
Child Safe Organisations Bill 2020

Sexual Assault Support Service Inc. (SASS) Submission

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Sexual
Assault
Support
Service

For further information please contact:

**Jill Maxwell, CEO – Sexual Assault Support Service
Inc. (SASS)**

Phone: (03) 6231 0044

Email: jill.maxwell@sass.org.au

Postal: 31-33 Tower Road, New Town, TAS 7008

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Introduction

Sexual Assault Support Service (SASS) Inc. is a community-based service committed to providing trauma-informed support and information services to survivors of sexual assault in Southern Tasmania, carers and support people, professionals, and the general public. SASS offers a 24-hour sexual assault crisis response and phone support service; and information, counselling, and referral services for anyone affected by sexual assault.

As part of our goal to provide responsive and holistic services to individuals, families, and the broader community, SASS facilitates therapeutic intervention services for children and young people (aged under 18 years) who are displaying harmful sexual behaviours.¹ This service is available free of charge for children aged up to 11 years, as part of our core services. For adolescents aged 12-17 years, we can provide behavioural change programs on a fee-for-service basis.

SASS is also funded to provide a Redress Scheme Support Service. This is a free and confidential support service for people who are seeking information on or wanting to apply to the National Redress Scheme.

SASS welcomes the opportunity to make a submission in response to the Child Safe Organisations Bill 2020.

¹ Alternative terminology is 'Problem Sexual Behaviour' (PSB) and 'Sexually Abusive Behaviour' (SAB).

1. Feedback on Part 1, Section 5 (Principles for the safety and wellbeing of children)

In our view, the Principles that are set out in this section are broad rather than specific, and this is a reasonable approach to take in terms of anchoring the proposed legislation with some key points and fundamental priorities. We recommend that simpler language is used, as a way of making the Principles more accessible to the community and easier to recall and cite. We also suggest that it is important for the Principles to:

- acknowledge the importance of diversity; and
- recognise the increased vulnerability of children and young people who identify as Aboriginal and Torres Strait Islander, Culturally and Linguistically Diverse, LGBTIQ+ and/or having a disability.

The set of Principles adopted in Victoria serve as a useful model here. The Victorian Commission for Children and Young People explains clearly that while all children are vulnerable, those from diverse backgrounds “may be particularly vulnerable to being victimised and may face challenges in reporting an incident of abuse.”²

2. Feedback on Schedule 1 (Child Safe Standards)

The Standards in this Bill appear to have been drafted with reference to the ten National Principles, endorsed by the Council of Australian Governments (COAG) in 2019, which align with the ten standards developed by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).³ We make the respectful submission that the proposed Standards for Tasmania need more attention and refinement prior to finalisation. As a starting point, we suggest that active rather than passive language is used throughout, in order to make expectations, responsibilities and obligations clear and action-focused. As an example of active language, we refer to National Principle 1, which reads as follows:

Child safety and wellbeing is embedded in organisational leadership, governance and culture.

By contrast, the first Child Safe Standard in the draft Bill uses passive language, which – in our view – is convoluted and ineffective:

Measures to protect the safety and wellbeing, and uphold the equity and diverse needs, of children are to be embedded in organisational leadership, governance, policy, practice and culture.

An alternative approach is to adopt the ten National Principles in full as the Child Safe Standards and produce a supporting guide to the Standards, which has been done in New

² Commission for Children and Young People, Victoria. Child safe principles. See: <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/child-safe-principles/#TOC-1>

³ Commonwealth of Australia (2017). Final Report: Volume 6, Making institutions child safe. Report accessed online at: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf

South Wales.⁴ Western Australia has also taken this approach and produced a range of state-based supporting resources, including a Self-assessment and Review Tool for use by organisations.⁵

A separate consultation process on the Principles and Standards may be worthwhile. It is vital to get this part of the process right from the outset, to ensure that there is a solid foundation from which to implement targeted and robust systems and processes for Child Safe compliance and public awareness activities in Tasmania.

3. Feedback on Part 2, Sections 9 and 10

We are not satisfied that the annual reporting procedure outlined in this draft Bill will be effective in terms of protecting the safety and wellbeing of children. Our concerns are summarised as follows:

- A non-government organisation (NGO) may be reporting to a Government Agency that is being investigated with regard to allegations of child abuse or mistreatment. This is not likely to instil public faith or confidence in Child Safe compliance processes. There are also potential procedural issues to consider, including whether an NGO that reports to more than one Government Agency will be required to engage in multiple compliance processes, and whether outcomes from these will be shared across agencies. A key question here is what will happen if a Government Agency finds that an organisation is not complying with requirements: i.e. will concerns be shared with other agencies that fund the organisation? It is easy to envisage a range of procedural issues and challenges that may impact on the effectiveness of proposed compliance processes.
- In the Bill, it is not clear who will scrutinise the annual reports that are prepared by government entities, and what actions will be taken if there are any concerns arising from the reports. The only direction given is that an annual report is “to be combined with an annual report required under section 36 of the *State Service Act 2000*.”⁶
- The draft Bill appears to be silent on compliance and monitoring procedures for organisations that engage with children and deliver child-related services in Tasmania, but do not receive funding from the Tasmanian Government.⁷

4. Implementation of an independent Child Safe oversight body in Tasmania

We urge the Tasmanian Government to commit to the planning, resourcing and establishment of an independent Child Safe oversight body for this State. The Royal

⁴ See:

<https://www.kidsguardian.nsw.gov.au/ArticleDocuments/838/ChildSafeStandardsGuide.pdf.aspx?Embed=Y>

⁵ See: <https://www.cyp.wa.gov.au/our-work/child-safe-organisations-wa/>

⁶ See Section 10 (2) of draft Bill.

⁷ Section 9B does not specifically refer to a funding agreement with a State Government department; however, this draft legislation is intended for application in Tasmania and the accompanying letter indicates that one of the purposes of the proposed reform is to “[r]equire Tasmanian Government entities to embed the Principles for the Safety and Wellbeing of Children and the Child Safe Standards in funding agreements with non-government organisations”.

Commission identified independent oversight as a central component of an effective and responsive Child Safe approach. The following excerpt from the Royal Commission's Final Report provides clear and evidence-based support for an independent, investigative and educative oversight body.⁸

4.5.1 Minimising the burden on institutions

Independent monitoring and oversight of institutions is required for the Child Safe Standards to be effective. Regulatory burdens on child-related institutions can be reduced through good design of the standards, and with responsive administration and enforcement including implementation guidance, and coordination with other regulatory systems.

Regulation and oversight should recognise the diversity of institutions that will be required to implement the standards. Consistent with best practice regulation, oversight bodies should take a risk-based approach to compliance. Enforcement efforts by government should focus on higher risk institutions, and regulators should respond to non-compliance with proportional interventions for those institutions unwilling and/or unable to comply.

Responsive regulation

We were told that a responsive approach to regulation would minimise the regulatory burden on institutions while improving safety for children. Accordingly, this regulatory theory has significantly influenced our approach to improving regulatory oversight and practice. It has influenced the regulation of a variety of fields including WHS law, taxation, environmental law, and the regulation of food and alcohol.

Responsive regulation is a dynamic model of enforcement based on an ongoing relationship between the regulator and regulated entity. It encourages voluntary compliance through self-regulation and persuasive, informal enforcement measures. Enforcement methods can range from encouragement, such as education and training, to sanctions, such as penalties and the revocation of a licence. Under this model, coercive measures are used only when less interventionist measures have failed to achieve compliance.

When the regulator becomes aware that an institution is not child safe, they can work collaboratively with the institution to achieve compliance. Compliance efforts become more burdensome if institutions show a consistent unwillingness to comply. Regulators can have a suite of enforcement tools, such as powers to request information, orders to comply or penalties. All can deter non-compliance, or can achieve compliance for institutions unwilling to be child safe.

Proportional response to compliance is a core principle of responsive regulation. It assumes that those being regulated will comply because of reputational, ethical or other normative motivations, but has sanctions for those who are either unwilling or unable to comply. Commissioned research on regulation and oversight noted:

⁸ Commonwealth of Australia (2017). Final Report: Volume 6, Making institutions child safe. Pages 275-276.

Self-regulation in the context of responsive regulation ultimately relies upon the regulated actors' desire for social legitimacy and reputational esteem, with optimal examples leading to the internalisation of regulatory norms and the development of trust between regulators and regulatees.

Commissioned research also confirmed that substantial cooperation between regulators and institutions increased the likelihood of compliance and led to longer term cultural change and the achievement of regulatory outcomes. Oversight bodies can minimise burden on institutions by auditing at greater or lesser levels of frequency, and at differing levels of focus, depending on the type of institution and its level of risk.

Stakeholders during our consultations agreed that monitoring and enforcement should be a partnership between the institution and the regulator, taking a capacity building and responsive approach to build a shared understanding of what it means to be child safe. These views were echoed by children and young people in our commissioned research, who told us external monitoring of institutions should focus on reviewing safety approaches and suggesting improvements.

This approach would minimise the burden on institutions and prioritise cultural change in them. Focusing regulatory efforts on improving safety for children, rather than reinforcing prescriptive requirements, will allow institutions to tailor child safe practices to their operational context, such as community, size, resources and risk to children.

WorkSafe Tasmania provides a framework for conceptualisation of an accessible, educative and investigative Child Safe oversight body. The Royal Commission identified the scope for nuanced, targeted guidance and compliance processes as a key strength of Work Health and Safety (WHS) schemes in Australia. Again, we draw attention to relevant wording from the Final Report:

Australian WHS schemes are an example of a regulatory framework that applies to a large number of institutions across many different sectors. Commissioned research found that WHS regulators have overcome this challenge by establishing multiple layers of requirements. Requirements that apply to all persons conducting a business or undertaking are set out as core principles and reinforced through specific duties to manage risks to health and safety. This gives the flexibility for institutions to tailor safety strategies to the specific context of that business or undertaking. For particularly high-risk work, additional requirements are more prescriptive and dictate how workers must be protected, for example prescribing a limit on workers' exposure to noise. Commissioned research suggested that a similar approach could be taken to child safe standards by subjecting higher risk institutions to more stringent regulation and oversight.⁹

In SASS's view, the best way forward is to extend the operations and resourcing of the office of the Children's Commissioner in Tasmania. To support our position, we include another excerpt from the Royal Commission's Final Report.¹⁰

⁹ Ibid, p. 278.

¹⁰ Ibid, p. 282.

A new or existing state or territory body could be appointed as a central regulator of the child safe approach. This responsibility could fall to children’s commissioners and guardians, who are currently playing a key role in state and territory child safe approaches. The state or territory oversight body could fill the gap for unregulated sectors and also take a jurisdiction-wide leadership and capacity building role. They could perform the following functions:

- oversee and monitor the implementation of the Child Safe Standards in unregulated institutions
- monitor and enforce compliance with the Child Safe Standards
- provide guidance on the Child Safe Standards to institutions and the community. For smaller clubs and local business, such as sport and recreation institutions, this could be through a voluntary email subscription process (see Volume 14, Sport, recreation, arts, culture, community and hobby groups)
- collect, analyse and publish data on the child safe approach in that jurisdiction, and report these to the proposed National Office for Child Safety (see Section 4.6)
- access relevant information about the child safety of individual institutions to help monitor and enforce the Child Safe Standards
- foster cooperative and consultative relationships with institutions and peak bodies
- provide, promote or support education and training on the Child Safe Standards to build the capacity of institutions to be child safe
- coordinate ongoing information exchange between oversight bodies on institutions’ compliance
- handle or oversee complaints and investigations of allegations of institutional child sexual abuse (see Volume 7, Improving institutional responding and reporting).

In Victoria, the Commission for Children and Young People performs the role of independent oversight body. The Commission describes their duties and approaches as follows:

We encourage good practice and improved performance, and take action when needed against unacceptable performance.

We have a number of legislative tools available to use in enforcing compliance with the Child Safe Standards under the Act. We consider court action as a last resort enforcement tool.

For regulated and/or funded organisations we will work collaboratively with existing statutory regulators and funding bodies.¹¹

In New South Wales, the Office of the Children’s Guardian provides independent oversight functions (including a Reportable Conduct Scheme), training activities, and a range of resources for organisations and the general public.¹²

¹¹ See: <https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards/our-powers/>

¹² See: <https://www.kidsguardian.nsw.gov.au/child-safe-organisations>

5. Use of existing accreditation processes as an alternative to annual reporting by non-government organisations to funding bodies

Another recommendation we make is for non-government organisations that receive State Government funding to demonstrate Child Safe compliance through existing quality and safety accreditation processes, as opposed to the annual reporting procedure outlined in the draft Bill. A condition of SASS's core funding with Department of Communities Tasmania (DCT) is that we maintain full quality and safety accreditation. For more than a decade, SASS has held Quality Improvement Council (QIC) Standards for Health and Community Services accreditation. Our ongoing accreditation assessments are conducted by Quality Innovation Performance (QIP).¹³ In our view, use of existing quality and safety accreditation processes would ensure that compliance is assessed and reviewed externally and consistently. It would also avoid duplication.

However, we do not suggest that this approach alone is sufficient for Child Safe purposes. This recommendation is a procedural one only, as an alternative to the approach outlined in Part 2, Section 9 (2) of the Bill. As outlined in this submission, we are strongly in favour of an appropriately resourced, independent and educative oversight body in Tasmania – but we acknowledge that this will take time to plan and implement. The alternative reporting procedure could serve as an interim measure until the operations of an independent oversight body commence.

6. Concluding comments

SASS takes its Child Safe obligations seriously and we will comply with whichever reporting processes are required of us. However, we respectfully submit that the draft Child Safe Organisations Bill does not, in its current form, provide the basis for an effective and robust Child Safe strategy in Tasmania.

¹³ For information about QIP, see: <https://www.qip.com.au/>