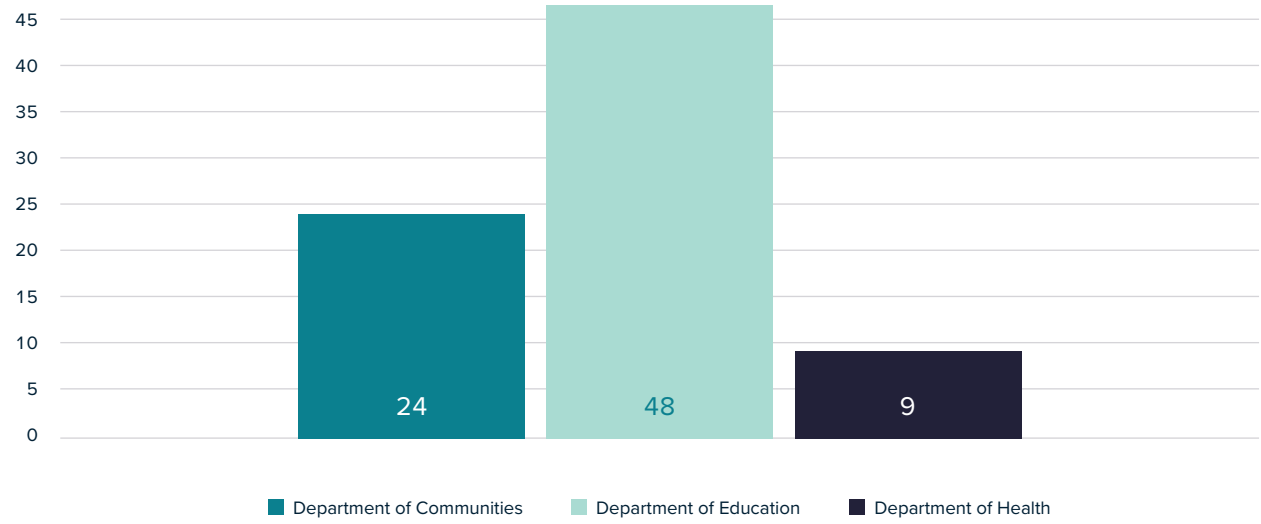
4.3 Department of Health

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Health.[13] Column 'J' (labelled 'Preliminary assessment undertaken (Y/N)') was filtered to include anything with 'Y', 'No', 'Pending' and blank cells were excluded.

The number obtained was 9.

Figure H.2 provides a graphical representation of these numbers.

Figure H.2: Preliminary assessment numbers by department from January 2000 to February 2023[14]



Source: Tasmanian Government, *ED trackers supplied by the Tasmanian Government in response to Commission notices to produce*, 2023.

5 Employment Direction No. 4—Suspension numbers

We applied the following methodology to determine the number of Employment Direction No. 4—Suspension that were conducted from the period January 2000 to February 2023 by respective department.

5.1 Department of Communities

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Communities.[15] Column M (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED4' and 'CD8'. The terms 'N/A' and 'referral for ED4/ED5', 'suspended with pay' without a reference to ED4 or CD8, and blank cells, were excluded.

The number obtained was 19.

5.2 Department of Education

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Education.[16] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED4 suspension', 'ED4', 'ED4/ED5', 'ED4, ED5', 'ED4 & ED5', 'ED4 and ED5', 'ED5 & ED4', 'ED5 and ED4', 'ED5, ED4', 'ED5/ED4'. The terms 'NA' and 'referral for ED4/ED5', and blank cells, were excluded.

The number obtained was 38.

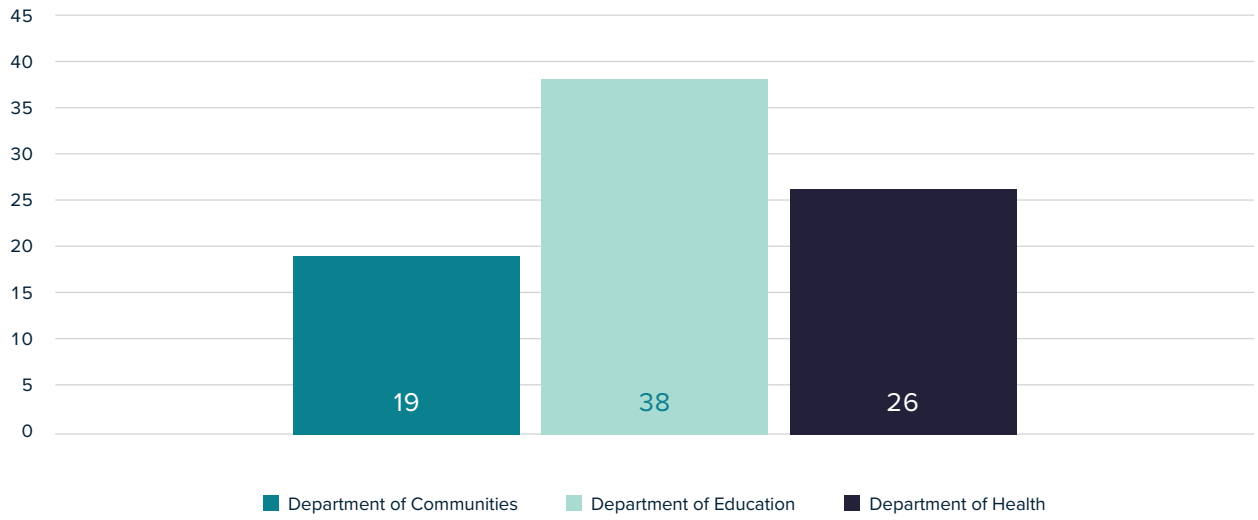
5.3 Department of Health

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Health.[17] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6)' was filtered to include 'ED4 suspension' or 'ED4' and 'ED4 suspension – pending ED5/5 investigation (not commenced)'. The terms 'N/A', 'Pending', 'Stood down (not suspended)' and 'ED4 not applied', and blank cells, were excluded.

The number obtained was 26.

Figure H.3 provides a graphical representation of these numbers.

Figure H.3: Employment Direction No. 4—Suspension numbers by department from January 2000 to February 2023[18]



Source: Tasmanian Government, *ED trackers supplied by the Tasmanian Government in response to Commission notices to produce*, 2023.

6 Employment Direction No. 5—Breach of Code of Conduct numbers

We applied the following methodology to determine the number of Employment Direction No. 5—Breach of Code of Conduct that were conducted from the period January 2000 to February 2023 by respective department.

6.1 Department of Communities

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Communities.[19] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED5', 'ED6', 'ED5 investigation' and 'CD5 investigation'. The term 'No CD5 process', and blank cells, were excluded.

The number obtained was 26.

6.2 Department of Education

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Education.[20] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'Commissioners Direction No. 5', 'Commissioner's Declaration No. 5' , 'ED5', 'CD5', 'ED4/ED5', 'ED4, ED5', 'ED4 & ED5', 'ED4 and ED5', 'ED5 & ED4', 'ED5 and ED4', 'ED5, ED4', 'ED5/ED4'. The terms 'Referral for ED5' and 'NA', and blank cells, were excluded.

The number obtained was 50.

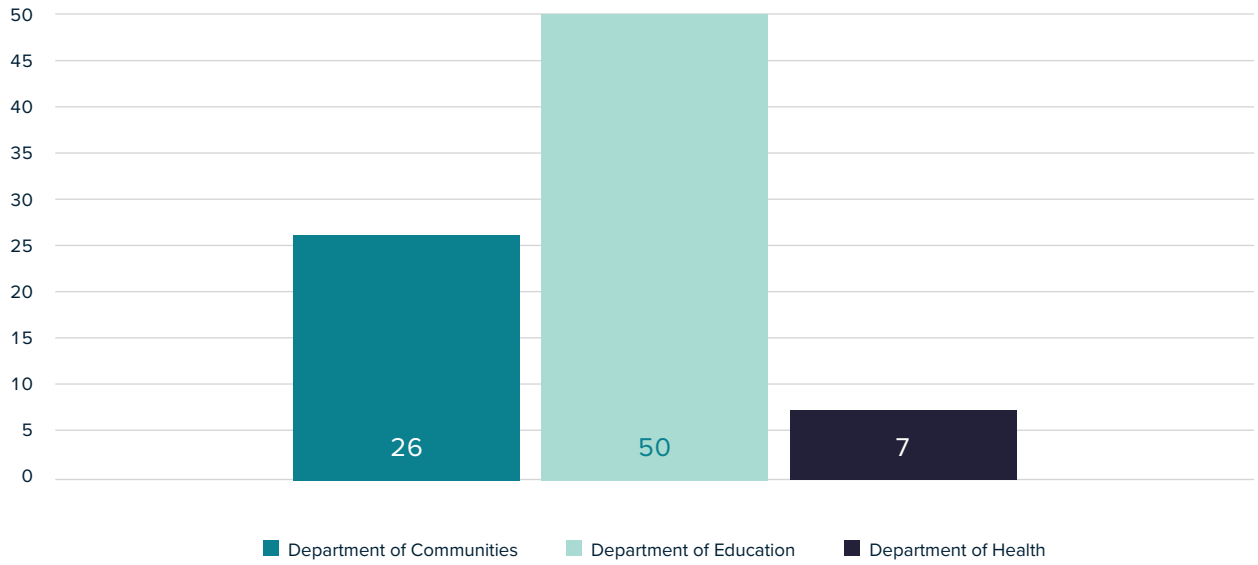
6.3 Department of Health

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Health.[21] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED5' and 'ED5 investigation'. The terms 'pending ED5', 'ED5/6 pending', 'N/A', 'Pending' and 'Stood down' were excluded.

The number obtained was 7.

Figure H.4 provides a graphical representation of these numbers.

Figure H.4: Employment Direction No. 5—Breach of Code of Conduct numbers by department from January 2000 to February 2023[22]



Source: Tasmanian Government, *ED trackers supplied by the Tasmanian Government in response to Commission notices to produce*, 2023.

7 Employment Direction No.6—Inability numbers

We applied the following methodology to determine the number of Employment Direction No. 6—Inability that were conducted from the period January 2000 to February 2023 by respective department.

7.1 Department of Communities

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Communities.[23] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED6'.

The number obtained was 0.

7.2 Department of Education

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Education.[24] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED6'.

The number obtained was 1.

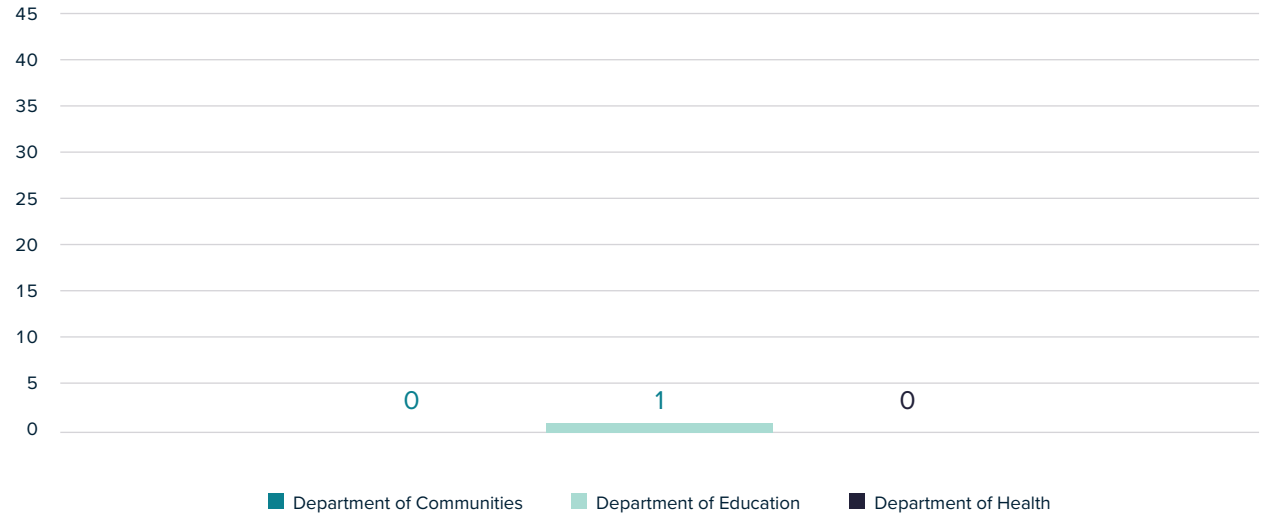
7.3 Department of Health

Analysis was conducted on the most recently provided version of the ED tracker for the Department of Health.[25] Column 'M' (labelled 'Type of ED – ED4, ED5 or ED6') was filtered to include 'ED6'. The term 'ED5/6 pending (not commenced)' was excluded.

The number obtained was 0.

Figure H.5 provides a graphical representation of these numbers.

Figure H.5: Employment Direction No. 6—Inability numbers by department from January 2000 to February 2023[26]



Source: Tasmanian Government, *ED trackers supplied by the Tasmanian Government in response to Commission notices to produce*, 2023.

Notes

1 Department of Communities, 'ED tracker' (Excel spreadsheet), 5 December 2022, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 5 December 2022, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 24 January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), 5 December 2022, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Police, Fire and Emergency Management, 'ED tracker' (Excel spreadsheet), undated, produced by the Tasmanian Government in response to a Commission notice to produce.

2 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

3 Refer to, for example, Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce and Letter from Michael Pervan to the Commission of Inquiry, 10 February 2022.

4 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

5 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

6 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

7 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

8 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

9 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

10 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

11 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

12 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

13 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

14 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

15 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

16 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

17 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

18 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

19 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

20 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

21 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

22 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

23 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

24 Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

25 Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.

26 Department of Communities, 'ED tracker' (Excel spreadsheet), January 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Education, 'ED tracker' (Excel spreadsheet), 22 February 2023, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health, 'ED tracker' (Excel spreadsheet), February 2023, produced by the Tasmanian Government in response to a Commission notice to produce.