NSW Government Submission
Royal Commission into Institutional Responses to Child Sexual Abuse
Issues Paper 3 – Child Safe Institutions

The NSW Government welcomes the Royal Commission's focus on the content and effectiveness of strategies aimed at making an organisation child safe. As highlighted in NSW's submission to Issues Paper 1 on the Working with Children Check, approaches to managing risk to children must go beyond criminal history screening. Organisations that work with children should have in place policies and procedures to manage all possible risks to children. These should include preventative measures and effective immediate responses to child harm, and should also promote a child safe and child focused organisational culture and leadership style more broadly.

The NSW Government is a major provider of services to children, in areas as diverse as education, health, sport and recreation, out-of-home care and disability support. All Government agencies with a role in delivering these services have policies and procedures in place to ensure that they, as well as organisations funded to deliver services on their behalf, are child safe. Some of these policies and procedures are highlighted in this submission.

Additionally, the NSW Office of the Children's Guardian (OCG) has a statutory responsibility for encouraging all organisations to develop their capacity to be safe for children[1]. It provides information, training and resources to organisations that work with children to assist them in this regard. While some of these resources are referred to throughout this submission, further detail is available on the OCG website[2] and in the OCG's separate submission to this issues paper.

1. **The essential elements of establishing a 'child safe organisation' that protects children from sexual abuse in an institutional context. In particular, are there core strategies that should be present and others that are less critical?**

There are a number of elements which are important to ensuring that an organisation is child safe – those which NSW consider to be key are outlined below (although it is noted that this list is not exhaustive). None of these are inherently less critical than others in protecting children from sexual abuse in an institutional context. However, the relative importance of each element to a particular organisation depends on its context. For example, upholding privacy considerations might be particularly important in an organisation dealing with sensitive information (such as a child protection agency), while encouraging child participation might be less relevant in an organisation dealing with very young children (such as long day care or preschool).

---

[1] Section 181 of the *Children and Young Persons (Care and Protection) Act 1998* and Section 38 of the *Child Protection (Working with Children) Act 2012*
[2] http://www.kids.nsw.gov.au/Working-with-children/Become-a-Childsafe-Organisation

A child safe policy

This should provide a strong foundation for the organisation's policies, procedures, governance arrangements and culture. It should describe the organisation's commitment to safeguarding children from harm and the strategies in place to keep children safe. It might also reference the organisation's legal obligations and/or the standards of care that apply. While some organisations (such as child care services) are required to by law to have a child-safe policy, this is good practice that should be adopted more broadly. The OCG website contains advice for organisations on how to develop a child safe policy, including a template which can be used as a guide.

A child safe code of conduct

This should outline the organisation's values and provide clear expectations for staff, volunteers, parents and children in the following areas: personal and professional boundaries (including the use of social networking sites and other technology); ethical behaviour; and what is appropriate and inappropriate behaviour. It could also be accompanied by guidelines that address high risk activities or situations. The OCG website contains advice for organisations on how to develop a child safe code of conduct, as well as a template which can be used as a guide.

Effective staff recruitment and training

Child safe practice should be in place from the beginning of the recruitment process. Position descriptions and job advertisements should be designed to make clear the organisation's commitment to providing a child safe environment, and the roles and expectations of staff in achieving this. This will assist in attracting appropriate candidates that share these values. The recruitment process should include stringent referee checks which include the applicant's current or most recent employer, and appropriate screening processes including a Working with Children Check. All new employees should be subject to a probationary employment period, to allow time to assess their suitability to the position. Strong disciplinary management processes are also important to ensure that any misconduct or inappropriate behaviour is responded to appropriately.

Child protection training should be delivered as part of the induction process, to enhance the knowledge and skills of employees and volunteers and reduce exposure to risk. This training should cover the following areas: the organisation's policies and procedures (including its code of conduct); compulsory training as required by industry standards or legislation; how to identify, assess and minimise risk; how to respond to a concern or complaint about behaviour towards children (including a disclosure from a child); and reporting guidelines and obligations. Ongoing training and support in these areas should also be available to all employees and volunteers, in addition to the induction process.

Upholding privacy considerations

Child safe organisations should be aware of their privacy obligations, and respect the privacy rights of children as well as those who provide information. Policies and procedures should be established for the collection, use and disclosure of personal information. Organisations which handle sensitive and/or confidential information should have in place additional mechanisms to protect this (such as secure IT facilities and filing cabinets which can be locked).

Everyone involved with the organisation, including children, should be made aware of the need to report child protection matters to the appropriate external authorities. While

confidentiality cannot be guaranteed in these matters, organisations should ensure they are dealt with privately.

Risk management strategy or plan
All organisational environments and all people working with children can pose some level of risk. Organisations should have in place a strategy or plan to appropriately deal with these risks. This should set out what the risks are; how likely they are to occur; how serious the result could be; and how they are being managed and/or mitigated. Risk management should become part of an organisation's culture. The OCG website contains advice for organisations on how to develop a risk management strategy or plan, and a template that can be used as a guide.

Children and young people are listened to and encouraged to participate
The organisation should have in place mechanisms to ensure that children and young people are involved in decisions about policies, programs, services and other issues that affect them, and to respond appropriately to their views. This lets children and young people know that they and their concerns are respected and valued. It can also make children more confident in speaking out when they feel unsafe.

Effectively deals with complaints or concerns about behaviour towards children
The organisation should have in place policies and procedures to ensure that complaints and concerns are dealt with and responded to appropriately. These should make it clear that a child or someone acting on their behalf can approach any person in the organisation to express concerns about their treatment and that they will be taken seriously, and include the requirement to notify appropriate external authorities. Information for clients about the organisation's complaints handling process, including how to make a complaint and what to expect, should be readily available.

Understands child protection
An organisation and all people in it should understand what constitutes harm to a child, how to recognise it and what to do when it is detected. This includes: an awareness of how abuse affects children; how this might manifest itself; the process of disclosure and that this can occur over time; and the factors that might cause a child to deny allegations when asked, or retract a disclosure once made. The National Child Protection Clearinghouse's September 2011 Practice Brief 'Responding to children and young people's disclosures of abuse' [3] may assist organisations in developing and implementing a set of protocols that enable a fast and effective response to disclosures of abuse.

In NSW, the *Children and Young Persons (Care and Protection) Act 1998* makes certain occupations mandatory reporters of child abuse. However, anyone with reasonable grounds to suspect that a child or young person is at risk of significant harm should report this. It is important that all employees and volunteers working with children understand what significant harm is, who can make a report and how to make a report.

---

[3] *Responding to children and young people's disclosures of abuse* by Cathryn Hunter, published by the Australian Institute of Family Studies, September 2011. Available at
http://www.aifs.gov.au/nch/pubs/brief/pb2/pb2.pdf

Safe physical environment
An organisation should account for environmental factors which may increase risk to children. Depending on the nature of the organisation, access controls may be necessary to minimise the risks associated with unauthorised persons entering the facility. As well as having in place policies to provide guidance as to when it is appropriate for adults to work unsupervised with children, consideration should also be given to the design of facilities to allow for monitoring and supervision.

Attends child-safe organisation training
The OCG runs a series of workshops and seminars designed for managers, directors and human resources staff in organisations that work with children and young people. These sessions help people to learn about: tools to make their organisation more child safe; risk management strategies; obligations under the Working with Children Check; recruitment and selection tips; and complaints handling procedures.

2. The evidence base for the range of strategies associated with making an organisation 'child safe'. Does this evidence base extend to the physical environment?

The evidence base for the range of strategies associated with making an organisation child safe does not appear to be as strong as it is for other aspects of child protection. Despite this, there does seem to be general acceptance as to what the key elements of child safe practice are.

NSW considers that the *2005 National Framework Creating Safe Environments for Children – Organisations, Employees and Volunteers*[4], which established a nationally consistent approach to child safe organisations, provides a good foundation for the strategies referred to in response to Question 1. Schedule 1 of this Framework, Guidelines for Building the Capacity of Child Safe Organisations, identifies nationally agreed characteristics of child safe organisations which have been found effective in establishing, maintaining and strengthening the child safe capacity of organisations. It supports the need for a child safe approach to be taken to organisational activity at a number of levels, including:

- Governance and culture
- Human resources management
- Participation and empowerment of children
- Education and training
- Systems to ensure adaptation, innovation and continuous improvement.

There is also consensus to support child safe strategies which are particular to a specific context or sector. For example, NSW considers that the *National Safe Schools Framework*[5] provides a strong, overarching basis for the range of strategies associated with making a school child safe. This Framework was developed by the then Ministerial Council for Education, Early Childhood Development and Youth Affairs and endorsed by all Education Ministers. It is based on a combination of good practice, research-based literature and feedback from all education systems and sectors, and is used by NSW

---

[4] http://www.checkwwc.wa.gov.au/NR/rdonlyres/E1B2D479-B4EE-4119-9944 28C3E478EBA5/0/childsafe_framework.pdf
[5] http://www.deewr.gov.au/national-safe-schools-framework-0

Government schools to assist them in planning, implementing and maintaining the following elements of a safe school:

- Leadership commitment to a safe school
- A supportive and connected school culture
- Policies and procedures
- Professional learning
- Positive behaviour management
- Engagement, skills development and a safe school curriculum
- A focus on student wellbeing and student ownership
- Early intervention and targeted support
- Partnerships with families and communities.

While the evidence base for the range of child safe strategies associated with the physical environment would also benefit from further development, there are measures which are generally accepted as contributing to a safer physical environment. In the context of child sexual abuse, these relate primarily to ensuring appropriate supervision and monitoring. For example, design features such as open plan spaces and doors with viewing glass help reduce the chance of somebody working unsupervised with children, and the use of access controls to prevent unauthorised access to an organisation's premises are important. However, these measures should complement and not replace other strategies aimed at ensuring supervision and monitoring, such as policies that provide guidance as to when it is appropriate for adults to work unsupervised with children (particularly given the practical constraints associated with changing an organisation's physical environment).

3. How should the effectiveness of 'child safe' strategies be tested?

As is the case with the Working with Children Check, it is not clear that there are any plausible methods for determining how much offending is prevented by having child safe strategies in place. In the absence of this data, the effectiveness of child safe strategies should be tested by reference to how well these strategies are implemented and understood, and the extent to which they are reflected in an organisation's culture. Possible measures include:

- The level of compliance with an organisation's child safe policy, code of conduct, risk management plan and privacy obligations.
- Whether breaches of these plans and obligations are taken seriously and dealt with appropriately.
- How well an organisation's staff, volunteers and broader community understand these policies and their individual responsibilities.
- Whether an organisation's staff, volunteers and broader community are able to understand and recognise child protection concerns, know how to respond, and are willing and supported to respond.
- The extent to which child wellbeing and child safety is at the focus of an organisation's activities.
- How many complaints or concerns about behaviour towards children are received and the extent to which these are taken seriously and dealt with appropriately.

- Feedback from children and young people, including feedback related to how safe and empowered they feel within the organisation. This should be measured not only by what children say, but also how they behave.

It is important that the number of complaints or concerns about behaviour towards children is not, on its own, seen as a measure of the effectiveness of child safe practices within an organisation. This is because reporting levels are not an accurate indicator of actual levels of abuse. An increased awareness of child safe principles and a greater sense of authority to act on concerns could potentially result in an increase in the number of complaints or reports received – however, this would not necessarily reflect a failure of child safe practices or an increase in offending. Similarly, a decrease in the number of complaints or reports received may not reflect a reduced incidence of harm, but rather an unwillingness or inability to recognise and respond to child protection concerns.

NSW would support the establishment of an evaluation or research program to measure the effectiveness of child safe strategies. Not only would this fill a gap in the understanding of the extent to which these prevent harm, it would also provide a strong evidence base to inform future developments in child safe practice.

In addition, NSW considers that the development of any universal framework for child safe organisations (as referred to in Question 5) should include the development of a child safe audit or self assessment tool. This should be similar to the tool available under the National Safe Schools Framework, which helps schools to make informed judgements about what they are doing well and indentify gaps in their development.

4. How 'child safe' policies and procedures work in practice.

Child safe policies and procedures should work to reinforce and embed a child focused organisational culture, and support in a practical way the implementation of the strategies outlined in response to Question 1. Examples of how NSW Government agency policies and procedures work in practice to do this are outlined below.

- The *Child Wellbeing and Child Protection – NSW Interagency Guidelines* provide advice and guidance to mandatory reporters in the government and non-government sectors on their child protection responsibilities and how to uphold them. The Guidelines cover the following areas: the legislation governing child protection and child wellbeing services; how information can be shared in relation to the safety, welfare and wellbeing of a child or young person; how to make a child protection report; how to respond to a child wellbeing concern or child protection report; engaging children, young people and their families; and early intervention and prevention strategies.

- The Department of Family and Community Services' *Care and Protection Practice Framework* outlines the values and principles that underpin the Department's approach to working with children and families, and describes the specific skills and knowledge that are fundamental to achieving this. It provides a shared vision for staff that the child or young person is at the centre of practice, and highlights relationship based casework as pertinent to achieving better outcomes for children, young people and families.

- The Department of Family and Community Services provides centralised, systemic and consistent responses to allegations of reportable conduct made about authorised carers (through the Reportable Conduct Unit, or RCU) and paid employees (through the Professional Conduct, Ethics and Performance Unit, or PCEP). Investigations of allegations are implemented in conjunction with child related risk of significant harm assessment processes. The NSW Ombudsman is notified of allegations involving reportable conduct against anyone working for the Department, and the Office of the Children's Guardian is notified of completed relevant employment proceedings which involve certain classes of reportable conduct.

  The Department's Governance and Assurance Directorate undertakes ongoing analyses of client incidents and Ombudsman complaints and provides reports to the Executive on issues arising and potential systemic problems, including those associated with child sexual abuse. It is also rolling out the *Support Services Governance Program*, which requires line managers to self assess compliance of their position against key operational policies and procedures and to document the action they have taken, or will take, to achieve compliance.

- NSW Health operationalises the requirement to deliver child-safe policies, procedures and provision through service-level and funding agreements between the NSW Ministry of Health and Local Health Districts (LHDs), Specialty Networks and Pillars. These are articulated in 'Service Agreements', which reflect the requirement for LHDS to provide safe work environments and practice for both adults and children. Cultural change documents, including the 2013 *Child Wellbeing and Child Protection Policies and Procedures for NSW Health*, further emphasise the importance of child safe policies and provide contextual and operational detail.

- NSW Health's *Children and Adolescents – Guidelines for Care in Acute Care Settings* ensures children receive paediatric care in a safe and appropriate setting. Amongst other things, it acknowledges that inpatient units for children and adolescents have different requirements from those focussed on the care of adults, taking into account factors including physical layout, staffing levels and skills, supervision and child protection issues. It also establishes that a designated children and adolescent's area or ward should address special safety and security aspects for accommodating children or adolescents and be easily observed and supervised at all times.

- The Department of Education and Communities has in place various policies and procedures to clearly outline the types of behaviour expected of staff. The *Code of Conduct* makes clear that staff must not develop a relationship with any student that is, or that can be misinterpreted as, having a personal rather than a professional interest in a student, and provides very clear examples of situations where professional boundaries might be breached. Further examples of acceptable and unacceptable teacher-student relationships, including acceptable and unacceptable physical contact, are provided in the Department's policy *Responding to Allegations against Employees in the Area of Child Protection*.

- The Department of Education and Communities also has comprehensive child protection training for all school staff, to ensure they understand their mandatory reporting responsibilities, child protection issues and their responsibilities

towards students. Teacher training students are required to undertake child protection training prior to having student placements in schools, induction training in child protection is provided for new teachers, and all school staff are required to undertake annual child protection refresher training. A special interactive on-line training resource – Child Protection Awareness Training – has been developed for casual teachers, who can produce a certificate showing that they have undertaken the training before working in schools. This was developed in response to concerns that casual teachers were not consistently receiving the annual update training in child protection.

5. Should there be a universal framework for a 'child safe organisation' or should strategies be specifically tailored to particular types of institutional settings?

As highlighted in its submission to Issues Paper 1, NSW considers that there would be merit in a universal framework for child safe organisations.

Any such framework should build on the work that the Commonwealth, State and Territory Governments and the non-government sector have been doing under the *National Framework for Protecting Australia's Children 2009-2020* to develop a nationally consistent approach to child safe organisations, based on the 2005 National Framework *Creating Safe Environments for Children – Organisations, Employees and Volunteers*.

The proposed new framework should also adopt a similar approach to the 2005 Framework. That is, it should set out nationally agreed good practice to guide organisational development, rather than attempt to set out what organisations should do in every situation or prescribe procedures which must be followed. This approach recognises that each child related sector and each jurisdiction is different, and allows scope for a tailored and flexible approach to implementation of universal child safe principles based on an organisation's context.

As well as establishing a baseline of the minimum requirements for child safe practice any framework should also set out benchmarks which organisations can seek to achieve, and reference points against which organisations can assess their child safe capacity. This will allow organisations to remain engaged with the framework as a development tool, rather than viewing it as a set of expectations which can be met once and then not revisited.

6. The role of staff performance management systems and disciplinary processes in a 'child safe organisation'.

Robust performance management systems and disciplinary processes play two significant roles in an organisation becoming and being child safe.

Firstly, they contribute to the prevention of harm to children through the setting and reinforcing of boundaries. An organisation's performance criteria or standards should articulate key child safe practices, so that staff who engage in inappropriate or unsafe behaviour or behaviour that is contrary to policy can have these addressed through performance management or disciplinary processes.

Secondly, when misconduct does occur having structured disciplinary processes in place is essential for:

- Sending a strong message that inappropriate or unsafe conduct is unacceptable and that the reporting of this behaviour is taken seriously.
- Providing consistent processes for responding to reports or allegations.
- Enabling reports and allegations to be managed and investigated in a structured way that takes into account all aspects of risk, and provides a solid basis on which to base decisions or actions.
- Providing for an historical record of conduct which can be used to identify patterns.
- Ensuring that those identified as being unsuitable are not engaged elsewhere in the organisation (i.e. by transferring to a different division or site).
- Ensuring procedural fairness for all involved, and that disciplinary action can withstand external scrutiny due to the systems having been developed in accordance with employment law and other employer responsibilities.

7. The role and characteristics of governance and management leadership in creating and maintaining a 'child safe' organisational culture.

Strong governance and leadership are essential elements of a child safe organisational culture, and a more inclusive approach to children overall. An organisation's governance structure should embed and reinforce child-safe principles at every level through the tools referred to in response to Question 1 (for example, child-safe policy, risk management strategy, code of conduct and privacy provisions).

Management leadership plays an essential role in modelling and fostering a commitment to child safe practices. *The National Safe Schools Framework* outlines the characteristics of leadership which are essential to creating and maintaining a safe school. While these have been developed in an educational context, NSW considers that these could and should be applied more broadly. They are:

- Acceptance of responsibility.
- Development and communication of a clear vision for a safe, supportive and respectful school.
- Planning for sustaining that vision.
- Regular evaluation and review of the school's capacity to enhance the safety and wellbeing of its students and staff.
- Facilitation of access to resources to support the implementation of the vision.
- Identification and support of key staff with responsibility for student safety and wellbeing.
- Ongoing data collection to inform decision-making and evaluate effectiveness.
- School leaders develop a comprehensive knowledge of the school community.
- Awareness of mandatory requirements and legal issues regarding child protection, aggression and violence and communication of these to staff.
- Awareness of the rights and responsibilities of school leadership in relation to safety issues outside school hours and off school grounds.

8. Should there be any additional enforceable requirements for institutions or particular institutions to maintain a 'child safe' environment?

Many organisations are already required to maintain a child safe environment, either as a result of legislative obligations, regulatory or licensing schemes, policy or contractual funding requirements. It is not currently clear that there is a need for additional enforceable requirements.