

# Volunteering Tasmania — Submission

Child and Youth Safe Organisations Bill 2022

September 2022

## About Volunteering Tasmania

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Volunteering Tasmania's (VT) vision is to ensure the contribution of volunteering is understood, respected, and valued as a powerful driver of community prosperity and inclusion in Tasmania. We support the development of connected and inclusive communities through the impact of volunteering and strive to represent the interests of all Tasmanians involved in volunteering through research, consultation, policy development and community relationships. Our membership is comprised of volunteers and volunteering involving organisations (VIOs) from across the state, we strive to represent their interests and advocate for the needs of the sector.

Volunteering is at the centre of Tasmania's civic identity. In 2019, nearly 300,000 Tasmanians over 15 years of age volunteered their time to activities and programs across the state<sup>1</sup>.

The volunteer workforce plays a critical role in the provision of services to Tasmanian children and young people, including those experiencing vulnerability and disadvantage. According to the Tasmanian Council of Social Services Community Services Industry Plan 2021-2031, the 'Tasmanian community services industry is supported by a volunteer workforce of around 35,000 people. Almost 90% of organisations in the community engage with volunteers at some point<sup>2</sup>. While significant numbers of volunteers engage with children and young people through community service organisations, volunteers and VIOs exist in every aspect of community life. They interact with children, young people, their families, and communities by enhancing access to and providing basic needs, education assistance, emergency services, transport, recreational activities, emotional support, social connection etc.

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## Introduction

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Thank you for the opportunity to provide feedback to the Department of Justice in relation to the Child and Youth Safe Organisations Bill 2022 ('the Bill'). VT are broadly supportive of the Bill and its introduction of the Child and Youth Safe Organisations Framework ('the Framework'), comprised of both the Child and Youth Safe Standards ('the Standards') and the Reportable Conduct Scheme ('the Scheme').

The Tasmanian Government have stated that this Framework will 'contribute to the development of child and youth safe organisations in Tasmania, which promote the safety of children and young people from all forms of harm in institutional settings', 'contribute to the prevention of sexual abuse against children and young people in institutional settings', and 'improve investigation of, and responses to, child sexual abuse in institutional settings'<sup>3</sup>. We note that the introduction of policy and legislation, such as that outlined in the Bill was a key recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission), in highlighting the systems failures of institutions in both protecting children and responding to allegations of child sexual abuse.

While generally supportive of this Bill, this submission will provide five recommendations intended to strengthen the outcomes of the Framework. Given the significance of interaction between children, young people and the volunteer sector, it is important that the Bill considers the social, cultural, psychological and emotional safety of children and young people both as providers and recipients of volunteer time.

## Recommendations

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1. The Tasmanian Government replace the 'Meaning of employee' with the 'Meaning of worker' as per the Tasmanian *Work Health and Safety Act 2012*.
2. Tasmanian Government mandate all entities required to comply with the Standards to comply with the Scheme and provide support to organisations to meet their legislative requirements through investment in capacity building.
3. In addition to the Independent Regulator's provision of education and advice to entities, the Tasmanian Government should invest in organisational capacity building, training, and community education to equip individuals and organisations to understand their obligations and to appropriately identify and respond to risks of harm to children and young people.
4. The Tasmanian Government include an additional Standard which makes the obligations of entities clear in relation to the cultural safety of Aboriginal and Torres Strait Islander children and young people.
5. The Tasmanian Government adopts gender inclusive language to refer to the Independent Regulator, using *they/ their/ them* rather than *she/ her/ hers* or *he/ him/ his*.

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Volunteering Australia offers the definition of volunteering as "time willingly given for the common good and without financial gain"<sup>4</sup>. Volunteering is part of a wider concept of civic participation. It includes formal volunteering within structures and organisations and informal volunteering, which takes place outside of a formal organisations, and 'should not replace paid work'<sup>12</sup>.

The Bill defines 'volunteer' within the meaning of 'employee'<sup>5</sup>, yet volunteers and employees experience distinctly different roles, responsibilities, expectations, and motivations of and in their work. These differences should not be overlooked and have significant implications for work undertaken with children and young people. The distinction between *employee* and *volunteer* is recognised within the *Registration to Work with Vulnerable People Act 2013*<sup>6</sup> and has culminated in separate registration categories for 'Employment/ Volunteer' and 'Volunteer'.

The *Work Health and Safety Act 2012*, also makes this distinction and provides a state-based precedent for the legislative use of the broader term 'worker', to recognise the contractual nature of work undertaken by employees and volunteers, amongst others.

### **7. Meaning of worker**

- (1) A person is a **worker** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as –
- (a) an employee; or
  - (b) a contractor or subcontractor; or

- (c) an employee of a contractor or subcontractor; or*
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or*
- (e) an outworker; or*
- (f) an apprentice or trainee; or*
- (g) a student gaining work experience; or*
- (h) a volunteer; or*
- (i) a person of a prescribed class<sup>7</sup>.*

Employee is counter language to volunteer. The use of confounding terminology in the legislation fails to acknowledge the unique role played by volunteers and their unique position within organisational structures. It misrepresents the distinct needs, obligations and motivations of volunteer participation, relative to paid employees.

The Tasmanian Government mandate all entities required to comply with the Standards to comply with the Scheme and provide support to organisations to meet their legislative requirements through investment in capacity building.

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The Royal Commission recommended that each Australian state and territory establish a Reportable Conduct Scheme to improve the safety of children by providing independent oversight of an organisation's response to allegations of child sexual abuse by employees or volunteers. Recommendation 7.12 of the Australian Government Response – Royal Commission into Institutional Responses to Child Sexual Abuse: Final Report, states:

*Reportable conduct schemes should cover institutions that:*

- exercise a high degree of responsibility for children*
- engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with.*

Recommendation 7.12 also sets out the types of institutions, that at a minimum, should be mandated to comply with the Scheme<sup>8</sup>. While the Bill has adopted this recommendation, we are concerned that the exemption of the following types of entities from the Scheme leaves children and young people vulnerable to harm.

- 1. A club, association or cadet organisation that has a significant membership of, or involvement by, children.*
- 2. An entity that provides a coaching or tuition service to children.*
- 3. An entity that provides commercial services to children including, but not limited to –*
  - (a) entertainment or party services; and*

- (b) gym or play facilities; and*
- (c) photography services; and*
- (d) talent or beauty competitions.*

*4. An entity that provides, on a publicly funded or commercial basis, a transport service specifically for children<sup>9</sup>.*

Recommendation 7.11 of the Report states:

*State and territory governments should periodically review the operation of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse<sup>10</sup>.*

This recommendation acknowledges that risks to children exist within the four types of entities currently exempt from compliance with the Scheme, and indicates that adoption of the Standards alone do not go far enough to protect children from harm. We are particularly concerned that the distinct differences in organisational regulation will create a unique set of institutional characteristics, established by the state, that leave some organisations vulnerable to perpetrators seeking less regulated environments and to organisations to unwittingly facilitate grooming. We also acknowledge that exemption of some organisations from the Scheme is likely to create confusion around expectation and organisational uncertainty in their obligations, particularly for smaller, less structured and less resourced entities.

Grooming is recognised as a 'complex, commonly incremental process that can involve three main stages – from gaining access to the victim, initiating, maintaining the abuse and concealing the abuse'<sup>11</sup>. It can be assumed, in the absence of access to the Framework compliance risk assessment, that the organisations exempt from the Scheme, have been categorised as 'low risk' due to the presumed presence of a parent, guardian or other caregiver while the child is engaged with the organisation. However, potential victims of child sexual abuse are not the only targets of grooming techniques as '[g]rooming can target those involved in gaining access to the child's life, including parents and other caregivers, colleagues, and other staff in an institutional setting'<sup>12</sup>.

If we consider the typology and patterns of 'predatory, opportunistic, and situational perpetrators of child sexual abuse', we understand that implementing strategies aimed at increasing regulation, organisational capacity to identify, respond, and prevent abuse, as well as reducing opportunities to offend (or increasing the effort required to offend) may deter perpetrators<sup>13</sup>.

As such, our advocacy for equal entity regulation within the Framework is particularly relevant to volunteer involving and volunteer led organisations who experience distinct challenges in their lack of resourcing, access to training, development opportunities and infrastructure. **Rather than providing exemption and administrating increased organisational vulnerability, the legislation must focus on resourcing and capacity building to reduce risk of harm and increase the safety of children and young people.**

In addition to the Independent Regulator's provision of education and advice to entities, the Tasmanian Government should invest in organisational capacity building, training and community education to equip individuals and organisations to understand their obligations and to appropriately identify and respond to risks of harm to children and young people.

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The Framework acknowledges the diversity of organisations that engage with children and young people in Tasmania, and recognises that distinct differences in organisational structure, resourcing, values, culture, and personnel have led entities to identify and respond to risks to children and young people in a variety of ways.

Targeted prevention of child sexual abuse and risks of harm to children should not be limited to institutional contexts and interventions required to address public health problems such as child sexual abuse 'must be able to reach every level of society including families, communities, and governments'<sup>14</sup>. In addition to a focus on the creation of child safe organisations, the Royal Commission appointed the Australian Catholic University: Institute of Child Protective Studies to conduct research into the prevention of child sexual abuse<sup>14</sup>. This research highlighted the need to:

- Develop a whole-of-community approach to preventing child sexual abuse
- Support better access to primary prevention education and resources
- Enhance the quality, coordination, delivery, and evaluation of primary prevention programs to ensure they are reaching all relevant target audiences

This study further reflects the limited understanding within the broader community about how child sexual abuse may be prevented and notes that one of the primary challenges in preventing child sexual abuse is inconsistent public awareness, knowledge, and beliefs about the issue<sup>14</sup>. This is of particular significance when considering the number of community members who engage with children and young people through diverse volunteer roles and who may have limited exposure to the training, development and resourcing available to employees. Capacity must be built within individuals, as well as organisations to shift the social conditions that perpetuate myths and misconceptions about child sexual abuse and aim to excuse, justify, or even promote harm to children.

The Bill establishes the role of and assigns powers to the Independent Regulator in relation to the Standards and the Scheme<sup>15</sup>. While VT is supportive of a range of these legislated elements, including educating and providing advice to entities and entity regulators to promote compliance with the Standards and the Scheme, we believe that the effectiveness of the Framework will be determined by the level of Government investment in organisational capacity building, training, and community education.

We believe that investment in organisational capacity building should include the following:

- Easy-to-use e-learning packages that provide training to organisations to enhance their understandings of their obligations within the Framework and provide guidance in the prioritisation of child safety. Alternative training packages and documentation should also be developed for those with low digital access and/or literacy.

- A communications plan which ensures that entities understand their obligations under the Framework, but also equips employees and volunteers with the knowledge and confidence to make a report under the Scheme.
- Tools and templates to assist organisations to develop key policies, practices and procedures.
- Detailed guidelines, requirements for and indicators of compliance with the Standards.
- The provision of templates and accessible, easy-to-follow documentation.
- Flexible templates for investigation plans.
- The development and provision of child-safe resources, co-designed with children and young people that provide information about:
  - their rights to safety and respect
  - entity obligation to provide safe environments for children and young people
  - operation of the Standards and how this may look in practice
  - how to raise concerns and/ or make a complaint
  - engaging children and young people in evaluation of services

The Tasmanian Government include an additional Standard which makes the obligations of entities clear in relation to the cultural safety of Aboriginal and Torres Strait Islander children and young people.

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VT supports the inclusion of Child and Youth Safe Standards that are aligned with the National Principles for Child Safe Organisations and notes the Royal Commission’s recommendation for the implementation of nationally consistent Standards across Australian jurisdictions<sup>16</sup>. We appreciate that the Tasmanian Standards are ‘underpinned by a universal principle embedding Aboriginal Cultural Safety’ and recognise the representation of this requirement within the Bill:

*In addition to the requirement to comply with the standards under this section, an entity must provide, on and after 1 January 2024, an environment that ensures that the rights of Aboriginal children to cultural safety are respected<sup>17</sup>.*

Rather than relying on organisational interpretations of the ‘universal principle’, VT recommend that the Tasmanian Government also embeds a commitment to the safety of First Nations children, young people, families, and communities through the establishment of an additional Standard, which mirrors the first Victorian Standard:

*Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued<sup>18</sup>.*

We understand that the establishment of culturally safe environments takes time, dedication, and a commitment to meaningful engagement. It requires governments, organisations, and individuals to take accountability for long term change, recognising the impacts of intergenerational trauma and developing a deep respect of cultural diversity<sup>19</sup>. We appreciate that once the legislation has been finalised, additional resources, materials,

guidelines, and compliance indicators will be developed to assist entities and relevant stakeholders to understand, monitor and assess their progress and compliance with the Standards. VT encourages the Tasmanian Government to review the website of the Victorian Commissioner for Children and Young People<sup>20</sup> to guide the development of clear, accessible, and tangible information to support organisations to acknowledge and respond to the often nuanced and unwitting perpetuation of systemic racisms.

We believe that the inclusion of a specific Standard which embeds a commitment to cultural safety will promote conscious and systemic progression of culturally safe organisations and prompt the Government's creation of detailed materials which support organisations to actively meet their obligations under this Standard. We encourage the Tasmanian Government to continue to consultation with the Tasmanian Aboriginal community to inform understandings of cultural safety.

The Tasmanian Government adopts gender inclusive language to refer to the Independent Regulator, using *they/ their/ them* rather than *she/ her/ hers or he/ him/ his*.

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Diversity shapes the ways that children and young people see and experience themselves, the world around them and their needs within it. Acceptance, respect and celebration of their identities are fundamental to wellbeing and to a sense of safety.

The Bill outlines safety within the meaning of 'reportable conduct' and includes definitions of 'emotional or psychological harm, grooming, neglect, physical violence, relevant offence, sexual misconduct, sexual offence, and significance within the context of emotional or psychological harm or neglect'<sup>21</sup>. We understand the purpose of legislative and criminal definitions of safety yet acknowledge that children and young people will likely provide additional and/ or alternative definitions of safety. Erasure of identity and experiences 'of discrimination can cause serious emotional or psychological harm [and can] constitute serious neglect of a child'<sup>22</sup>, with potential to result in distress, depression and anxiety<sup>23</sup>.

Language is a powerful driver of safety, inclusion, and wellbeing, and has a distinct role in shaping cultural and social attitudes. The use of gender-inclusive language reflects social progress and promotes diversity, belonging and equality between all genders<sup>24</sup>. The United Nations Guidelines for gender-inclusive language recommends that gender is not made visible when it is not relevant to the conversation<sup>25</sup>.

In respect of Standard 4, "equity is upheld and diverse needs respected in policy and practice", we recommend that the Tasmanian Government encourage entities to use non-discriminatory, and gender-inclusive language by replacing the use of she/ he language with all-gender/ gender-inclusive language to avoid the active marginalisation of those whose identity is erased by the use of she/ he pronouns<sup>25</sup>. A failure to do so is considered counterproductive to the intent of this legislation, which is to support and protect the safety of children and young people.

## Conclusion

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The Child and Youth Safe Organisations Framework presents an opportunity to build the capacity of individuals and organisations to effectively identify and respond to risks of harm, and to promote the safety and wellbeing of Tasmania's children and young people. We encourage the Tasmanian Government to implement the recommendations above and highlight the importance of incorporating a comprehensive approach to child and youth safety where prevention efforts are integrated within the community and organisational capacity is built through a continuum of detailed strategies.

## Referencing

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