



Tasmanian Council of Social Service Inc.

Submission on Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019

July 2019



INTEGRITY
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About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low-income Tasmanians living in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

TasCOSS welcomes the opportunity to make a submission to the Justice Legislation (Organisational Liability for Child Abuse) Amendment Bill 2019 (“the Bill”). The Bill amends the *Civil Liability Act 2002* and the *Limitation Act 1974* to ease access to justice for survivors of child abuse, as recommended in the Redress and Civil Litigation Report and the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Our goal

Our goal is to see all children in Tasmania who cannot be safe at home are able to thrive and flourish in a safe environment.

Background

The Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (“the Royal Commission”) was handed down in December 2017. The final Report consists of a number of reports on specific issues, each with its own set of recommendations. The current draft bill is a response to recommendations in the report on *Redress and Civil Litigation*, released in September 2015.¹

In May 2018 the Tasmanian Government announced it will opt in to the National Redress Scheme, a key recommendation of the Royal Commission, which opened in July 2018. The current Bill addresses associated aspects of the redress and civil litigation recommendations, namely:

- Makes it clear that all organisations and individuals connected to those organisations must do everything in their power to protect children and prevent child abuse from occurring;
- Imposes a new statutory duty of care on all organisations that exercise care, supervision or authority over children;
- Extends vicarious liability to organisations for the perpetration of child abuse by individuals that are ‘akin to employees’ in their organisations, as well as regular employees; and
- Allows courts to set aside a previous settlement between an organisation and survivor if ‘it is in the best interests of justice to do so’, enabling a survivor to commence civil litigation where the court considers that previous settlements have been unfair or inappropriate.²

Key Issues

Support for the draft Bill

TasCOSS supports a national redress scheme because it recognises the responsibility held by institutions for the harm done to people in their care. We also support the removal of barriers to better enable

¹ https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf

² <https://eliseacher.com.au/improving-access-to-justice-for-child-abuse-survivors/>

access to the redress scheme. In 2017 the Tasmanian Government passed legislation removing a key barrier, which is time limitations on civil claims by survivors of child sexual and physical abuse.³ This reflects the difficulty survivors have in reporting crimes against them for many reasons including trauma, distrust of authorities and experiences of not being believed.

The current Bill addresses other barriers that focus on organisational liability for child abuse, particularly an organisation's defence that they have no liability due to their unincorporated status, or that the perpetrator of abuse was not an employee. TasCOSS has consulted its members on the draft bill and there is universal endorsement of its underlying principles and intention.

Ensuring the intent of the Bill can be delivered

Survivors of child abuse, particularly sexual abuse, often experience complex trauma, especially when layered on to abuse that resulted in the child living in a residential institution. As the Royal Commission notes:

For many survivors talking about past events required them to revisit traumatic experiences which have seriously compromised their lives. Many spoke of having their innocence stolen, their childhood lost, their education and prospective career taken from them and their personal relationships damaged. For many, sexual abuse is a trauma they can never escape. It can affect every aspect of their lives.⁴

This complex trauma can mean that many survivors do not acquire foundational knowledge and skills that would enable them to access litigation and redress schemes. As the Royal Commission points out, 'the training, education and guidance that exist about reporting obligations – what to report and how to make a report – are inadequate.'⁵

TasCOSS therefore recommends that the Government design, through consultation with survivors and other relevant stakeholders, a public education campaign and expanded legal assistance scheme to ensure that the public is informed about redress and litigation options and that those who require assistance to access these options are assisted to do so.

It is particularly important that children and young people understand their rights, and organisational responsibilities, under this Bill. We therefore recommend that the Government work with the Office of the Commissioner for Children and Young People to discuss appropriate ways to inform children of their rights under this legislation, should the Bill be passed.

³ http://www.premier.tas.gov.au/releases/bill_to_abolish_time_limitation_for_child_abuse_cases_passes_lower_house

⁴ https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf, p. 2

⁵ https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf, 29

More broadly, a similar education campaign should focus on all organisations impacted by this Bill to ensure they have clarity and commitment to its intent. This needs to include occur at both operational and governance levels.

Recommendations

- Should the legislation be passed, the Tasmanian Government ensure that all relevant organisations, at operational and governance levels, and those who use their services – particularly children – are advised of their rights and responsibilities in an age appropriate manner.
- Ensure the redress scheme is widely publicised and understood.
- Expand legal assistance if survivors require support for civil litigation or access to the redress scheme.