

Child and Youth
Safe Organisations
Bill 2022 —
Consultation Draft
Submission to the
Department of Justice

30 September 2022

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has been funded to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability. From 1 January 2022, our services were expanded to assist survivors who experienced child sexual abuse in non-institutional settings. From 1 March 2022, we have also been funded to provide legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 August 2022, knowmore has received 72,554 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 12,469 clients. Just over a third (34%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. About a fifth (19%) of clients are classified as priority

clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in Tasmania

knowmore has a notable client base in Tasmania — 4 per cent of our current clients reside in the state. We therefore have a strong interest in reforms that will help to reduce the risk and incidence of child sexual abuse in Tasmanian institutions and strengthen institutions' responses to child sexual abuse.

knowmore's submission

knowmore's overall support for the proposed reforms

knowmore welcomes the draft Child and Youth Safe Organisations Bill 2022 (the draft Bill) and the Tasmanian Government's commitment to implementing key recommendations from the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) that aim to make institutions safer for children and prevent institutions from covering up child sexual abuse.¹

knowmore strongly supports the introduction of a comprehensive and nationally consistent legislative framework to implement Child Safe Standards and establish a Reportable Conduct Scheme in Tasmania. We also strongly support the establishment of an Independent Regulator with responsibility for the monitoring, oversight and enforcement of these important reforms. In our view, these reforms are essential to reducing the risk and incidence of child sexual abuse in Tasmanian institutions and ensuring that institutions respond appropriately to allegations and suspicions of child sexual abuse.

The draft Child and Youth Safe Standards

knowmore strongly supports the provisions in the draft Bill, including Part 3 and Schedules 1 and 2, that will establish Child and Youth Safe Standards in Tasmania.

The Royal Commission proposed 10 Child Safe Standards as a benchmark against which all institutions could assess their child safe capacity.² The Child Safe Standards were designed to ensure that an institution that engages in child-related work upholds the rights of all children and young people under their care and supervision and:

*consciously and systematically creates conditions that reduce the likelihood of harm to children, creates conditions that increase the likelihood of identifying and reporting harm, and responds appropriately to disclosures, allegations or suspicions of harm.*³

The Royal Commission's recommended Child Safe Standards have been incorporated into the National Principles for Child Safe Organisations (the National Principles), which were

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- 1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 6, Making institutions child safe*, 2017, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf> and *Final Report: Volume 7, Improving institutional responding and reporting*, 2017, <www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_7_improving_institutional_responding_and_reporting.pdf>.
 - 2 Royal Commission, *Final Report: Volume 6*, p. 13.
 - 3 Royal Commission, *Final Report: Volume 6*, p. 12.

endorsed by all Australian governments, including the Tasmanian Government, in February 2019.⁴

Consistent with the Royal Commission's position, knowmore advocates for nationally consistent approaches to laws regulating child safe institutions. In our view, this is necessary to ensure that all children in Australia receive equal protection from the risk of child sexual abuse in institutions, regardless of where they live. We therefore welcome the Tasmanian Government's proposed Child and Youth Safe Standards, outlined in Schedule 1 of the draft Bill, which closely mirror the National Principles.

We also note our support for the provisions in the draft Bill that require the full range of child-related institutions identified by the Royal Commission in Recommendation 6.9 of the Final Report to comply with the Child and Youth Safe Standards.

Cultural safety for Aboriginal Children

We welcome the Tasmanian Government's commitment to ensuring that institutions provide culturally safe environments for Aboriginal children. This is critical given the overrepresentation of Aboriginal and/or Torres Strait Islander children in high-risk institutional settings and as victims and survivors of institutional child sexual abuse, as well as their unique experiences and needs. While cultural safety has been embedded in several National Principles, including Principles 3, 4 and 7,⁵ we support the adoption of a stronger and more explicit approach to promoting cultural safety for Aboriginal and/or Torres Strait Islander children.

We note the Tasmanian Government's proposal to introduce a universal principle that requires institutions to provide "...an environment that ensures that the rights of Aboriginal children to cultural safety are respected".⁶ This universal principle would apply across all 10 Child and Youth Safe Standards. This differs from the approach recently adopted in Victoria where, following a review of the Child Safe Standards, an additional standard was introduced mandating cultural safety for Aboriginal and/or Torres Strait Islander children.⁷

Without further information about the proposed universal principle and how it is intended to operate in practice, and given the relatively short period of time the revised Victorian

4 Australian Human Rights Commission, *National Principles for Child Safe Organisations*, AHRC, Canberra, 2018, <childsafeframework.org.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf>.

5 See Australian Human Rights Commission, *National Principles for Child Safe Organisations*, and Australian Human Rights Commission, 'Cultural Safety', <childsafeframework.org.au/diverse-needs/cultural-safety>.

6 Part 3, clause 9(4) of the draft Bill, and page 3 of the Child and Youth Safe Organisations Framework information pack available at <www.justice.tas.gov.au/_data/assets/pdf_file/0010/676702/Child-and-Youth-Safe-Organisations-Framework-Information-Pack.pdf>.

7 Commissioner for Children and Young People, 'New Child Safe Standards now apply', CCYP, Melbourne, 1 July 2022, <ccyp.vic.gov.au/child-safe-standards/new-child-safe-standards-now-apply/>.

Child Safe Standards have been operating, it is difficult to comment on the preferred model. However, we make the following comments for consideration:

- While the universal principle is intended to apply across all standards, there is a risk that it may not be treated with the same significance by institutions and the Independent Regulator. We are particularly concerned that the functions and powers of the Independent Regulator in Part 3 of the draft Bill are specifically framed to apply to the standards and make no reference to the universal principle. It is therefore unclear how an institution's compliance with the universal principle will be monitored and enforced.
- We urge the Tasmanian Government to ensure that an institution's obligation to respect the cultural safety rights of Aboriginal children is subject to the same level of oversight, monitoring and enforcement as the standards. Similarly, cultural safety should be prioritised in any community awareness and capacity building initiatives, including in the development of information materials and guidance for institutions.
- Where possible, a nationally consistent approach should be taken. We note that the Victorian model was adopted following a comprehensive review of the Victorian Child Safe Standards, which were first introduced in January 2016. Careful consideration should be given to whether the lessons learnt from the Victorian experience can usefully inform the Tasmanian Government's approach and whether the Victorian model may be a suitable option for Tasmania.
- The Tasmanian Government's choice of model must be informed by the views of Aboriginal communities and organisations, including where possible Aboriginal children and young people.

The proposed Reportable Conduct Scheme

knowmore supports the provisions in the draft Bill, including Parts 1 and 4 and Schedule 3, that will ensure Tasmania's proposed Reportable Conduct Scheme implements all key elements of Recommendations 7.10 to 7.12 from the Royal Commission's Final Report⁸ and is consistent with existing schemes in New South Wales, Victoria and the ACT (as well as the scheme to be established in Western Australia).⁹ The Royal Commission emphasised the importance of reportable conduct schemes across Australia being consistent in a number of key ways,¹⁰ and we are pleased that the draft Bill reflects this.

In particular, we support the provisions in the draft Bill that will ensure that:

8 Royal Commission, *Final Report: Volume 7*, pp. 283 and 294.

9 Part 4, *Children's Guardian Act 2019* (NSW); Part 5A, *Child Wellbeing and Safety Act 2005* (Vic); Part 2, Division 2.2A, *Ombudsman Act 1989* (ACT). We also note Part 2 of the *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA), which was passed in August 2022 and will establish a reportable conduct scheme in Western Australia (relevant provisions to commence on a day fixed by proclamation).

10 Royal Commission, *Final Report: Volume 7*, p. 282.

- The full range of high-risk institutions identified by the Royal Commission in Recommendation 7.12 are included within the scope of the scheme.
- Reportable conduct being defined to include:
 - Sexual offences and sexual misconduct committed against a child [as per proposed Part 1, section 5], which is consistent with part c of Recommendation 7.10 and relevant provisions in New South Wales, Victoria, the ACT and Western Australia.¹¹
 - Behaviour involving other forms of physical violence against a child, significant neglect of a child, emotional or psychological harm to a child, or grooming of a child [as per proposed Part 1, section 5], which is generally consistent with relevant provisions in New South Wales, Victoria, the ACT and Western Australia.¹²
 - Conduct that occurs outside the course of an employee’s employment [as per proposed Part 1, section 5(2)], which is consistent with the approach taken in Victoria, the ACT and Western Australia.¹³
- Employees being defined to include paid employees as well as persons engaged by institutions to provide services, such as volunteers, contractors, consultants and members of management committees [as per proposed Part 1, section 4], which is consistent with part e of Recommendation 7.10 and relevant provisions in New South Wales, Victoria, the ACT and Western Australia.¹⁴

The role of the Independent Regulator

knowmore strongly supports Part 2 of the draft Bill, which provides for the appointment of an Independent Regulator who will be responsible for the oversight, monitoring and enforcement of both the Child and Youth Safe Standards and the Reportable Conduct Scheme. We are particularly supportive of section 8(3), which provides that the Independent Regulator “must act independently, impartially and in the best interests of children when performing a function, or exercising a power, under this Act”.

11 Sections 20 to 22, *Children’s Guardian Act 2019* (NSW); section 3, *Child Wellbeing and Safety Act 2005* (Vic); section 17E, *Ombudsman Act 1989* (ACT); sections 19C and 19G, *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA).

12 See note 11.

13 Section 3, *Child Wellbeing and Safety Act 2005* (Vic); section 17E, *Ombudsman Act 1989* (ACT); section 19F, *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA). New South Wales’s scheme also covers conduct that occurs outside of the course of the employee’s employment, but not for employees in public authorities who are not required to hold a working with children check clearance for the purpose of their employment [sections 18 and 19, *Children’s Guardian Act 2019* (NSW)].

14 Section 16, *Children’s Guardian Act 2019* (NSW); section 3, *Child Wellbeing and Safety Act 2005* (Vic); section 17EAC, *Ombudsman Act 1989* (ACT); section 19D, *Parliamentary Commissioner Amendment (Reportable Conduct) Act 2022* (WA).

In a previous submission to the Tasmanian Government, knowmore expressed support for the independent oversight role being performed by the Tasmanian Commissioner for Children and Young People.¹⁵ We continue to hold this view. Such an approach would be consistent with the Royal Commission's suggestion that state and territory governments enhance the roles of existing children's commissioners or guardians to perform this function,¹⁶ and is also consistent with the regulatory frameworks in other jurisdictions, including Victoria, New South Wales and the ACT.

However, it is essential that the Commissioner for Children and Young People is adequately funded and resourced to perform this role effectively. On this point, we note that we have had the opportunity to read and consider the submission on the draft Bill written by the Tasmanian Council of Social Services Inc. (TasCOSS), and we endorse TasCOSS's comments and recommendations about the role of the Independent Regulator. While we acknowledge the additional costs to government associated with this, the costs of inadequate monitoring and enforcement must also be acknowledged:

We believe government and institutional investment to prevent institutional child sexual abuse is justified. The impact of institutions' child sexual abuse often has lifelong repercussions and can have significant social and economic consequences on victims and survivors, their family, friends and the community. Significant social and economic costs of institutional child sexual abuse include costs related to healthcare, lost earnings and tax revenue, increased need for welfare and child protection, the criminal justice system, and crime.¹⁷

In our view, adequate funding and resourcing for the Commissioner for Children and Young People is essential to supporting not only the Independent Regulator's compliance, monitoring and enforcement responsibilities, but also ensuring that they are able to undertake the education and capacity building work that will be critical to the success of the framework. On this point, we again note and endorse TasCOSS's comments and recommendations in its submission, highlighting the need for the Tasmanian Government to prioritise the development of educational materials, guidance and resources in relation to both the Child and Youth Safe Standards and the Reportable Conduct Scheme to ensure their effective implementation.

Given the short timeframe within which the Child and Youth Safe Standards and the Reportable Conduct Scheme are proposed to commence — as soon as 1 January 2024 for most institutions — we recommend that the Tasmanian Government make funding and resourcing for the Independent Regulator an urgent priority.

As a final point, we recommend that in enhancing the capacity of the Commissioner for Children and Young People to adequately perform the role and functions of an Independent Regulator, consideration should also be given to the creation of an additional Commissioner or Deputy Commissioner position with responsibility for the protection of Aboriginal

15 knowmore, *Child Safe Organisations Bill 2020: Submission to the Tasmanian Department of Justice*, March 2021, <knowmore.org.au/wp-content/uploads/2022/04/submission-child-safe-organisations-bill-2020-tas.pdf>.

16 Royal Commission, *Final Report: Volume 6*, p. 16.

17 Royal Commission, *Final Report: Volume 6*, p. 17.

children in Tasmania. We note that similar positions have been established in a number of other jurisdictions, including Victoria and New South Wales, and that the ACT has also recently introduced legislation to establish an Aboriginal and Torres Strait Islander Children and Young People Commissioner.¹⁸

18 ACT Government (Tara Cheyne MLA), 'New Commissioner for Aboriginal and Torres Strait Islander children in the ACT', ACT Government, Canberra, 21 September 2022, <www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/cheyne/2022/new-commissioner-for-aboriginal-and-torres-strait-islander-children-in-the-act>.

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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