



Australian
Human Rights
Commission

Child Safe Institutions

**AUSTRALIAN HUMAN RIGHTS COMMISSION
RESPONSE TO THE ROYAL COMMISSION INTO
INSTITUTIONAL RESPONSES TO CHILD SEXUAL
ABUSE: ISSUE PAPER 3**

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1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) in response to its call for submissions regarding child safe institutions. The Commission welcomes the opportunity to provide comment.
2. The issue of child sexual abuse raises a number of important children's rights. The implementation of policies and practices that promote greater child safety in organisations is critical to enhancing the protection of children's rights.
3. This submission starts with a consideration of children's rights in relation to organisational practice, as articulated in the United Nations *Convention on the Rights of the Child* (CRC). It then comments briefly on some of the questions posed in Issues Paper 3. It focuses primarily on key principles for keeping children safe in organisations and refers to existing principles and guidelines developed by children's organisations and others where relevant.

2 Recommendation

4. As put forward in its submission to Issues Paper 1, the Commission believes that there should be formal requirements for the implementation of child-safe practices and risk management mechanisms in child related organisations.
5. A national voluntary or mandated accreditation system for 'child safe organisations' would assist in building child-safe communities. A visible assurance that an organisation is implementing child-safe policies and procedures, to a certifiable standard, is likely to be an incentive for organisations to comply with requirements and a reassurance for children and young people, parents and carers.
6. Such an accreditation scheme should be administered and regularly reviewed by an external body with clear and practical child safe guidelines, resources and self audit tools for organisations readily available.

3 Outline of children's rights in the context of 'child safe organisations'

7. Article 3 of the CRC provides that in all actions concerning children, whether undertaken by social welfare institutions, courts of law, administrative authorities or legislative bodies, to the best interests of the child shall be a primary consideration. This article also requires the Commonwealth to ensure that institutions, services and facilities responsible for the care or protection of children conform to 'standards established by competent authorities, particularly in areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'¹ Other areas to which standards should apply include training of staff.

8. Article 19, read in conjunction with article 34, outlines the obligation of the Commonwealth to take appropriate measures to ensure that children are properly protected from violence, abuse and neglect, including sexual abuse and sexual exploitation. These protective measures, should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and those who care for the child, and systems for identification, reporting, referral, investigation, treatment and follow-up of instances of various forms of child maltreatment.²
9. Article 31 recognises the rights of children to rest, play and participate in leisure activities. Children's play and recreational activities are often facilitated by organisations. Given the physical and human risks to children when participating in recreational activities provided by organisations, there is a need for increased levels of monitoring and surveillance.³
10. Article 12 of the CRC establishes the right of every child capable of forming their own views, the right to express their views in all matters affecting the child and have their views considered. Processes to facilitate the views of children should be accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times.⁴ One of the key elements in establishing 'child safe organisations' is to make sure that children's views and concerns are heard and acted upon.
11. Article 4 of the CRC requires the Commonwealth to undertake all appropriate measures to implement the rights recognised under the CRC. With regard to economic, social and cultural rights, this obligation involves the Commonwealth undertaking such measures to the maximum extent of their available resources.

4 The essential elements of establishing a 'child safe organisation'

12. A 'child safe organisation' describes any organisation or institution that shows a commitment to child safe practices and procedures, and 'takes a preventative, proactive and participatory stance on child protection issues.'⁵
13. Achieving the status of a 'child safe organisation' requires strategies, initiatives and responsibilities to ensure that children are safe in the organisation's environment. As outlined by the Commission in its submission to Issues Paper 1, principles and essential elements of establishing a 'child safe organisation' are detailed in the National Framework for Creating Safe Environments for Children: Guidelines for Building the Capacity of Child-Safe Organisation, 2005.⁶
14. This is not an exhaustive list and no single element should be seen as more critical than another. The task of protecting children is multi-faceted and, to be effective, a range of elements must work together. In general, the key elements of 'child safe organisations' should include:
 - systems to ensure adaptation, innovation and continuous improvement. This involves a commitment to regularly reviewing, updating and refining

child-safe policies and practices within an organisation. This initiative encourages organisations to be open to external influences, governing bodies and accountability standards. For example, new technologies now mean that most organisations use computers and the internet as part of their daily operations and in their work with children. New risk assessments, management strategies and policies must be developed to respond to the contemporary risks posed to children through these new technologies.

- establishing an accessible and clear child-safe policy. This should state the organisation's commitment to child-safe practices. Policies should articulate specific details about:
 - child-protection awareness and safety training for employees and volunteers;
 - processes for reporting and managing concerns and incidents;
 - disciplinary processes and grievance procedures; and
 - provision of support for employees, volunteers, children and their families when concerns are expressed about harm to a child.
- developing and implementing reliable and workable child-safe risk management strategies. Unlike inter-familial perpetrators, perpetrators of abuse in organisational settings must create 'opportunities' to offend against children; they take advantage of situations and manipulate environments, in order to abuse children.⁷ As such, it is important for organisations to assess existing facilitators and barriers within the organisation to reduce or minimise situations where children may be abused. However, risk strategies should not only focus on the risk of sexual abuse to children. Strategies must cover the full range of intentional and unintentional harms that could occur. Examples include a child being lost, being emotionally or physically abused through reckless or deliberate action, harms that may present from other children, or neglect of a child's medical, physical or emotional needs.
- a Code of Conduct outlining the values of the workplace. To be effective, the Code of Conduct should promote positive work practices and provide expectations about the behaviour, relationships and responsibilities of employees, volunteers, children, parents and carers in the organisation.
- strategies for the participation and empowerment of children. This may be achieved through:
 - structures and systems that encourage children's views, and provide them with accessible information about their rights to be safe, and where they can go for help and advice;
 - fostering a culture where knowledge, experience and contribution and leadership of children influence policies and practices;
 - a commitment to inclusive and empowering language and culturally safe spaces;

- applying cultural sensitivity without condoning acts that are harmful to children; and
 - adopting strategies that empower children by giving them an opportunity to share their concerns and to easily make complaints.
- human resource management which incorporates a child-safe focus, including:
 - recruitment and selection practices that acknowledge child safety. This strategy seeks to deter unsuitable persons from positions in the organisation and attract suitable people. This may include: clearly stating the organisations commitment to child safety in job advertisements, conducting Working With Children Checks (WWCCs) or police checks, ensuring interviewing processes highlight the priority of child safety through appropriate questioning and checking of references;
 - comprehensive job descriptions and duty statements that provide employees and volunteers with a clear understanding of their responsibilities and accountabilities; and
 - staff support, supervision and performance management. This includes ongoing training and education of staff in child rights, child-safe practices and child awareness more generally.
 - the establishment of guidelines for dealing with complaints management and disciplinary proceedings. These mechanisms must be documented in a way that is accessible and understood by children and should cover the range of available responses.

It is important that an organisation makes clear distinctions between complaints management and disciplinary proceedings. Organisations may benefit from independent expert human resources and legal advice in this area.

- education and training to promote awareness and understanding about child risk, harm and abuse in the context of organisational responsibilities. This includes any responsibilities in respect of mandatory and other reporting. One of the greatest risk factors for harm or abuse of children is the lack of awareness of employees and volunteers. In relation to sexual abuse, educating employees and volunteers about early warning signs, indicators of child abuse, and knowing what to look for can engender individual responsibility for creating and maintaining protective practices for children in organisations.⁸
15. The Australian Commissioners and Guardians Group (ACCG) are currently developing a set of contemporary principles and explanatory notes relating to child safe organisations. The ACCG intends to provide this work to the Royal Commission.

5 Measuring the effectiveness of ‘child safe’ strategies

16. ‘Child safe organisations’ must be committed to regular review, updating and refinement of policies and practices.⁹ First, internal reviews of the effectiveness of child safe policies and system should be an essential part of the organisation’s planning and governance. Second, regular compliance auditing by an independent body will indicate whether ‘child safe organisations’ are meeting necessary standards.
17. Analysis of data from these audits should, over time, be able to tell organisations the extent to which they have adopted and improved their policies and practices in relation to child safety and child friendliness. These audits should also be supplemented by consumer satisfaction and staff awareness surveys. This information will inform trends in relation to ‘child safe’ strategies and effectiveness. A range of relevant system performance indicators and measures could be developed in this regard. For example, proportions of organisations that have relevant policies, organisations where staff receive appropriate training, organisation organisation staff who are aware of the code of conduct, children involved with the organisation who are aware of complaints procedures, and children who report that organisations are child friendly and safe.
18. It is important to include children and parents in organisation level reviews. As highlighted above, one of the key elements in establishing a ‘child safe organisation’ is by ensuring that children’s views are heard. Engaging children in this process ensures the best interests of the child are being taken into account and serve to empower children within organisations.
19. A major deficiency of Australian research into child abuse and neglect is the absence of methodically rigorous, nation-wide studies into the prevalence or incidence of child abuse or neglect.¹⁰ Without reliable prevalence studies, Australia has no starting point for the measurement of the effectiveness of ‘child safe’ strategies.
20. It is important that prevalence studies are undertaken in Australia. This type of research will indicate the extent of the problem of child abuse and neglect in Australia, and will assist in measuring the effectiveness of ‘child safe’ policies implemented in organisations.
21. It is important to acknowledge that some work is being advanced in this area. As part of the National Framework for Protecting Australia’s Children,¹¹ the Australian Institute of Health and Welfare (AIHW), through its National Child Protection Data Collection, is collecting data on the proportion of children aged 0 to 17 years who were the subject of child protection substantiation for sexual abuse. The Productivity Commission, in its Report on Government Services, has reported on the rate of substantiated abuse in care across jurisdictions where data is available, using information collected by the AIHW, but noted the lack of comparability of this data across Australian jurisdictions (January 2013). In addition, the Australian Bureau of Statistics (ABS) Recorded Crime – Victims Collection reported on the rate of children aged 0 to 14 years who have been victims of sexual assault. However, to be

meaningful in the context of child safe organisations, it is important that this data is analysed in a way that distinguishes between abuse in or through institutions and abuse within familial contexts, where the vast majority of abuse occurs.

22. In the Second Three Year Action Plan for the National Framework for Protecting Australia's Children, there is a commitment to developing and trialling programs to prevent sexual abuse and keep children safe, including specific programs for remote Indigenous communities, such as the cyber smart outreach program. It will be important that any programs that are developed and trialled undergo rigorous evaluation.
23. Capturing the views of children and young people about environments which make them feel safe, and those which do not, is a critical and ongoing challenge at the national level. The biennial survey of children in out-of-home care currently being trialled has the capacity to provide important information about the extent to which children feel safe and understand their rights in foster and residential care settings. Similarly, the CREATE Foundation's periodic surveys of young people can add to this understanding. ABS child health and wellbeing surveys, the Longitudinal Study of Australian Children and the Longitudinal Study of Indigenous Children should also be used to gather information about children's actual and perceived safety. It is encouraging to see that as part of its work the Royal Commission is seeking to gauge the views of children and young people about the essential features required for institutions to be safe and friendly.

6 A universal framework for child safe organisations

24. The Commission believes that the most effective way to ensure that organisations are 'child safe' would be to introduce a national voluntary or mandated accreditation system. This accreditation process would serve as a visible assurance that an organisation has implemented child-safe procedures to a certifiable standard. This system is likely to be an incentive for organisations to comply with requirements and give reassurance to children and young people, parents and carers.
25. Examples of existing accreditation systems include the Australian Children's Education and Care Quality Authority (ACECQA). ACECQA oversees the National Quality Framework. This is a national legislative framework committed to the regulation and assessment of early childhood education and care services.¹² This regulatory system sets a national benchmark in seven areas: educational program and practice; children's health and safety; physical environment; staffing arrangements; relationships and children; collaborative partnerships with families and communities; and leadership and service management.¹³
26. Other national accreditation models include: the National Food Safety Standards; the National Occupational Licensing Authority; the National Disability Insurance Scheme; the National Employment Standards; the National Accreditation Authority for Translators and Interpreters; and the National Heart Foundation Tick scheme.

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

27. A 'child safe organisation' is the product of a range of strategies, which together foster a culture of openness, and where there is a willingness to listen to children and invite their input as normal practice.¹⁴ Involving children genuinely and meaningfully in governance activities and processes is fundamental to creating and maintaining a 'child safe' organisational culture.
28. Effective 'child safe' organisations are governed by leaders who are committed to a shared and well-developed vision of a safe and supportive environment. Management in those organisations facilitates the empowerment of staff to take responsibility for child-safe initiatives and is proactive in developing strategies to continually meet 'child safe' standards, including regular staff training and development. In addition, the organisation should widely publicise, internally and externally, the philosophy and standards it has committed to.
29. An overarching responsibility for child safety should be embedded in the duty statements and performance agreements of all staff, including key executive staff where it is often not. For some high risk organisations, there should be named child protection staff with clearly defined roles and responsibilities to facilitate this. Additionally, regular surveys of how the organisation is performing should occur with children, parents and carers who are involved in the organisation.
30. Ultimately 'child safe' governance means a clear articulation of law, policies and procedures across all Australian jurisdictions.

¹ *Convention on the Rights of the Child*, art 3

² *Convention on the Rights of the Child*, art 19.

³ UN Committee on the Rights of the Child, *General Comments No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*, para 34 - 39.

⁴ UN Convention on the Rights of the Child, *General Comments No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, para 23.

⁵ Child Wise, *Choose with Care ®: A handbook to build safer organisations for children*, Child Wise, Melbourne, 2004, p 18 at <http://www.childwise.net/page/37/online-publications>

⁶ Community and Disability Services Ministers, *National Framework for Creating Safe Environments for Children: Guidelines for Building the Capacity of Child-Safe Organisation*, Community and Disability Services Ministers Conference, 2005.

⁷ Irenyi, M. Bromfield, L. Beyer L. Higgins, D. Child maltreatment in organisations: Risk factors and strategies for prevention, 2006, Child Abuse Prevention Issues No. 25, *Australian Institute of Family Studies*, pg 12. At <http://www.aifs.gov.au/nch/pubs/issues/issues25/issues25.html>

⁸ Australian Children Foundation, *What prevents children from being protected?* <http://www.safeguardingchildren.com.au/the-program/why-are-children-not-protected.aspx>. (viewed 1 October 2013)

⁹ Community and Disability Services Ministers, *National Framework for Creating Safe Environments for Children: Guidelines for Building the Capacity of Child-Safe Organisation*, Community and Disability Services Ministers Conference, 2005.

¹⁰ Price-Robertson, R. Bromfield, L. Vassallo, S. Prevalence Matters: Estimating the extent of child maltreatment in Australia [online] No. 26, *Developing Practice: the child, youth and family work journal*, Spring 2010 12-20 at <http://www.aifs.gov.au/cfca/pubs/factsheets/a144254/index.html>

¹¹ Commonwealth of Australia, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020. Second Three Year Action Plan 2012-2015*, Department of Families, Housing, Community Services and Indigenous Affairs (2012), p 41.

¹² Australian Children's Education and Care Quality Authority, *National Quality Framework: Overview*, 2012 at <http://www.acecqa.gov.au/national-quality-framework/introducing-the-national-quality-framework>

¹³ Australian Children's Education and Care Quality Authority, *National Quality Framework: Overview*, 2012 at <http://www.acecqa.gov.au/national-quality-framework/introducing-the-national-quality-framework>

¹⁴ Families SA, *Child Safe Environments: Principles of Good Practice*. Government of South Australia Department of Families and Communities (2007) at <http://www.decd.sa.gov.au/docs/documents/1/ChildSafeEnvironGoodPrac.pdf>