

Volunteering Tasmania Submission to Justice Miscellaneous (Commission of Inquiry) Bill 2024

Prepared for	Tasmanian Government Department of Justice
Date of submission	4 June 2024
Prepared by	Volunteering Tasmania
Contact	policy@volunteeringtas.org.au
About Volunteering Tasmania	As the peak body for Volunteering in Tasmania, we work to see an inclusive, thriving, and celebrated culture of community participation across the state by strengthening and enhancing volunteering through leadership, education, and connection. We work to ensure community-based volunteering is sustained, valued and integral to community resilience and wellbeing.

A note about this submission

This submission has been written in the context of the reform project associated with the implementation of the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings (the Commission of Inquiry's) recommendations. Given the nature of this submission we encourage you to exercise care when reading.

Introduction

Volunteering Tasmania welcome the opportunity to provide feedback on the Justice Miscellaneous (Commission of Inquiry) Bill 2024 (the Bill). The Bill includes amendments to several pieces of legislation in response to recommendations from the Commission of Inquiry. This submission focuses on key issues of proposed amendments to the *Civil Liability Act 2002* and the *Criminal Code Act 1924* and makes a number of recommendations for amendments and further policy action as the Tasmanian Government progress reforms associated with the implementation of the Commission of Inquiry's recommendations. reforms.

Tasmania's volunteering industry and workforce is often under considered and underrepresented in legislative and policy reforms that have requirements of, and directly affect volunteers and volunteer-involving organisations (VIOs). In 2023, nearly 70 per cent (69.8 per cent) of the Tasmanian population aged 15 years and over participated in volunteering.¹ That is 332,000 people who donated their time, energy, and resources in diverse ways to supporting their communities. Volunteers provide critical skills, knowledge, and support across a range of sectors and services, including through government and non-government organisations that support victim-survivors of child sexual abuse and that engage with children and young people.

In 2022, nearly 15 per cent (14.7 per cent) of Australian volunteers participated in voluntary activities with VIOs that have a focus on children and young people; 25.0 per cent with sport and recreation organisations; 22.2 per cent with community services, welfare and homelessness organisations; and 20.5 per cent with religious, faith based and spiritual organisations.² These sectors not only rely heavily on their volunteer workforces to deliver services but also engage with significant numbers of children and young people.

The Commission of Inquiry reform implementation project, including the proposed amendments introduced through this Bill will have a bearing on Tasmania's volunteering industry. It will affect children, young people, and victim-survivors who engage with VIOs to access supports; for children, young people and victim-survivors who volunteer their time; and for volunteers and VIOs who provide supports to children, young people, and victim-survivors.

It is critical in the context of the ongoing reform project that the Tasmanian Government understand the unique complexities and nuances of the volunteering industry so as to design legislative and policy reform that promotes and protects the safety of children, young people and victim-survivors of child sexual abuse who are engaged with Tasmania's volunteering industry.

¹ Volunteering Tasmania, 2023 Tasmanian State of Volunteering Report.

² Volunteering Australia, Volunteering in Australia 2022: The Volunteer Perspective, pp. 42, <https://volunteeringstrategy.org.au/wp-content/uploads/2022/10/Volunteering-in-Australia-2022-The-Volunteer-Perspective.pdf>

Key issues

Amendments to the *Civil Liability Act 2002* – apologies for institutional child sexual abuse

The Commission of Inquiry made specific recommendations³ about the provision of apologies from institutions in relation to institutional child sexual abuse.

Recommendation 17.4

The Tasmanian Government should ensure individual victim-survivors of child sexual abuse who request an apology receive one. Proactive steps should also be taken to offer an apology to victim-survivors who make contact in relation to their abuse. The apology should include:

- a. the opportunity to meet with a senior institutional representative (preferably the Secretary) and receive an acknowledgment of the abuse and its impact*
- b. information about the victim-survivor's time in the institution*
- c. information about what steps the institution has taken or will take to protect against further sexual abuse of children, if asked.*

Recommendation 17.5

The Tasmanian Government should introduce legislation to amend the Civil Liability Act 2002 to ensure that an apology in relation to child sexual abuse can be made without amounting to an admission of liability.

In response to these recommendations, the Bill proposes amendments to the *Civil Liability Act 2002*, found in Clauses 4 and 5. These amendments set out requirements for apologies from organisations to victim-survivors and minimise the legal disincentive of doing so by ensuring that apologies are not accompanied by an admission fault or liability for wrongdoing.

While Volunteering Tasmania are broadly supportive of the proposed amendments, we encourage the Tasmanian Government to consider the below to align proposed legislative change more closely with the Commission of Inquiry's recommendations, and to implement trauma informed policy measures alongside legislative reform.

Initiation of an apology

Clause 5(2) outlines that an apology may be made 'at the request of the person who suffered the alleged child abuse, or the person's representative', or at the 'organisation's own initiative'.

Both the Commission of Inquiry (Recommendation 17.4) and Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) (Recommendation 5) have made recommendations relating to apologies or direct personal responses that suggest a request for an apology should be led by the victim-survivor rather than by the organisation. On this matter the

³ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, [Final Report](#), August 2023, p. 165.

Royal Commission advise that ‘re-engagement between a survivor and an institution should only occur if, and to the extent that, a survivor desires it’.^{4, 5}

We appreciate that these recommendations centre the victim-survivor in an apology process, yet we also note the need for organisations to be proactive in preventing, identifying, and responding to child sexual abuse.⁶ While we support the introduction of Clause 5(2)(a)(ii), enabling organisations to engage in proactive apology processes, we strongly recommend that the Tasmanian Government develop accompanying policy measures that reflect the Commission of Inquiry’s recommendations and that centre victim-survivors rights to safety and recovery. We recommend that such measures should include guidelines to support organisations to engage with and facilitate trauma-informed apology processes, and that effectively resource the victim-survivor support sector to respond to a potential need for increased service support in the context of these reforms. We further recommend that such policy measures are developed as soon as possible to enable implementation alongside new legislative provisions.

Policy mechanisms to accompany legislative reform

Whole of government guidelines

Re-engagement with government, including through an apology process has the potential to increase victim-survivors experiences of trauma. As such we urge the Tasmanian Government to develop whole of government, trauma informed guidelines for responding to child sexual abuse, as has been enacted jurisdictionally.^{7, 8} In addition, guidelines, and processes for apologies to victim-survivors of institutional child sexual abuse should reflect the Royal Commission’s recommendations.⁹

5 d. In offering direct personal responses, institutions should try to be responsive to survivors’ needs.

5 f. Direct personal responses should be delivered by people who have received some training about the nature and impact of child sexual abuse and the needs of survivors, including cultural awareness and sensitivity training where relevant.

5 g. Institutions should welcome feedback from survivors about the direct personal response they offer and provide.

8. Institutions should accept a survivor’s choice of intermediary or representative to engage with the institution on behalf of the survivor, or with the survivor as a support person, in seeking or obtaining a direct personal response.

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, [Redress and Civil Litigation Report, 2015](#), p. 62.

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report Recommendations](#), p. 99.

⁶ Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, [Final Report](#), August 2023.

⁷ Queensland Government, Responding to sexual abuse and child sexual abuse, [Queensland Government Interagency Guidelines for responding to children, young people and adults who have experienced sexual assault or child sexual abuse](#), December 2023.

⁸ Queensland Government, Department of Justice and Attorney-General, [Whole-of-government guidelines for responding to civil litigation involving child abuse](#).

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report Recommendations](#), p. 99.

In addition, Volunteering Tasmania suggest that guidelines and processes for apologies should ensure that:

- Apologies are accessible to and offered in the preferred format of the victim-survivor. This may include the provision of a written apology, a written acknowledgement and written assurance of steps taken to protect against further institutional harm.
- The apology may need to be a process rather than a singular interaction.
- In engaging in this process, victim-survivors have access to appropriate supports.
- Consideration is given to who might constitute a victim-survivor's representative. We note that a 'person's representative' (as referenced in Clause 5(2)(a)(i)) is not defined by the Bill or by the *Civil Liability Act 2002*. Policy measures should therefore ensure that the victim-survivor's/ 'person's representative' has the victim-survivor's consent or that the appropriate authorities are in place to act on the victim-survivor's behalf.

Commensurate sector resourcing and education

The Commission of Inquiry highlighted the importance of personal apologies to victim-survivors of institutional child sexual abuse for the harms perpetrated against them.¹⁰ We note that the amendment to remove legal disincentives for organisations to apologise aligns with the Commission of Inquiry Recommendation 17.5 and will bring Tasmanian legislation into line with other Australian jurisdictions. Importantly, while an apology under the proposed amendment does not constitute an admission of fault or incurred liability, it does not prevent victim-survivors from pursuing a claim against the organisation. Avenues for victim-survivors to receive compensation or redress for institutional or organisational child sexual abuse are reliant on state-based organisations to provide supports. Legislative amendments intended to support victim-survivors to access apologies for harms perpetrated against them should be accompanied by an increase in funding for those organisations who provide support through this process. This will be essential in minimising unintended consequences and further harm through an apology process.

As per the *Civil Liability Act 2002*, the definition of an organisation includes government as well as non-government organisations.¹¹ The proposed amendment through Clause 5 (2) outlines the circumstances through which an apology 'may be made', but it does not require an organisation to make an apology to a victim-survivor. For these reasons it is critical that the Tasmanian Government deliver broad scale education about policy and legislative change to ensure that victim-survivors are aware of, can influence and access reform outcomes, and that government and non-government organisations can respond to victim-survivors experiences of organisational harm in a sensitive, informed, and meaningful way.

¹⁰ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, [Final Report](#), August 2023, p. 165.

¹¹ s49C, [Civil Liability Act 2002](#).

Amendments to the Criminal Code Act 1924

The Bill proposes a number of amendments related to criminal offences.

Clause 9 (b) (c) (e) (f) and (g)

Volunteering Tasmania support the proposed changes in wording to Clause (b), (c), (e) and (f).

We also support Clause 9 (g) which ensures that the offence of ‘failure by a person in authority to protect a child from a sexual offence’ does not apply to children.

Clause 9 (a) and (d)

In addition, Clause 9 (a) introduces a new offence, ‘Indecent act with or directed at a child [or young person] by a person in a position of authority.’ The creation of this offence was recommended by the Commission of Inquiry.¹²

Recommendation 16.9

b. section 124A (the position of authority offence) to cover indecent acts with or directed at a child or young person under the age of 18 by a person in a position of authority in relation to that child or young person. The offence should:

i. not apply where the person accused of the offending is under the age of 18 at the time of the offence

ii. qualify as an unlawful sexual act for the purposes of the offence of ‘persistent sexual abuse of a child or young person’ under section 125A of the Criminal Code Act 1924

While we support the introduction of the new offence (Clause 9 (a)) and recognise the importance of holding those who have abused positions of power, authority and/ or trust to account, we have some concerns about the absence of a ‘similar age defence’ for offences introduced in Clause 9 (a). In outlining these concerns, we note those expressed by the Department of Justice (the Department) in the consultation notes about the potential unintended consequences and over-criminalisation of young people in the absence of a ‘similar age defence’.¹³

While the Commission of Inquiry’s recommendations do not provide advice about similar age defences, the Royal Commission have noted that in relation to position of authority offences and where the position of authority categories are too broad, State and Territories may wish to consider introducing a similar age consent defence.¹⁴ Legislative action has been taken across Australian jurisdictions to create or strengthen ‘position of authority offences’ to negate the consent of those under 18 where a relationship of authority exists. Yet there are distinct differences between jurisdictions as to how the provision operates, how it interacts with other legislative provisions, how the person in a position of authority is defined, and the available defences. In New South Wales¹⁵

¹² Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, [Final Report](#), August 2023, p. 156.

¹³ Tasmanian Government, Explanatory Fact Sheet for the Justice Miscellaneous (Commission of Inquiry) Bill 2024 – Consultation Draft, p 5-6.

¹⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report Recommendations](#), p. 99.

¹⁵ s80AG Defence of similar age, [Crimes Act 1900 \(NSW\)](#).

and the Australian Capital Territory,¹⁶ similar age defences apply in the context of jurisdictionally equivalent 'person in a position of power' offences.

We understand that the intention of introducing this offence is to recognise the dynamics of power and to address risks of grooming, by making it clear that children under the age of 18 can never consent to sexual acts with those who hold a position of authority or power over them. However, we note that the introduction of this offence has the potential to criminalise relationships which may have previously been considered lawful. For example, under Clause 9 (a), what would have been considered a lawful relationship between a 17-year-old and an 18-year-old, would be criminalised if during the relationship, the 18-year-old stepped into a position of authority such as that of a sports or music tutoring role. We are concerned that young people who are engaged in otherwise consensual, sexual relationships may be criminalised for matters that are not intended to be treated as criminal conduct.

The 2023 Tasmanian State of Volunteering Report revealed that 72 per cent of young Tasmanians under the age of 25 volunteered in 2023;¹⁷ they do so in ways that are accessible to them and for matters that they care about. Young volunteers contribute to their communities through a wide range of formal¹⁸ and informal¹⁹ volunteering activities, such as event support, teaching, or coaching, providing social and wellbeing supports, and environment, conservation, and animal welfare work. In response to increased barriers to formal volunteer participation, young people are finding ways to contribute to their communities through informal volunteering. While informal volunteering can be highly structured and responsive to community need, it is less associated with the types of structures seen in formal volunteering roles, such as adherence to an organisation's code of conduct, policies and procedures, risk management protocols and supervision practices.

The nature to which perpetrators have used their volunteer positions to harm children has been well documented.²⁰ While we support the introduction of a 'position of authority' offence, we encourage consideration of the level to which young Tasmanians hold 'positions of authority' through their engagement in formal and informal volunteering activities. As such, we also urge the Tasmanian Government to develop community and industry education mechanisms designed to inform children, young people and workplaces (including volunteer involving organisations) about the legislative changes so as to minimise the unintended consequences of this reform.

General comments on consultation relating to the Commission of Inquiry reforms

Volunteering Tasmania recognise that the short consultation period on the Bill was intended to advance the implementation of the Commission of Inquiry's recommendations as quickly as possible, however the timeframe provided was unacceptable. As the implementation project progresses across the coming years, the Tasmanian Government must provide adequate time for stakeholders to engage in meaningful consultation.

¹⁶ s55A, [Crimes Act 1990 \(ACT\)](#).

¹⁷ Volunteering Tasmania, 2023 Tasmanian State of Volunteering Report.

¹⁸ [Formal volunteering](#) is defined as time willingly given for the common good and without financial gain, taking place within organisations (including institutions and agencies) in a structured way.

¹⁹ [Informal volunteering](#) is defined as time willingly given for the common good and without financial gain, taking place outside the context of a formal organisation or group.

²⁰ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, [Final Report](#).

Recommendations

Clause 5

- Volunteering Tasmania support the introduction of Clause 5, however given the concerns noted above, we recommend changes to the wording to emphasise that proactive steps should be taken by organisations to offer an apology to victim-survivors.
- We strongly recommend that the Tasmanian Government develop and implement additional policy mechanisms to accompany Clause 5 legislative amendments. This includes:
 - o The development of whole-of-government guidelines and processes to support organisations to engage with and facilitate trauma-informed apology processes; and
 - o Commensurate resourcing for the victim-survivor support sector to promote the safety and wellbeing of victim-survivors in the context of the reforms.

Clause 9

- We support the introduction of items (a), (b), (c), (d) (e), (f) and (g), however we strongly encourage the Tasmanian Government to include a 'similar age defence' for the new offence introduced through Clause 9 (a).
- The Tasmanian Government should develop education mechanisms to inform the community and volunteering industry about the legislative changes associated with the introduction of the new offence (Clause 9 (a)).

General

- As the reform implementation project progresses, the Tasmanian Government must provide adequate time for stakeholders to meaningfully engage in consultation processes.