

COMMUNITY LEGAL CENTRES TASMANIA

7 October 2022

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

via email: haveyoursay@justice.tas.gov.au

To the Department of Justice,

Re: *Justice Miscellaneous (Royal Commission Amendments) Bill 2022*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the *Justice Miscellaneous (Royal Commission Amendments) Bill 2022* ('the Bill').¹

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We are supportive of the Government's intention to improve victim-survivors' experience of the criminal justice system and access to justice. The reforms set out in the Bill correspond broadly with the recommendations from the *Royal Commission into Institutional Responses to Child Sexual Abuse* and will support victim-survivors to more effectively participate in criminal proceedings and receive appropriate support throughout the process.

Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Tas)

Limitation periods provide finality and prevent unfairness to the accused. Nevertheless, the *Royal Commission into Institutional Responses to Child Sexual Abuse* ('the Royal Commission') recommended that limitation periods for all child sexual abuse offences be removed in recognition that many survivors of child sexual abuse are reluctant to disclose the crimes perpetrated against them until many years have passed. The Royal Commission reported for example that survivors of institutional child sexual abuse take, on average, 24 years to disclose the crime.² As well, *knowmore*, a nation-wide community legal centre providing legal information, advice and representation to survivors of child

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

² Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report, Volume 4, Identifying and Disclosing Child Sexual Abuse* (December 2017) at 9.

abuse, has previously reported that approximately 73 per cent of clients are 46 years of age or older.³

We strongly support the proposed amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas) which will ensure consistency with the Royal Commission's recommendations by removing the limitation period for all Tasmanian child sexual abuse offence.

Failure to protect

Currently, Tasmania's *Children, Young Persons and their Families Act 1997* requires prescribed persons including teachers, doctors and police to report their suspicions that a child is being abused or neglected.⁴ Tasmania is also likely to establish a reportable conduct scheme which allows for the reporting, investigation and independent oversight of a range of complaints and allegations made against employees and volunteers in certain government and non-government agencies.⁵

However, both mandatory reporting and the reportable conduct scheme are reactive, requiring action to be taken after the child abuse has occurred. To prevent child sexual abuse from occurring in the first place, the Royal Commission recommended the introduction of a failure to protect offence which "could apply to action taken or not taken before it is known that an offence has been committed".⁶

As the Victorian Attorney-General has previously observed, the importance of a failure to protect offence is its promotion of cultural change within organisations to ensure that they are proactively dealing with the risk of child sexual abuse:⁷

All organisations having responsibility for children must take effective action against those within their organisation who pose a risk of child sexual abuse. In such cases, the law will make clear that it is not acceptable to put the interests of an adult or an organisation ahead of the interests of a child. The interests of the child must come first.

We strongly support the Government's intention to put children first by introducing a failure to protect offence focused on organisations and organisational failure. The offence will reinforce the importance of prevention by imposing criminal sanctions on organisations that fail to take steps to prevent abuse.

³ Knowmore, *Infographic 1 July 2018 – 31 August 2022*. As found at <https://knowmore.org.au/wp-content/uploads/2022/09/Infographic-August-2022.pdf> (Accessed 6 October 2022).

⁴ Section 14 of the *Children, Young Persons and their Families Act 1997* (Tas).

⁵ A draft *Child and Youth Safe Organisations Bill 2022* was recently released for comment.

⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report Parts III – VI* (2017) at 234.

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report Parts III – VI* (2017) at 226.

The Bill's proposed failure to protect offence is consistent with the Royal Commission's recommendation⁸ and with provisions introduced in most other Australian jurisdictions.⁹ In particular, we support the broad definition of 'relevant organisation' and endorse the inclusion of specific types of organisations likely to be captured by the proposed offence. Whilst we support the TasCOSS recommendation of excluding individual kinship and foster carers we note that the Royal Commission recommended the inclusion of foster and kinship care services. The Royal Commission's rationale was explained as follows:¹⁰

We consider that it should be made clear that the offence cannot be committed by individual foster carers or kinship carers. While the offence should apply to those with the required knowledge and the power or responsibility to take action in the services that arrange or supervise foster care and kinship care, we do not consider that individual foster carers or kinship carers should be caught by the offence. Their position is not comparable to those who work within the services and including them would effectively extend the offence to domestic carers in a family setting.

To avoid doubt we therefore recommend that foster and kinship care services are included in the definition of 'relevant organisation' but individual foster or kinship carers are explicitly excluded.

Effective implementation of failure to protect provision

The introduction of a failure to protect offence will require a public information campaign to educate and inform organisations on the proactive steps they must take to effectively deal with the risk of child sexual abuse. In our opinion, it makes sense for the same organisation responsible for providing advice, training and assistance in relation to the Child and Youth Safe Standards and the reportable conduct scheme to also provide the same services in relation to the implementation of the failure to protect offence.

However, the success of all of these child first practices will require appropriate resourcing not simply to provide oversight but to have the capacity to meaningfully engage in a community-wide education campaign that will increase public awareness of the importance of child and youth safety, ensure that organisations are able to better prevent, identify and respond to child sexual abuse and other forms of abuse, and foster an environment where all members of the community can expect and demand child safe institutions.

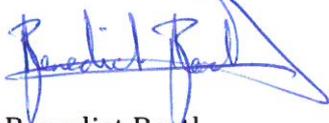
⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report Parts III – VI* (2017) at 249.

⁹ Section 273B.4 of the *Criminal Code Act 1995* (Cth); section 43B of the *Crimes Act 1900* (NSW); section 490 of the *Crimes Act 1958* (Vic); section 229BB of the *Criminal Code Act 1899* (Qld); section 65 of the *Criminal Law Consolidation Act 1935* (SA); section 66A of the *Crimes Act 1900* (ACT).

¹⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report Parts III – VI* (2017) at 248.

If you have any queries, or would like to discuss our submission further, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania
