

Consultation Paper - Best practice principles in responding to complaints of child sexual abuse in institutional contexts

Submission by Tasmanian
Government

The Tasmanian Government welcomes the opportunity to make a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in relation to the Consultation Paper on best practice principles in responding to complaints of child sexual abuse in institutional contexts.

The Tasmanian Government's complaint handling practices are based on guidelines published by the Tasmanian Ombudsman for complaint handling in January 2013, which is attached as Annexure A. These guidelines are based on the now revised Australian standard and international standard *Customer satisfaction – Guidelines for complaints handling in organizations AS ISO 10002:2006*.

A “fit for purpose” complaint handling system

The Tasmanian Government recognises that an effective complaint handling system should be a ‘fit for purpose’ system. That is, a system that is varied to fit an agency's circumstances and is proportionate to the number and type of complaints it receives.

As the Tasmanian Ombudsman outlines in his guidelines in relation to complaint handling, decisions about building a ‘fit for purpose’ system could incorporate the following considerations:

- the number and demographics of the agency's customers, and how they generally communicate with the agency;
- the nature and breadth of the agency's interactions with the public;
- the level of complaints that is considered reasonable for the agency (by examining trends in its level of complaints over time);
- the agency's risk management strategy – complaints are an important way of monitoring and mitigating any risks;
- the value the agency derives, or wishes to derive, from complaints to improve its operations over time, as well as other information needs of management; and
- the cost of operating a complaint handling system

In addition, complaint-handling processes must be considered in relation to existing legislative frameworks such as mandatory reporting, privacy and industrial relations requirements. There are also important intersections with investigative processes conducted by police services and regulatory bodies that need to be appropriately coordinated and managed. Where a multi-agency response is required, complaint-handling mechanisms need to be sufficiently flexible to adapt to the needs of those agencies whilst maintaining appropriate focus on the customer, accountability and procedural fairness for adversely affected parties. Adversely affected parties may include a range of classes of people such as victims, complainants, accused persons and ‘whistleblowers’ (disclosers).

The Tasmanian Government notes the work of the Royal Commission to date and its observations in relation to complaints handling procedures which include:

- Organisational culture may discourage individuals from pursuing complaints, or result in minimization of a complaint.
- Children may not be believed.
- Employees who are the subject of a complaint may be allowed to continue to work with children.
- Institutions can be slow to respond; fail to commence appropriate investigations; have a poor understanding of children's capacity to be witnesses; and fail to keep victims and their families informed of their findings or actions.
- Children may be punished or chastised for disclosure.

It is desirable to create a framework for child safe organisations that includes promoting organisational culture that enables and supports disclosures by child victims of sexual abuse and responds appropriately. While it is acknowledged that work is needed to remove barriers to reporting concerns and empower victims of institutional child sexual abuse to report abuse, it is also noted that the Royal Commission itself has provided a significant educative role in publicizing these issues and informing modern community expectations and standards that may have historically led to children being disbelieved, ignored and punished for disclosures. In addition to increased community awareness, regulatory changes such as Working with Children Check registration and increased training in relation to mandatory reporting obligations have resulted in significant changes to the ways in which organizations understand and address complaints of child sexual abuse.

Improvements to complaints processes to promote access by children are important to facilitate timely disclosure to be made but the challenge for organisations, including government agencies, is to balance responses to complaints and risk management with the rights of employees (noting the industrial relations framework) and balancing procedural fairness issues. Balancing these issues and creating a system of complaints handling which is centred on the best interests of the child will be challenging particularly where the interests of the worker is likely to be significantly affected through increased obligations to address issues outside their core business.

In an environment where services in relation to children are largely outsourced the government must be careful not to adopt policies that may impact the capacity of service providers to deliver necessary services for children. Potential market reduction resulting from increasing the regulatory and financial burden on service providers may also alter the capacity of family based service provision.

Reportable conduct schemes

Tasmania does not have a reportable conduct scheme comparable to the NSW Ombudsman's scheme.

In small jurisdictions like Tasmania the establishment and administrative costs of such a scheme will need to be evaluated as an alternative to other available or existing oversight mechanisms. The Tasmanian experience has been that numerous recommendations by various inquiries have not assisted to create a comprehensive and cohesive policy framework in relation to key areas of service delivery. For example, Out of Home Care

and Child Protection services in Tasmania have been the subject of numerous inquiries over the last two decades resulting in numerous recommendations that have varied from the general to specific. The recommendations of the inquiries have also often been ad hoc and inconsistent which created a confusing and difficult landscape to navigate the implementation of appropriate and cohesive policy reforms in these areas. As a result, the Department of Health and Human Services is currently undertaking extensive reform and redesign projects in relation to Out of Home Care and Child Protection outlined in the Tasmanian Government's submission to the Royal Commission's OOHC Consultation Paper.

There is a risk that the ongoing recommendations from a reportable conduct scheme may have similar impacts and overburden service delivery agencies required to respond to the recommendations.