

40TH PARLIAMENT



Joint Standing Committee on the Commissioner
for Children and Young People

Report 5

FROM WORDS TO ACTION

Fulfilling the obligation to be child safe

Presented by
Hon Dr S.E. Talbot, MLC and Mr K. O'Donnell, MLA
August 2020

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**Joint Standing Committee on the Commissioner
for Children and Young People**

From Words To Action

Fulfilling the obligation to be child safe

Report No. 5

Presented by

Hon Dr S.E. Talbot, MLC & Mr K.M. O'Donnell, MLA

Laid on the Table of the Legislative Assembly and Legislative Council on
13 August 2020

Inquiry Terms of Reference

The Joint Standing Committee on the Commissioner for Children and Young People will examine the scope and direction of the work currently being undertaken by government agencies, regulatory bodies and non-government organisations to improve the monitoring of child safe standards and the role of the Commissioner for Children and Young People in ensuring Western Australia's independent oversight mechanisms operate in a way that makes the interests of children and young people the paramount consideration. In particular, the Committee will consider the following:

- The recommendations made by the Commissioner for Children and Young People in the report *Oversight of services for children and young people in Western Australia*;
- The recommendations from the *Royal Commission into institutional responses to child sexual abuse* relating to an independent oversight body responsible for monitoring and enforcing child safe standards; and
- The response from the State Government of Western Australia to the above recommendations.

Chair's Foreword

What if we changed the way we think about child sexual abuse, from inevitable to preventable? ... We need to recognise that, like every form of violence, child sexual abuse is an avoidable tragedy.¹

It is clear that both historically and in modern times, the causes of the abuse and harm to which children and young people are exposed in institutional settings are myriad. There is now a considerable amount of evidence, some of it relating specifically to Western Australia, illustrating the diversity of people who sexually abuse children and the uniqueness of every survivor's experience of child sexual abuse.² While the responsibility for child sexual abuse lies first and foremost with adult perpetrators and institutions which have failed to care for a child, there is now widespread acceptance of the idea that, as a community, we are all responsible for preventing abuse from occurring and for responding quickly and effectively when it does.

This is a responsibility which is taken very seriously by members of the Joint Standing Committee on the Commissioner for Children and Young People. With the Royal Commission into Institutional Responses to Child Sexual Abuse delivering its final report in December 2017, the challenge faced by the State Government during the last three years has been to begin to implement the 310 Royal Commission recommendations which were directly applicable to the Western Australia Government, a process which is expected to take between five and 10 years. As would be expected, as well and contributing to the work of the Royal Commission, the Commissioner for Children and Young People has undertaken a great deal of work in relation to the Royal Commission recommendations, especially in the areas of child safe organisations, children and young people with harmful sexual behaviours, child friendly complaints systems and oversight of services for children and young people. The Committee has monitored, reviewed and reported on this work on a regular basis and has consulted regularly with the Commissioner during the course of the 40th Parliament.

Faced with the enormous amount of evidence and the wide range of areas of action covered by the 310 recommendations being considered by the State Government, the Committee spent some time carefully considering the focus of the work which would lead to the publication of this report. After several hearings following up the Children's Commissioner's *Oversight of services for children and young people in Western Australia* report, which was conducted in response to a recommendation by a former iteration of this Committee in the

1 As quoted in Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 42.

2 This observation about diversity and uniqueness is made in the Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, Final Report Volume 2 – *Nature and cause*, Commonwealth of Australia, 2017, p. 20. For evidence relating specifically to Western Australia, see: Hon Peter Blaxell, *St Andrew's Hostel Katanning: How the system and society failed our children*, Government of Western Australia; Joint Standing Committee on the Commissioner for Children and Young People (39th Parliament), Report No.7, *Everybody's Business. An examination into how the Commissioner for Children and Young People can enhance WA's response to child abuse*, June 2016.

39th Parliament, we began to form the view that there were two common factors leading to the creation of an unsafe environment for children and young people. The first was a failure by institutions to put the interests of children above all other considerations. The second was a failure by governing bodies to assess and monitor the capacity of institutions to give primacy to the interests of children.

To test this proposition, we embarked on a series of hearings both in Western Australia and in interstate and overseas jurisdictions to see how governments and organisations have responded to the growing demand for these failures to be rectified. On reaching London in October 2019, the Committee met with Sarah Blakemore, Chief Executive of Keeping Children Safe, an independent not-for-profit working to ensure that all organisations working directly for and with children have comprehensive safeguarding measures in place. I know I speak for all of my fellow Committee members as well as our advisors when I say that Ms Blakemore's evidence provided us not only with confirmation that our inquiry was on the right track, but also with the focus and the energy needed to complete this report. In comments that go right to the heart of the critical issues facing Western Australia, Ms Blakemore observed that while we all know what bad looks like, we are less clear about what good looks like and how we might make real and lasting improvements to our system.

It is worth quoting Ms Blakemore at length:

The more transparent we can be the more we can learn from our mistakes. We all know stories of people who turned away when they shouldn't. There are stories of people who have actively covered abuse up, but there are millions of stories of people who have not looked too hard. If we are not clear about what is expected of us as individuals, and we do not support that process in a transparent way, we will continue to have child abuse because the perpetrators look just like the other people who are not trying to stop the situation. If we can be really clear and empower people and make them not be frightened, then they will do the right thing. Otherwise...many people will think – "I'll just stay in my lane."

If we understand the National Child Safe Principles, reproduced on page 11 of this report, to establish exactly the statement of clear expectation referred to by Ms Blakemore, several imperatives become apparent. We must foster a commitment to cultural change and reform amongst government and non-government agencies delivering services to children and young people. We must support organisations as they learn to hear the voices of children and put their interests first. We must enable organisations and the individuals who work in them to see the practical effects of becoming child safe. We must provide active encouragement to engage in good faith information sharing, both to prevent child sexual abuse and to respond quickly to incidents and risks. We must put the lived experience of children and young people at the centre of independent oversight to make sure systems are transparent and that people are empowered to make change.

It is discussion of the National Child Safe Principles and these associated imperatives which form the basis of the chapters in this report. The report's basic premises are straightforward: that the institutional failure to put the interests of children first will be rectified once organisations embed the National Child Safe Principles into the heart of their

operations; and that the failure to effectively assess and monitor the capacity of institutions to put the interests of children first will be addressed when independent oversight renders systems transparent.

While the State Government has accepted every relevant recommendation of the Royal Commission, implementation of the National Child Safe Principles and oversight provisions is still in the planning stage. Everyone working towards implementation acknowledges the complexity of the task, and this is certainly borne out by the evidence which informs this report. Each chapter, in my view, might itself have been expanded into the subject of an entire inquiry, such is the importance of each issue.

It should also be acknowledged that there are other vital areas of concern which are intrinsic to meeting a community-wide obligation to be child safe but to which the Committee has not been able to devote time and resources. I mention specifically the consideration of actions to mitigate harmful sexual behaviour in children and young people and the exploration of the links between vulnerability, poverty and wellbeing, both of which have been the subject of a substantial amount of work by the Commissioner for Children and Young People. Our hope, however, is that the subject matter of this report will give readers from the government and non-government sectors and the wider community a sense that, in the years to come, there are some very practical ways that we might all shoulder some of the responsibility for determining how to radically improve the possibility that child sexual abuse might be prevented.

In closing, I extend my thanks to the dozens of witnesses, only a few of whom are named in this report, who helped us to form our ideas. I acknowledge as well the role that every member of the Committee has played in bringing this report to its final form, and especially the work done by our research officers Renée Gould and Michele Chiasson to piece together our many discussions and debates about this most challenging of subjects.

The sexual abuse of children is intolerable in a civilised society. It is the responsibility of our entire community to acknowledge that children are vulnerable to abuse. We must each resolve that we will do what we can to protect them. The tragic impact of abuse for individuals and through them our entire society demands nothing less.³



HON DR S.E. TALBOT, MLC
CHAIR

³ Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p. 4.

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Ministerial Response

The recommendations made in this report require whole-of government responses. Therefore, in accordance with Legislative Assembly Standing Order 277(1), the Joint Standing Committee on the Commissioner for Children and Young People directs that the Premier report to the Assembly within three months as to the action, if any, proposed to be taken by the Government with respect to the recommendations contained in the report.

Findings and Recommendations

Chapter 1 – Protecting our children from harm

Finding 1

Page 2

Globally, an estimated one billion children—50 per cent of everyone aged 2-17 years—suffer some form of abuse or violence each year. The World Health Organisation describes the level of violence against children as an epidemic.

Finding 2

Page 2

Evidence suggests that child abuse and neglect will be made worse by the COVID-19 pandemic. Western Australia’s children are not immune and their safety should not be taken for granted.

Finding 3

Page 6

The State Government has accepted every relevant recommendation of the Royal Commission and is issuing the required regular progress reports outlining priorities and actions to date.

Finding 4

Page 8

Implementation of measures to prevent child abuse within institutions will have significant long-term social and economic benefits which should be considered as Western Australia enters the recovery phase of the COVID-19 pandemic.

Finding 5

Page 12

Incorporating the wellbeing of children into child safe standards in Western Australia in accordance with the National Child Safe Principles ensures national consistency which will benefit children in Western Australia.

Recommendation 1

Page 13

That, in progressing the Royal Commission recommendations, the State Government continues to endorse the nationally consistent approach framed by the National Child Safe Principles.

Finding 6

Page 15

The Committee endorses the systematic and methodical approach being taken by the state government agencies charged with leading the implementation of the National Child Safe Principles and the provision of independent oversight.

Chapter 2 – Creating child safe communities

Finding 7

Page 21

There is clearly benefit in developing and delivering prevention education designed for parents and caregivers and others which caters to the specific needs of the Western Australian community as soon as possible.

Finding 8

Page 22

Prevention and child safe education should include information about the inherent value and status of children in order to influence community views of children and help bring about the cultural shift required to keep children safe.

Finding 9

Page 22

To complement the work underway to implement Royal Commission recommendations 6.1, 6.2, and 6.3, and the plan to create a Western Australian Centre for Excellence, the State Government must ensure the development and delivery of child safe education mechanisms tailored to parents, community groups, and children across the community. Further, the mechanisms should include information about the importance of children's rights.

Finding 10

Page 23

Direct engagement with families and interested stakeholders and advocacy groups in local communities will help ensure child safe approaches are culturally appropriate, and that the equity needs of children who receive services are met.

Finding 11

Page 24

Direct engagement with children by the Government and institutions is a vital part of developing and implementing child safe approaches.

Finding 12

Page 26

The implementation of the National Child Safe Principles presents an ideal opportunity for the active inclusion of children's views in the policy-making process.

Recommendation 2

Page 26

To support the implementation of the National Child Safe Principles, the Government should give urgent consideration to devising methods of incorporating the participation of children and young people to assist in decision-making as a key objective in policy development and design.

Finding 13

Page 27

The Government consider whether additional resources would be required by the Commissioner for Children and Young People to further develop participation guidelines to build the capacity of the community, institutions and the government to hear the voice of the child and seek the participation of children in decision-making.

Recommendation 3**Page 27**

That the Government consider whether additional resources would be required by the Commissioner for Children and Young People to further develop participation guidelines to build the capacity of the community, institutions and the government to hear the voice of the child and seek the participation of children in decision-making.

Finding 14**Page 28**

A whole-of-government response to the Royal Commission recommendations could involve direct engagement with families, interested stakeholders and advocacy groups in local communities with particular emphasis on considering specific strategies for how the community can become involved in the development of child safe approaches.

Chapter 3 – Creating child safe organisations**Finding 15****Page 29**

Positive outcomes of child safe approaches such as the National Child Safe Principles include children being safe, happy and engaged when accessing services outside the home.

Finding 16**Page 31**

Approximately 25,000 organisations located across the State will be required to actively engage with the child safe reform process and implement the National Child Safe Principles.

Finding 17**Page 31**

There is no single-way for institutions to implement the National Child Safe Principles. Appropriate government and industry supports should be made available as soon as possible to support the realistic capacity of organisations to implement the National Child Safe Principles without jeopardising the services delivered to children.

Finding 18**Page 34**

It is important that organisational leadership actively engages in tangible, child friendly actions and takes direct responsibility for the safety and wellbeing of all children accessing the organisation's services.

Finding 19**Page 34**

Organisational change is more effective where leadership engages directly with children and young people and their families about how the organisation can become child safe.

Finding 20**Page 36**

The National Child Safe Principles should not be overlaid onto governance structures as a compliance or tick box activity. Instead, they must extend beyond codes of conduct and child safe policies to achieve the "cut through" to change everyday practice about how child safety is regarded.

Finding 21**Page 39**

The role of safeguarding manager is too challenging and complex to undertake in an ad-hoc way or as an adjunct to another role.

Finding 22**Page 41**

Access to child safe professionals, i.e. safeguarding managers, could be made available in a variety of ways to improve the ability of organisations to comply with the National Child Safe Principles.

Recommendation 4**Page 41**

That the Government give serious consideration to professionalising the role of a child safeguarding manager.

Finding 23**Page 42**

The development of a child safe workforce is one of the most practical changes that can be made to improve child safety outcomes.

Finding 24**Page 43**

All organisations need to assess the level of risk and the level of vulnerability of children the organisation engages with when implementing the National Child Safe Principles. Some organisations will benefit from external assistance in establishing appropriate ways to take varying levels of risk into account.

Recommendation 5**Page 44**

That the Government ensure the implementation and oversight of the National Child Safe Principles are effected as soon as possible at the Kath French Secure Care Centre.

Finding 25**Page 45**

Organisations are awaiting a Government decision about which organisations will be required to implement the National Child Safe Principles, and by when.

Finding 26**Page 50**

In order to create the significant cultural change required for the successful implementation of the National Child Safe Principles, the Department of Communities is encouraged to engage in a broader public engagement process about the National Child Safe Principles.

Finding 27**Page 51**

Risk for all parties will be minimised as the Government increases its commitment to child safe reform through:

- educating and engaging with the community;
- investing in the capacity of organisations to become child safe; and
- demonstrating its commitment to strategies that help create the cultural change required for the entire community to understand that preventing child abuse is everybody's responsibility.

Finding 28**Page 52**

Further engagement processes that involve actions directly engaging with children and talking more broadly with organisations, parents, caregivers or community stakeholders about child abuse and its impact and how the Royal Commission recommendations should be progressed will strengthen the capacity building strategies identified by the Department of Communities and the Department of the Premier and Cabinet.

Recommendation 6**Page 52**

That the Government should finalise the necessary determinations about how organisations will be supported to become child safe. This should include measures to increase the understanding within communities and organisations about:

- the impacts of child abuse; and
- how to respond appropriately to concerns of child abuse.

Further measures should include information about:

- why the National Child Safe Principles are important;
- what the ongoing operation of child safe approaches will mean for individual organisations required to become child safe; and
- the means by which organisations and the community can contribute to the planning for, and operation of, child safe approaches.

Chapter 4 – Implementing the National Child Safe Principles**Finding 29****Page 63**

Evidence obtained in Western Australia, interstate and overseas jurisdictions suggest that mandatory implementation of the National Child Safe Principles through legislation is a necessary part of a successful implementation strategy.

Finding 30**Page 66**

Careful consideration needs to be given to ensuring that if contract management is used as either a form of regulating for compliance with the National Child Safe Principles, or as a form of quality assurance, it is supported by an independent strategy to measure and build an organisation's capacity to become child safe.

Finding 31**Page 69**

The creation of a standalone piece of legislation that enshrines both the National Child Safe Principles and the requirement to adhere to them would represent a useful first step in embedding child safe approaches in Western Australia.

Recommendation 7**Page 69**

That the Government considers the creation of a standalone piece of legislation that enshrines both the National Child Safe Principles and the requirement to adhere to them.

Chapter 5 – Applying the National Child Safe Principles**Finding 32****Page 72**

Evidence shows that child sexual abuse can occur in any type of institution where there is potential to come into contact with a child.

Finding 33**Page 74**

Information and education materials designed to educate institutions, employers and employees about the National Child Safe Principles should explain how the threshold of “child-related work” is applied.

Finding 34**Page 77**

If the “child-related work” definition under the *Working with Children (Criminal Record Checking) Act 2004* is adopted to determine the scope of organisations to which the National Child Safe Principles will apply, it would assist organisations if the State Government were to provide clarity on how the terms “the usual duties of work” and “contact with a child” may operate from a whole-of-organisation perspective.

Finding 35**Page 78**

Using the “child-related work” threshold for determining to which institutions the National Child Safe Principles apply may result in some organisations, which may still have an impact on a child safety and wellbeing, falling outside of the scope.

Recommendation 8**Page 78**

That the Government should consider some form of engagement with the community and stakeholders about which institutions should be obliged to become child safe.

Recommendation 9**Page 78**

That if the “child-related work” definition is to be the single threshold for determining to which institutions the National Child Safe Principles should apply, direction be provided by the Government about how the “the usual duties of work” and “contact with a child” as determined under Section 6 of the *Working with Children (Criminal Record Checking) Act 2004* may operate from a whole-of-organisation perspective.

Chapter 6 – Importance of Information Sharing

Finding 36

Page 80

There is broad agreement that when deciding to share information, the safety and wellbeing of a child should always outweigh privacy concerns.

Finding 37

Page 81

Opportunities exist for the Government to take a leading role in educating the public on the importance of appropriately sharing information when it comes to the safety of children.

Finding 38

Page 82

Decisions about how to implement the National Child Safe Principles and establish the independent oversight body for the National Child Safe Principles are highly pertinent to questions about the regulation of information sharing.

Finding 39

Page 83

It is important for the State to introduce a reportable conduct scheme to help protect the safety and wellbeing of children.

Finding 40

Page 84

The State Government has committed to being an early adopter of the National Child Protection Information Sharing Solution.

Recommendation 10

Page 94

Should any new information sharing regime for Western Australia be established, the Government ensures that it includes:

- alignment with the recommendations from the royal commission;
- information sharing with third parties;
- explicit protections for those who share information in good faith;
- the ability to compel information;
- specific child safety functions pertaining to a privacy commissioner including a function to work collaboratively with the oversight body of the national child safe principles; and
- the ability to see “the whole picture” of a child.

Finding 41

Page 99

Education campaigns about the practical employment of the National Child Safe Principles can encourage appropriate information sharing.

Finding 42

Page 99

Professional education campaigns help adults in child-related work identify the early markers of abuse and neglect and assist them to understand what information can and cannot be shared and under what circumstances information can be shared.

Finding 43 **Page 99**
Accurate advice and education resources about appropriate information sharing needs to be included as part of any material developed to raise the awareness of the community and organisations about child abuse and its impacts.

Recommendation 11 **Page 99**
That accurate advice and education resources about appropriate information sharing be included in any material developed to raise the awareness of the community and organisations about child abuse and its impacts.

Recommendation 12 **Page 99**
That professional education campaigns be undertaken to help adults in child-related work identify the early markers of abuse and neglect and assist them understand the importance and effectiveness of appropriate information sharing.

Recommendation 13 **Page 99**
That community information and education campaigns be undertaken to demonstrate how practical employment of the National Child Safe Principles can encourage appropriate information sharing.

Chapter 7 – The need for independent oversight

Finding 44 **Page 104**
The Children’s Commissioner’s *Oversight of services to children and young people in Western Australia* Report shows that the current independent oversight system in Western Australia is fragmented with significant gaps in coverage for children and young people. It is weighted towards complaints systems and investigation functions with limited scope for recourse to more proactive and preventative mechanisms.

Finding 45 **Page 104**
The absence of effective independent oversight reduces ways of ensuring the intended outcomes of procedures and processes for the prevention of child abuse and the promotion of child safety and child wellbeing are being achieved.

Finding 46 **Page 105**
The Government is pursuing an integrated independent oversight system in the areas of child safe standards; out-of-home care; juvenile justice; and reportable conduct.

Finding 47 **Page 108**
To avoid delays in the matter of integrated oversight in the short term, an interim standalone approach could be considered for the oversight of the National Child Safe Principles.

Finding 48 **Page 108**

Existing gaps of oversight will be filled if any oversight established to satisfy the Royal Commission recommendations also has regard to the elements of effective oversight established by the Children’s Commissioner’s *Oversight of services for children and young people in Western Australia* Report.

Finding 49 **Page 110**

The expertise of the Children’s Commissioner could provide an additional layer of systemic advocacy if charged with the oversight role recommended for the out-of-home care sector.

Finding 50 **Page 111**

There is one Advocate for Children in Care servicing over 5,000 children in out-of-home care. This is acknowledged as insufficient by the Department of Communities.

Finding 51 **Page 111**

Access to independent individual advocacy for children in care is crucial.

Finding 52 **Page 111**

The concern being raised about the lack of advocacy services for children in out-of-home care has not been adequately addressed.

Recommendation 14 **Page 112**

That attention is given to improving access to independent individual advocacy for children in care as a priority.

Recommendation 15 **Page 112**

That consideration be given to the immediate provision of additional resources for the Advocate of Children in Care until a long-term solution is developed.

Finding 53 **Page 112**

The expertise of the Ombudsman’s office aligns well with the investigatory nature of the reportable conduct scheme recommended by the Royal Commission.

Finding 54 **Page 114**

The Children’s Commissioner’s office is well equipped in terms of demonstrated expertise and experience and existing statutory authority to perform many of the recommended oversight functions.

Finding 55 **Page 114**

Serious consideration should continue to be given to resourcing and empowering the Children’s Commissioner to perform the oversight of the National Child Safe Principles.

Finding 56**Page 118**

The expertise of the Children’s Commissioner across the areas of consulting with and promoting the best interests of all children in Western Australia is unique amongst oversight bodies in Western Australia.

Finding 57**Page 120**

Much of the Children’s Commissioner’s enabling legislation and ongoing advocacy work is aligned with functions recommended for the oversight body for National Child Safe Principles including:

- promoting awareness and understanding of matters relating to the wellbeing of children and young people;
- monitoring and reviewing policies, practices and services affecting the wellbeing of children;
- providing advice and information on the National Child Safe Principles to institutions and the community in an effective and tailored way;
- collecting, analysing and publishing data;
- actively partnering with peak bodies, sector leaders and decision makers to enhance the safety of children;
- providing and promoting education and training on the National Child Safe Principles to build the capacity of institutions to be child safe from a centralised body; and
- monitoring public agencies on the outcomes and trends of complaints made by children and advocating for child friendly complaints mechanisms and practices.

Finding 58**Page 121**

Additional provisions of the Commissioner for Children and Young People legislation demonstrate the alignment between, and exercise of, the Children’s Commissioner’s powers and the oversight function of the National Child Safe Principles.

These include:

- The special inquiry function under Part 5 of the Act enabling the Children’s Commissioner to inquire in depth into any issue concerning the application of child safe approaches if required.
- The Joint Standing Committee on the Commissioner for Children and Young People, which provides broad investigative powers to examine the exercise of the Children’s Commissioner functions, and which could include the oversight of the National Child Safe Principles.

Finding 59**Page 123**

It is not clear if the functions provided to the Children’s Commissioner within Part 5 of the *Commissioner for Children and Young People Act 2006* would be sufficient to compel a response from relevant institutions.

Finding 60**Page 123**

Any consideration about adding a power to compel a response as part of any oversight responsibility should include extensive consultation about what powers are acceptable and how these powers should be exercised.

Finding 61 **Page 124**

Should it be determined that the Children’s Commissioner is provided with responsibility for some or all of the oversight functions recommended by the Royal Commission, the Committee would expect that the existing prescribed statutory functions of the Children’s Commissioner established under section 19 of the *Commissioner for Children and Young People Act 2006*, including advocacy and research, be maintained.

Finding 62 **Page 125**

Recommendation 3 of the Children’s Commissioner *Improving the Odds for WA’s vulnerable children and young people* Report is sound and its substance should be included in measures to implement and oversight the National Child Safe Principles.

Recommendation 16 **Page 125**

That the substance of Recommendation 3 of the Children’s Commissioner *Improving the Odds for WA’s vulnerable children and young people* Report should be included in measures to implement and oversight the National Child Safe Principles.

Finding 63 **Page 129**

The National Child Safe Principles have the potential to make a difference to the life of every single child living in Western Australia.

Finding 64 **Page 129**

Wholesale reform of the attitudes and beliefs of the community and organisations about child safe organisations is needed. Increased government regulation and reforms of organisational governance alone will not suffice.

Finding 65 **Page 129**

Information sharing provisions need to enable the body responsible for the oversight of the National Child Safe Principles to share information with the National Office for Child Safety, in accordance with Royal Commission recommendation 6.11.

Recommendation 17 **Page 129**

That consideration is given to the ways in which legislation and regulation can be put in place to promote change and support organisations to dedicate resources, time and effort towards becoming child safe.

Recommendation 18 **Page 129**

That an oversight body with the purpose of assisting child safe approaches and a focus on achieving better safety outcomes for children is a crucial part of child safe reform and must be established as a priority.

Recommendation 19**Page 130**

That the oversight body for the National Child Safe Principles should incorporate all the elements of the model described in Fig 7.1 of this report and include sufficient and appropriate enforcement powers, collaboration with other statutory oversight bodies and good faith information sharing provisions.

Chapter 1

Protecting our children from harm

Stopping the epidemic of violence against children can provide wide-ranging and substantial health, social, and economic benefits, both nationally and globally, as well as for subsequent generations.

World Health Organisation ¹

Improving child safety

- 1.1 A ground breaking 2020 report by the World Health Organisation (WHO) describes the levels of violence and abuse against children across the world as an epidemic.² It estimates one billion children—50 per cent of everyone aged 2-17 years—suffer some form of abuse or violence each year.³
- 1.2 Australia is not immune to violence against children. This has been confirmed by the evidence of several recent reports and studies. On the basis of this evidence, the assumption cannot be made that children are always safe, or that child safety is automatically built into our organisational and institutional structures. Child safety requires action. The development of child safe standards aims to focus attention on action to protect children from the harm and the lifelong impacts associated with child abuse. The future health of our society depends on a collective effort to prevent child abuse and protect children from harm.
- 1.3 The risk of harm will no doubt be exacerbated by the current COVID-19 pandemic as existing research shows child abuse increases during public health emergencies⁴ so it is vitally important to introduce appropriate strategies to help protect children.⁵

1 World Health Organisation, *Global status report preventing violence against children*, Geneva, 2020, p. v.

2 This WHO report is based on a survey administered from mid-2018 to mid-2019, whereby 155 countries including Australia reported on their efforts to prevent violence against children, the first time ever that governments are self-reporting on their work to specifically address violence against children. See World Health Organization, *Global status report on preventing violence against children 2020*, World Health Organization, Geneva, June 2020, p. vi.

3 Violence and abuse against children is defined as all forms of violence against people aged under 18 years, whether perpetrated by parents or other caregivers, peers, or strangers in the home or in other settings such as schools or other institutions. It includes all forms of child maltreatment such as physical, sexual and emotional violence and neglect. *ibid.*, p 11.

4 Amber Peterman et al, 'Pandemics and Violence Against Women and Children', *Centre for Global Development*, Working Paper 528, April 2020, p. 3.

5 Mr Colin Pettit, Commissioner for Children and Young People, 'Kids needs support in this testing time', *The West Australian*, 31 March 2020, p. 20; National Office for Child Safety, *Message from the National Office for Child Safety: COVID-19 and children's safety*, 8 April 2020, accessed 8 April 2020, <<https://pmc.gov.au/domestic-policy/national-office-child-safety/message-covid-19-and-childrens-safety>>.

- 1.4 The WHO report asserts that government officials from all countries, including Australia, acknowledge the need to “scale up” their efforts to combat violence and abuse against children.⁶
- 1.5 In Western Australia, during the 2018–19 financial year, over 24,500 safety and wellbeing assessments – which include reported concerns of child neglect, emotional, physical or sexual abuse – were conducted by the Department of Communities and the majority of concerns were substantiated.⁷
- 1.6 This inquiry examines ways Western Australia can most effectively “scale up” its efforts to ensure children are safe when accessing services outside of the home.
- 1.7 As the evidence of several recent reports and studies, as well as the number of notifications to the Department of Communities, confirm, child abuse is still occurring. This report brings together evidence that the prevention of child abuse is a matter for the whole community. Child safety can never be taken for granted, or considered someone else’s problem. Efforts we make to improve child safety will have a direct impact on the quality of children’s lives.

Finding 1

Globally, an estimated one billion children—50 per cent of everyone aged 2-17 years—suffer some form of abuse or violence each year. The World Health Organisation describes the level of violence against children as an epidemic.

Finding 2

Evidence suggests that child abuse and neglect will be made worse by the COVID-19 pandemic. Western Australia’s children are not immune and their safety should not be taken for granted.

Calls for change

- 1.8 This inquiry builds on a number of reports released in previous years, including:
- *St Andrew’s Hostel Katanning: How the system and society failed our children*, the report of the Special Inquiry into St Andrew’s Hostel Katanning, colloquially known as the Blaxell Report,⁸ tabled in 2012;
 - *Oversight of Services for Children and Young People in Western Australia* report published by the Commissioner for Children and Young People (Oversight Report) in 2017; and

6 World Health Organization, *Global status report on preventing violence against children 2020*, World Health Organization, Geneva, June 2020; p. vi.

7 This figure is the total number of concerns assessed for an outcome. Department of Communities, *Child Protection Activity Performance Information 2018-19*, Government of Western Australia, n.d., p. 6. Note: While evidence shows that most child abuse and neglect occurs in a familial setting, reports like the *Royal Commission into institutional responses to child sexual abuse* reveal evidence about the prevalence and extent of child abuse occurring outside of the home when a child is not in the care of their parent or caregiver.

8 Named after the Special Investigator who conducted the Inquiry, former Supreme Court Justice the Honourable Peter Blaxell.

- The *Final Report of the Royal Commission into institutional responses to child sexual abuse* (the Royal Commission Final Report).

1.9 These reports, and others over the previous decade, have uncovered the prevalence, and identified causes, of child abuse in institutions, and recommended specific changes to make children safer in institutions and improve their overall safety and wellbeing.

1.10 The inquiry on which this report is based was announced one year after the Royal Commission Final Report was tabled. The Committee was keen to see if the relevant recommendations from the Blaxell Report and the Oversight Report were being considered as part of the current State Government's response to the Royal Commission recommendations, as a full response to the recommendations of both the Blaxell report and the Oversight Report had been deferred until the findings of the Royal Commission could be taken into account (see paragraphs 1.15 and 1.18).

Blaxell Report

1.11 St Andrews Hostel was a residential boarding house for students attending the local high school. The Blaxell inquiry was established after the Warden of the Hostel and his brother were convicted of committing multiple serious sexual abuses against some students between 1975 and 1990.

1.12 The report examined why there was a failure to act when the abuse was occurring and found evidence of numerous incidences of public officials hearing allegations of sexual misconduct at the Hostel but deciding to ignore them.⁹

1.13 The Blaxell Report revealed the tragic legacy of child abuse in regional Western Australia and made several recommendations about ways in which organisations can be improved to bring about greater safety for children.

1.14 In 2012, the State Government committed to implementing the recommendations from the Blaxell Report which included a recommendation for a whole-of-government approach to developing a 'child friendly' system involving a 'one stop shop' for handling complaints in relation to child abuse.¹⁰ At the time, the Government stated 'the Commissioner for Children and Young People was best-placed to oversee this system'¹¹ and it was referred to the statutory review of the *Commissioner for Children and Young People Act 2006*.¹² The review subsequently determined that the Children's Commissioner should perform an amended "child abuse support role", as follows:

[T]he commissioner's role should consist of developing education and outreach programs for children and young people about how to disclose child abuse; receiving complaints from children and young people, or adults acting in good faith

9 Hon Peter Blaxell, *St Andrew's Hostel Katanning: How the system and society failed our children*, Government of Western Australia, n.d., p.1.

10 *ibid.*, p. 340.

11 Hon Colin Barnett MEd MLA, Premier, *Government to implement Blaxell inquiry recommendations*, media release, 19 September 2012.

12 Public Sector Commission, *Review of the Commissioner for Children and Young People Act*, Public Sector Commission, Western Australia, May 2013, p. 1.

on their behalf, about alleged child abuse and referring such complaints to the relevant investigative authority or authorities; providing information and referrals to children and young people in relation to the support services available for victims of child abuse and their families; and monitoring the way government agencies deal with complaints of child abuse.¹³

- 1.15 In tabling the Government's response to the statutory review, former Attorney General, Hon Michael Mischin MLC, stated that '[f]ull implementation of the proposed child abuse complaints support role will be deferred to allow for the final recommendations of the Royal Commission to be taken into account'.¹⁴

Oversight of Services for Children and Young People in Western Australia

- 1.16 A previous iteration of this Committee recommended that the Children's Commissioner map the extent to which services provided to children are accountable to independent oversight and recommend ways to mitigate any deficiencies.¹⁵ The subsequent Oversight Report was published by the Commissioner for Children and Young People (Children's Commissioner) in 2017.¹⁶
- 1.17 The mapping project focused on six sectors providing the majority of services to children and young people when they are at an increased risk of abuse or maltreatment and the independent statutory bodies that oversight the provision of those services. The six sectors include out-of-home care services, mental health services, police custody, education, youth justice, and disability services.¹⁷
- 1.18 The concluding report outlined the principles and components of a best-practice comprehensive framework of independent oversight; it described the existing structures, powers and functions of relevant independent oversight mechanisms; and established crucial gaps in the oversight of children's services.¹⁸ Recommendations were made to improve the operation of the system of independent oversight for these services.¹⁹
- 1.19 The Committee started its inquiry process by examining what, if any, progress had been made to implement the improvements to oversight recommended by the Children's Commissioner. The Government confirmed it is considering all Royal Commission recommendations calling for independent oversight holistically and is considering the Children's Commissioner's recommendations as part of that process.²⁰ While not disagreeing with this approach, the Committee has therefore been unable to ascertain what

13 Hon Michael Mischin MLC, Attorney General, Legislative Council, *Hansard*, 20 August 2014, p. 5532.

14 *ibid.*, p. 5533.

15 Joint Standing Committee on the Commissioner for Children and Young People, Report No.7, *Everybody's Business. An examination into how the Commissioner for Children and Young People can enhance WA's response to child abuse*, June 2016, p. 88.

16 Parliament was prorogued before the Commissioner's Oversight Report was published so it could not be reviewed by the Joint Standing Committee on the Commissioner for Children and Young People in the 39th Parliament. It was consequently examined by this Committee of the 40th Parliament.

17 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p. 20.

18 *ibid.*, p. 25.

19 *ibid.*, p. 7.

20 Transcript of closed evidence disclosed by resolution of the Committee.

improvements may have been made to these services in direct response to the recommendations of the Oversight Report (discussed further in chapter 7).

Royal Commission into institutional responses to child sexual abuse

- 1.20 The Royal Commission was established in 2012 in response to the significant and growing community support for a national inquiry into the failure of institutions across Australia to protect children.²¹
- 1.21 The Royal Commission Final Report was tabled on 15 December 2017, detailing findings of the five-year inquiry — Australia’s longest-running public inquiry. The far-reaching work, comprising 17 volumes, revealed the alarming extent to which child abuse had occurred in Australia over the past 90 years. Almost 17,000 people contacted the Royal Commission, and nearly 8,000 survivors of child sexual abuse contributed.²² The conclusion of this work revealed that ‘countless thousands of children have been sexually abused in many institutions in Australia.’²³
- 1.22 These findings led to over four hundred recommendations²⁴ designed to address institutional failings through improvements to institutional governance and government regulation, increasing community awareness of child abuse in institutions and educating the community about risks to children.²⁵
- 1.23 The Committee chose to focus on recommendations related to child safe standards and the independent oversight thereof, of which there were more than 50.²⁶ A consistent theme throughout the recommendations is a call for society to acknowledge that children are vulnerable to abuse and it is the responsibility of everyone to protect them.²⁷
- 1.24 For the purposes of clarity, the remainder of this report uses the term “child safe standards” to indicate a generic set of standards designed to improve child safety; however, when referring to the set of standards as intended for implementation by the Royal Commission, and ultimately endorsed by the Australian Commonwealth, State and Territory Governments, the report uses the term National Child Safe Principles which designates the formalisation of the generic standards. Direct references from transcripts and other sources

21 Royal Commission into institutional responses to child sexual abuse, *Interim Report, Volume 1*, Commonwealth of Australia, 2014, p. 28.

22 In exact figures, 16,953 people contacted the Royal Commission who fell within the Terms of Reference, and 7,981 survivors of child sexual abuse were heard from in 8,013 private sessions about abuse. Further contributions included 1,344 written accounts of abuse received. The Royal Commission referred 2,562 matters to police. See: Royal Commission into institutional responses to child sexual abuse, *Final information update*, n.d., accessed 19 December 2019, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_information_update.pdf.

23 Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p. 1.

24 The Royal Commission made 409 recommendations in total.

25 Royal Commission into institutional responses to child sexual abuse, *Final information update*, n.p., accessed 19 December 2019, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_information_update.pdf.

26 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Western Australia, November 2019, p. 8.

27 Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p. 4.

may differ but should be understood to mean the National Child Safe Principles, unless otherwise stated.

Recommendations to improve child safety are not new

- 1.25 Findings from the Blaxell Report, the Oversight Report and the Royal Commission Final Report highlight the vulnerability of children in institutional settings.
- 1.26 The recommendations of all three reports include ways organisations, governments, communities and families can improve the safety of children and protect them from abuse when in contact with organisations and activities outside the home. These recommendations are not new. The three reports include hundreds of recommendations about measures to improve child safety and the need to implement these measures. The Department of the Premier and Cabinet (DPC) confirmed that if the net were to be cast wider, there are more than 1,000 recommendations from recent times that remain relevant to the safety of children in this State:

[I]f you look at the range of reports ... that deal with supporting the safety of children and young people in Western Australia—we have gone back to 2002—there are about 1,079 recommendations that we will need to go back to and look at in the context of going forward.²⁸

- 1.27 The Royal Commission is now concluded, and the State Government has accepted every relevant recommendation, issuing the required regular progress reports outlining priorities and actions to date.
- 1.28 The Committee has established that there is a considerable amount of work underway by the Government to determine the best way forward. It is the intention of this report to examine the scope and direction of this work and to ensure that the interests of children and young people are the paramount consideration as this work progresses.

Finding 3

The State Government has accepted every relevant recommendation of the Royal Commission and is issuing the required regular progress reports outlining priorities and actions to date.

Child sexual abuse in institutions continues

[C]hild abuse in institutions continues today and is not just a problem from the past.²⁹

- 1.29 Despite an increasing awareness among the community, government and organisations about the prevalence of child abuse and the necessity to protect children, institutional

28 Mr Darren Foster, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 5.

29 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 9.

practices and cultures, attitudes, beliefs and behaviour still occur which 'enable, encourage or normalise sexually abusive behaviour towards children'.³⁰

- 1.30 The misperceptions and lack of understanding about child abuse can permit child abuse to continue in institutional settings and elsewhere. The topic of child abuse is distressing, which makes people reluctant to discuss it. The uncomfortable reality is that much work needs to be done to protect children, raise awareness, and encourage the disclosure of abuse when it happens.

The cost of delay

- 1.31 The Committee endorses an approach by Government that is measured and able to withstand the passage of time.³¹ Such an approach must remain cognisant of the clear evidence that child abuse and neglect can have lifelong traumatic impacts, imposing substantial costs (physical, emotional, social and economic) on the life of a child and their community.³²

- 1.32 An Australian report on the cost of unresolved childhood trauma conservatively estimates that appropriately addressing the impacts of child abuse alone could improve the combined budget position of Federal, State and Territory Governments by a 'minimum of \$6.8 billion annually.'³³ The Royal Commission notes that delaying the implementation of child safe approaches not only results in the continuing sexual abuse of children but also in passing on the cost of this failure to the entire Australian community.³⁴

Addressing the impacts of child abuse could improve the combined budget position of Federal, State and Territory Governments by a minimum of \$6.8 billion annually.

- Adults Surviving Child Abuse (ASCA and Pegasus Economics

- 1.33 Western Australia is currently in a state of emergency as it responds to the COVID-19 pandemic. The financial implications of current events will significantly impact many sectors of the economy. The State Government has deferred the passage of the budget until

30 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 9.

31 Noting the State Government's commitment to a 10-year reform program: Government of Western Australia, Royal Commission into institutional responses to child sexual abuse – *2018 Progress report*, Western Australia, December 2018, p. 8.

32 Aside from the Royal Commission into institutional responses to child sexual abuse, other reports highlighting the harmful impacts of child sexual abuse in Australian context include the following publications: Victorian Parliamentary Committee, *Betrayal of trust: Victorian parliamentary inquiry into the handling of child sexual abuse by religious and other non-government organisations*, Parliament of Victoria, Melbourne, 2013; Commonwealth of Australia, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, Canberra, 2004; J Wood, *Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales Government, Sydney, 2008; E Munro & S Fish, *Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts, report prepared for the Royal Commission into institutional responses to child sexual abuse*, Sydney, 2015.

33 Dr Cathy Kezelmen et al, *The Cost of Unresolved Childhood Trauma and Abuse in Adults in Australia*, Adults Surviving Child Abuse (ASCA) and Pegasus Economics, Sydney, 2015, p. 12.

34 Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p. 7.

October 2020, which the Committee notes may delay any announcements regarding the implementation of the National Child Safe Principles and relevant independent oversight provisions.³⁵

1.34 It goes without saying that the pandemic response does not remove the imperative to implement recommendations protecting children against child abuse. The National Office for Child Safety recently issued a message about COVID-19 and child safety, highlighting that measures to combat this pandemic may put some children at greater risk of harm.³⁶

1.35 Given the overwhelming evidence—and long held acceptance—of the detrimental, often lifelong, impacts of child sexual abuse and the devastating consequences of not responding to allegations of abuse appropriately,³⁷ the implementation of protections and preventions of child abuse within institutions which will reduce the significant social and economic costs of institutional child sexual abuse should remain a priority as Western Australia enters the recovery phase of this pandemic.

Finding 4

Implementation of measures to prevent child abuse within institutions will have significant long-term social and economic benefits which should be considered as Western Australia enters the recovery phase of the COVID-19 pandemic.

What is “child safe”?

1.36 The Royal Commission identified three key attributes that underpin the “child safe” concept:

- the best interests of a child are the primary consideration;
- the value that children have in society is recognised; and
- the rights of children are protected and upheld.³⁸

1.37 A child safe organisation is an organisation that employs child safe approaches. The working definition adopted by the Royal Commission states a child safe organisation (or institution) is one that ‘consciously and systematically creates conditions that reduce the likelihood of

35 This statement is inferred from the previous evidence which stated these decisions would be made by the Government, based on advice provided by the Department of the Premier and Cabinet ‘by the end of the financial year’ when, at the time the evidence was given, there was not an expectation that the budget and any related end of financial year decisions would be deferred. See Ms Kim Lazenby, Director, Social Policy Unit, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 9. The Committee also heard from the Children’s Commissioner that he was hopeful of a decision being made in this budget about the Government’s decision regarding oversight of the National Child Safe Principles. See Mr Colin Pettit, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2020, p. 4.

36 National Office for Child Safety, *Message from the National Office for Child Safety: COVID-19 and children’s safety*, 8 April 2020, accessed 8 April 2020, < <https://pmc.gov.au/domestic-policy/national-office-child-safety/message-covid-19-and-childrens-safety>>.

37 Dr Cathy Kezelmen et al, *The Cost of Unresolved Childhood Trauma and Abuse in Adults in Australia*, Adults Surviving Child Abuse and Pegasus Economics, Sydney, 2015. In addition, see references cited in footnote 31.

38 Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p7.

harm to children, creates conditions that increase the likelihood of identifying and reporting harm, and responds appropriately to disclosures, allegations or suspicions of harms'.³⁹

1.38 The essential point for the Committee is that child safe organisations require a deliberate and proactive attitude toward protecting children. This attitude must fundamentally drive the operation of standards, planning, policies and decision-making. To be child safe there must be active engagement with children in developing ways to protect them. This can only be achieved through serious consideration of their views and understanding their perspectives about safety and how they wish to communicate their fears, concerns or worries. In the interests of enhancing their wellbeing, understanding how children wish to convey feelings of happiness or contentment is equally important.

National Child Safe Principles

Child safe standards emerged from the failings of institutions to protect children

1.39 The Royal Commission identified a number of prevalent cultures, attitudes and practices within organisations that allowed abuse to occur and/or inhibited the detection of abuse.⁴⁰ These failings 'allowed abuse to continue unchecked'.⁴¹

1.40 Identified factors contributing to child abuse include:

- leaders failing to take responsibility for their institution's past failures to protect children against sexual abuse;
- a lack of understanding of child abuse and how it can occur in institutional settings, in particular, misperceptions about child sexual offenders;
- a lack of understanding about grooming behaviours;
- a tendency to believe adults over children and, equally, a fear of falsely accusing someone of child sexual abuse for fear of retaliation;
- perceptions that the primary responsibility of staff was to protect the institution's reputation and/or any adult accused rather than recognising the impact of abuse on the children;
- failures to report complaints;
- a lack of adequate governance structures; and
- a lack of understanding about the seriousness of complaints.⁴²

39 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 12

40 *ibid.*, pp. 184-185; Royal Commission into institutional responses to child sexual abuse, *Report of Case Study No 12: The response of an independent school in Perth to concerns raised about the conduct of a teacher between 1999 and 2009*, Commonwealth of Australia, 2015, pp. 39–40; Royal Commission into institutional responses to child sexual abuse, *Report of Case Study No 18: The response of the Australian Christian Churches and affiliated Pentecostal churches to allegations of child sexual abuse*, Commonwealth of Australia, 2015, p. 27.

41 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 184.

42 *ibid.*, pp. 14-15, 137.

- 1.41 These factors were found to occur across all types of institutions examined (see paragraph 5.1).⁴³ In a small number of cases, specific types of institutions were found to have particular cultural characteristics that increased the risk of child abuse occurring. For example, the risk increased in boarding schools and youth detention centres where significant control over the lives of children in their care is exerted and in other organisations where the culture is based on secrecy, power and control. Competitive or “macho” cultures were also found to prevent or ignore disclosures of abuse.⁴⁴
- 1.42 The breadth of institutions where child abuse is known to have occurred indicates that no organisation can guarantee that it will protect children from abuse without a well-planned and well-understood strategy to prevent, identify and mitigate risks of child abuse.

Child safe standards become National Principles for Child Safe Organisations

- 1.43 The Australian Government requested the National Commissioner for Children and Young People to address the Royal Commission’s recommended Child Safe Standards (Recommendation 6.6)⁴⁵ through consultation with stakeholder groups and with guidance from relevant State and Federal Ministers. The outcome of this process was that these standards became the National Principles for Child Safe Organisations (the National Child Safe Principles) and were endorsed by the Council of Australian Governments (COAG) in February 2019.

43 The types of institutions examined included statutory out-of-home care, education, faith based, recreation, sports and clubs, healthcare, youth detention facilities, childcare, supported accommodation, arts and culture, social support services, disability service providers, the defence forces and youth employment.

44 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 137.

45 See appendix 2 for full text of this recommendation.

1.44 The ten National Principles for Child Safe Organisations are outlined in the table below:

Table 1.1: National Principles for Child Safe Organisations (reproduced) ⁴⁶

 <p>1 Child safety and wellbeing is embedded in organisational leadership, governance and culture.</p>	 <p>2 Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.</p>
 <p>3 Families and communities are informed and involved in promoting child safety and wellbeing.</p>	 <p>4 Equity is upheld and diverse needs respected in policy and practice.</p>
 <p>5 People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.</p>	 <p>6 Processes to respond to complaints and concerns are child focused.</p>
 <p>7 Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.</p>	 <p>8 Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.</p>
 <p>9 Implementation of the national child safe principles is regularly reviewed and improved.</p>	 <p>10 Policies and procedures document how the organisation is safe for children and young people.</p>

National Child Safe Principles incorporate the wellbeing of children

1.45 During consultation conducted by the National Commissioner for Children and Young People, the National Child Safe Principles were broadened to include standards that enhanced the wellbeing of children.

1.46 The Committee accepts the premise made by the Royal Commission that while it was required to focus on sexual abuse of children in institutions, any application of child safe approaches by institutions must be as broad as possible, recognising ‘different types of abuse occur together’.⁴⁷

1.47 Broadly speaking, the State Government is not unfamiliar with wellbeing as a measure. Until the COVID-19 state of emergency was declared, a Government policy called *Our Priorities: Sharing Prosperity* was in operation to meet a number of whole-of-government targets. These included two wellbeing targets, one of which (*A Bright Future*) related to improving

46 Department of Prime Minister and Cabinet, *National Principles for Child Safe Organisations poster*, February 2019, accessed 9 July 2020, <https://pmc.gov.au/resource-centre/domestic-policy/national-principles-child-safe-organisations-poster>.

47 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 135.

the health and wellbeing of children in the early years.⁴⁸ At the time of writing, the policy implementation has been deferred indefinitely while the Government focuses on its COVID-19 response.⁴⁹

- 1.48 In the Committee's view, taking into account the wellbeing of children and incorporating this focus into the National Child Safe Principles is a welcome addition and will enhance national consistency.

Finding 5

Incorporating the wellbeing of children into child safe standards in Western Australia in accordance with the National Child Safe Principles ensures national consistency which will benefit children in Western Australia.

National Consistency

- 1.49 The Department of Communities advised it has worked with the Children's Commissioner and the Department of Local Government, Sport and Cultural Industries (DLGSC) to update 'all relevant existing resources to align with the national principles and assist organisations to be safer'.⁵⁰ The aim is to ensure Western Australia's approach to developing child safe organisations is nationally consistent.⁵¹
- 1.50 To this end, the Children's Commissioner has updated the existing child safe resources to ensure they are all aligned with the National Child Safe Principles. The Children's Commissioner indicated that this task was undertaken at the request of the State Government to ensure there is 'only one point of truth'⁵² so there is no confusion between which principles or standards an organisation was being asked to comply with.⁵³
- 1.51 On reviewing the evidence received during this Inquiry, the Committee urges that wellbeing continues to be included as a focus of the Government with respect to the implementation of the Royal Commission recommendations in line with the COAG-endorsed National Child Safe Principles.

48 Another wellbeing target (not inclusive of children) was the *Aboriginal Wellbeing* target to reduce the number of Aboriginal adults in prison. See: Government of Western Australia, *Our Priorities: Sharing Prosperity, Whole-of-government targets to deliver better outcomes for all Western Australians*. Information about this program was previously available at <https://www.wa.gov.au/government/our-priorities-sharing-prosperity>.

49 Government of Western Australia, *Our Priorities: Sharing Prosperity – Update: COVID-19*, 26 March 2020, accessed 9 July 2020, <https://www.wa.gov.au/government/our-priorities-sharing-prosperity>. Information on this site states the program has been deferred indefinitely while the Government focuses on its COVID-19 response.

50 Ms Michelle Andrews, Director General, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 3.

51 *ibid.*, p. 3; see paragraph 4.2 for additional information about this nationally consistent approach.

52 Mr Colin Pettit, Commissioner for Children and Young People, *Transcript of Evidence*, 25 September 2019, p. 2.

53 Mrs Patricia Heath, Director - Policy and Research, Commissioner for Children and Young People, *Transcript of Evidence*, 25 September 2020, p. 2.

Recommendation 1

That, in progressing the Royal Commission recommendations, the State Government continues to endorse the nationally consistent approach framed by the National Child Safe Principles.

Implementing the National Child Safe Principles will protect children from harm

Child sexual abuse is a social problem; it is a pattern of behaviour that is prevalent, harmful and morally repugnant, and it needs to be addressed. While the vast majority of child sexual abuse victims are abused in the home or community by a relative, family friend, neighbour or acquaintance ... a significant number are abused in institutional contexts.⁵⁴

1.52 The National Child Safe Principles are designed to keep children safe from harm in their interactions with institutions. This is an important distinction: evidence suggests children can be at greater risk of abuse in an institutional context; child sexual abuse occurring in institutions is more likely to involve multiple perpetrators who abuse multiple victims; and, the traumatic consequences of this type of abuse can be exacerbated due to inadequate institutional responses.⁵⁵

1.53 The National Child Safe Principles were found to be the 10 most effective ways for institutions to protect children and prevent this abuse from occurring in the future.⁵⁶ While governments and organisations providing services to children have accepted the need for the National Child Safe Principles, the commitment to implement them is now crucial. Despite the historical context of the Royal Commission's work, it found clear evidence that child sexual abuse continues to occur,⁵⁷ and has occurred in 'almost every type of institution where children reside or attend for educational, recreational, sporting, religious or cultural activities.'⁵⁸ The clear inference of the Royal Commission's findings is that until organisations implement the National Child Safe Principles children remain at risk.

State Government response to Royal Commission recommendations

1.54 In response to the Royal Commission recommendations, the State Government developed a 10-year reform program supported by a Framework for Implementation.⁵⁹ The State Government has completed or commenced 95 per cent of the 310 Royal Commission recommendations applicable to the State.⁶⁰

54 Dr Donald Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, Royal Commission into institutional responses to child sexual abuse, Sydney, 2016, p. 11.

55 *ibid.*, p. 12.

56 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 12.

57 *ibid.*, p. 9.

58 Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p. 5.

59 Government of Western Australia, *Royal Commission into institutional responses to child sexual abuse – 2018 Progress Report*, Western Australia, December 2018, p. 8.

60 Government of Western Australia, *Healing Past Hurts, Protecting Children Now, Preventing Further Harm*, Western Australia, 2019, p. 7.

- 1.55 The Committee’s work in this inquiry has been responsive to the State Government’s intentions and targets for progressing the Royal Commission recommendations. Those most relevant to the Committee’s terms of reference (the implementation of child safe standards and the development of appropriate oversight) were identified at the outset of this inquiry as a Government priority for the 2019-20 financial year.⁶¹
- 1.56 The Committee embarked on an in-depth series of hearings with the relevant agencies responsible for overseeing children’s services in WA, including DPC, the agency responsible for managing the whole-of-government response to the Royal Commission recommendations, and the Department of Communities, the agency responsible for managing the implementation of the National Child Safe Principles.
- 1.57 As part of its investigation, the Committee visited Ireland and the United Kingdom, two jurisdictions that have experience responding to widespread child sexual abuse revelations with a sustained implementation of processes to make institutions safer for children. This proved invaluable to the Committee and resulted in a nuanced understanding about the challenges involved in implementing wholesale policies to improve the safety of children and deeper insight into how the implementation of child safe standards should be approached in Western Australia.

The Government response

- 1.58 At the date of publishing this report, the State Government has not announced how it is intending to proceed with the implementation of the National Child Safe Principles or the intended oversight provisions. However, the current evidence is that these remain a priority and that, prior to the COVID-19 state of emergency, the team leading the advice to Government was on track to provide it by the end of the 2019-20 financial year.⁶²

The complexity of implementing the Royal Commission recommendations

- 1.59 Implementing the Royal Commission’s recommendations is a difficult task. DPC noted it is important ‘not to underestimate the complexity of the task’, stating it is ‘going to push the state into territory we have not been before in terms of some responsibility for oversight of sporting clubs and religious institutions—thousands upon thousands of them. That is a very sensitive and complex task’.⁶³

The Royal Commission recommendations are going to push the state into territory we have not been before in terms of some responsibility for oversight of sporting clubs and religious institutions—thousands upon thousands of them. That is a very sensitive and complex task.

*- Mr Darren Foster, Director General,
Department of the Premier and Cabinet*

- 1.60 This complexity is driving the Government to take a systematic and methodical approach to ensure recommendations of the Royal Commission are implemented in a way that “stick” and avoid past

61 Government of Western Australia, *Royal Commission into institutional responses to child sexual abuse – 2018 Progress report*, Western Australia, December 2018, p. 21.

62 Ms Kim Lazenby, Department of Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 9.

63 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2009, p. 5.

patterns where there is an ‘initial flurry of activity and then it drops away.’⁶⁴

- 1.61 While not resiling from its earlier comments about the need to “scale up” community responses to protecting children from abuse, the Committee endorses the systematic and methodical approach being taken by the state government agencies charged with leading the implementation of the National Child Safe Principles and the provision of independent oversight. However, as the Committee noted, there are costs to delays (see paragraphs 1.31-1.35 and the timeliness of the implementation is discussed further in chapter 3).

Finding 6

The Committee endorses the systematic and methodical approach being taken by the state government agencies charged with leading the implementation of the National Child Safe Principles and the provision of independent oversight.

The essential features of a child safe system

- 1.62 The Committee explored the essential features a child safe system should have to operate successfully. Given the complexity and challenges associated with these tasks,⁶⁵ the Committee’s findings will, it is to be hoped, help inform the Government’s decision-making processes on these issues.

- 1.63 Witnesses were asked how a successful child safe system should operate to ensure the ongoing safety and wellbeing of children, particularly in relation to these main areas:

- the implementation of child safe standards;
- establishing independent oversight of child safe standards;
- the need to share information to protect the safety and wellbeing of children; and
- the extent of change required within communities, organisations and government.

- 1.64 The evidence obtained by the Committee suggested that clarity around the following matters is vital to ensure the effective operation of a child safe system:

- the way in which the community will help promote child safe approaches (see chapter 2);
- the way in which organisations will be supported to become child safe (see chapter 3);
- how organisations should be required to implement the National Safe Principles (see chapter 4);
- determining which institutions should implement the National Child Safe Principles (see chapter 5);
- how privacy can be maintained alongside responsible information sharing to ensure children’s safety and wellbeing (see chapter 6); and
- the way in which the independent oversight of the National Child Safe Principles should operate (see chapter 7).

64 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2009, p. 5.

65 In addition to the evidence cited from the Department of the Premier and Cabinet (refer to paragraph 1.59), the complexity of progressing the royal commission recommendations is highlighted in the latest Progress Report. See Government of Western Australia, *Healing Past Hurts, Protecting Children Now, Preventing Further Harm*, Western Australia, 2019, p. 4.

- 1.65 These matters, like the National Child Safe Principles themselves, are interdependent. Each must be resolved effectively for a system to operate successfully.

Requiring the expertise of the Children’s Commissioner

- 1.66 As the oversight body, this Committee has for several years been monitoring work by the Children’s Commissioner to develop child safe standards within a Western Australian context.⁶⁶ Through this process, the Committee is aware of both the importance of child safe approaches and the challenges associated with implementing them.
- 1.67 The Children’s Commissioner can be credited for many of the efforts made to improve child safe approaches across this State.⁶⁷ The Commissioner’s office launched its Child Safe Organisations program in April 2016 and embarked on a series of information sessions for relevant government and non-government stakeholders.
- 1.68 It is the Committee’s view that the office of the Children’s Commissioner has achieved considerable traction with its ongoing work in this area. This includes substantial activity in the pre-Royal Commission years as well as in the post-Royal Commission era advising agencies and child-related industries on how to become and remain child safe. Additionally, the Commissioner is helping to develop the whole-of-government response to the implementation of the National Child Safe Principles and, at the request of the Government, updating the existing child safe resources to incorporate language consistent with the National Child Safe Principles.⁶⁸
- 1.69 Taking into account the complexity and sensitivity of the task, as recognised by the Government,⁶⁹ it is the Committee’s strongly held view that the state would benefit from fully utilising the skills, expertise and experience of the Children’s Commissioner when considering how to implement the measures involved in compliance with the Royal Commission recommendations on Child Safe Standards and oversight. As the only statutory office with responsibility for promoting and monitoring the wellbeing of children and young people in Western Australia, the Committee notes that the Children’s Commissioner has worked closely with the Royal Commission from the outset. The office of the Children’s Commissioner has developed ways in which organisations can become child safe, and ways in which the Government can provide appropriate support. Continuing to draw on the expertise of the Children’s Commissioner will ensure the State is well placed to implement reforms which venture into what has been acknowledged to be unknown territory.

66 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, November 2019.

67 The majority of stakeholders questioned about their child safe approaches are aware of and are accessing the various resources available through the office of Commissioner for Children and Young People. Mrs Patricia Heath, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2019, p. 8. See also, for example, Ms Lorraine Donachie, Project Lead, SportWest, *Transcript of Evidence*, 4 March 2020, pp. 3 and 5; and Ms Renee Gioffre, General Manager, Child Sexual Abuse Royal Commission Implementation Team, Department of Communities, *Transcript of Evidence*, p. 17.

68 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, November 2019.

69 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 5.

Language and terminology used within this report

- 1.70 **Child Safeguarding** — the *action* that is taken to promote the welfare of children and enable children to have the best outcomes, to protect them from harm and to prevent harm from occurring.⁷⁰ It is also defined as a *duty of care* of private and public organisations to keep safe from harm all the children they come into direct and indirect contact with in their day-to-day operations and work.⁷¹
- 1.71 **Child Safe Approaches** — means keeping the best interest of a child as the primary consideration; recognising the value children have in society; and upholding and protecting the rights of children.
- 1.72 **Child Safe Organisation** — an organisation that employs child safe approaches.
- 1.73 **Child Safe Reform** — the activities, services, programs, policies and legislative or other strategies that need to be progressed in order to operate a child safe system.
- 1.74 **Child safe standards** — the lowercase term “child safe standards” is used in this report (often in evidence) to indicate a generic set of standards designed to improve child safety. The term Child Safe Standards is used by the Royal Commission.
- 1.75 **Child Safe System** — where children receive services from institutions who:
- have implemented child safe approaches, such as the National Child Safe Principles;
 - have independent oversight and information sharing to ensure positive outcomes for children; and which,
 - operate in communities that are hostile to child abuse.
- 1.76 **Child Protection** — part of the safeguarding process, it focuses on protecting individual children identified as suffering or likely to suffer significant harm and includes child protection procedures which detail how to respond to concerns about a child.⁷²
- 1.77 **Children** — for the purposes of this report a child is defined as any child or young person under the age of 18.
- *Note: the Committee would like to acknowledge that calling a young person a child can fail to acknowledge some important differences between children and young people, such as the difference in their desire and capacity for self-determination.*
- 1.78 **Information sharing** — the sharing or exchange of information, including personal information, about, or related to, the safety and wellbeing of a child or young person. This refers to the sharing of information between (and in some cases, within) organisations, including non-government organisations, government, law enforcement agencies, and independent regulator or oversight bodies. It also includes the sharing of information by

70 National Society for the Prevention of Cruelty to Children, *Safeguarding children and child protection*, n.d., accessed 28 May 2020, <https://learning.nspcc.org.uk/safeguarding-child-protection>.

71 Unicef Australia, *Child Safeguarding Policy*, June 2018, accessed 28 May 2020, <https://www.unicef.org.au/Upload/UNICEF/Media/1806-CS-Policy-UA.pdf>.

72 National Society for the Prevention of Cruelty to Children, *Safeguarding children and child protection*, n.d., accessed 28 May 2020, <https://learning.nspcc.org.uk/safeguarding-child-protection>.

and with professionals who operate as individuals to provide key services for children and young people.⁷³

- 1.79 **Institution** — the Royal Commission defined Institution very broadly within its Terms of Reference to ‘effectively include any entity or group of entities (including one that no longer exists) that provides or has at any time provided activities, facilities, programs or services of any kind that provide the means through which adults have contact with children.’⁷⁴ The term institution has been interchanged with the term “organisation” throughout the evidence and subsequently in this report. “Institution” is generally used when referring to all entities that provide a service, regardless of service setting context.
- 1.80 **National Child Safe Principles** — the Committee’s preferred term for the National Principles for Child Safe Organisations as adopted by COAG.
- 1.81 **Organisation** — in evidence and for ease of reference throughout the report – tends to be used when speaking about individual entities or specific types of institutions, but is also used interchangeably with “institution” in the sense that an “institution” may be providing services to which the National Child Safe Principles might apply.
- 1.82 **Personal information** — information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whose identity is apparent or can reasonably be ascertained from the information or opinion.⁷⁵
- 1.83 **Services/ Provider of** — inclusive of activities, facilities, programs or services of any kind that provide the means through which adults have contact with children.

73 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 1 – Our inquiry*, Commonwealth of Australia, 2017, p. 324. Note: This definition reflects that of the Royal Commission; however, the Committee has broadened it to include the safety and wellbeing of children and young people.

74 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p267. See also: Royal Commission into institutional responses to child sexual abuse, *Letters Patent*, accessed 28 July 2020, <https://www.childabuseroyalcommission.gov.au/terms-reference>.

75 *Freedom of Information Act 1992*, Glossary.

Chapter 2

Creating child safe communities

[T]he implementation of royal commission recommendations is complex and long-term reform. It requires multiagency approaches and responsibilities, and a commitment to cultural change.

Department of the Premier and Cabinet ⁷⁶

Parents and the community must support child safe approaches

Child safe institutions exist in child safe communities.⁷⁷

- 2.1 The Royal Commission recognised that for institutions to be safe for children, the communities in which the institutions are located need to be safe for children.⁷⁸
- 2.2 Children are still experiencing abuse and neglect when accessing services away from their home. A focus on communities is needed to address child sexual abuse wherever it occurs. This involves creating an environment where, ideally, institutional child sexual abuse is prevented, and where it does occur, is swiftly identified, reported and responded to.
- 2.3 The will not occur until both communities and institutions are able to ensure:
 - that children are valued;
 - that children’s rights are respected; and
 - that children’s best interests are paramount.⁷⁹
- 2.4 The broader community, as well as institutions, must understand that child safety is everyone’s responsibility.

Misunderstandings about child abuse need to be addressed

There are misperceptions, attitudes, beliefs and behaviour in all Australian communities that can enable, encourage or normalise sexually abusive behaviour towards children.⁸⁰

⁷⁶ Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 3.

⁷⁷ Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 294.

⁷⁸ *ibid.*, p.9.

⁷⁹ These are universal rights established for children by the United Nations Convention on the Rights of the Child (UNCRC). As a party to the UNCRC, Australia has a duty to make sure that all children in Australia enjoy these rights. See: Australian Human Rights Commission, *Child Safe Organisations, Children’s rights*, n.d, accessed 9 June 2020, < <https://chidsafe.humanrights.gov.au/children-young-people/childrens-rights>>.

⁸⁰ Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 - Making institutions child safe*, Commonwealth of Australia, 2017, p. 9.

- 2.5 The Royal Commission revealed a variety of misperceptions that still exist in the community which can directly contribute to child sexual abuse or deter disclosure of abuse. Examples of views or behaviours that are detrimental to the safety of children include:
- children being considered as owned possessions of families;
 - children’s voices being silenced, and their ability to influence their own lives limited;
 - believing that children are complicit or culpable for their sexual relations with adults rather than being victims of abuse;
 - not believing children when they disclose abuse or not considering children to be reliable witnesses; and
 - mistakenly believing that children with a disability are asexual or that they do not suffer the harmful impacts on abuse.⁸¹
- 2.6 The social taboo and stigmatisation surrounding child sexual abuse can censor or even prohibit informed and open discussion about it.
- 2.7 The Blaxell Report provides noteworthy examples in Western Australia of how prevailing attitudes can directly contribute to the failure of adults to respond appropriately to allegations made by children about sexual abuse, and how these attitudes make children reluctant to make a complaint in the first instance.⁸²

Educating communities is crucial for prevention

- 2.8 Educating the community about the risk of institutional child sexual abuse — how it can be prevented, identified, reported and responded to, is a crucial step to help parents and the community support child safe reform.
- 2.9 Communities need support to change attitudes or behaviours, and many lack an understanding or awareness of the nature of child abuse, including:
- the characteristics of adult perpetrators;
 - grooming practices;
 - risks to children in both physical and online environments; and
 - harmful sexual behaviours in children.⁸³
- 2.10 Parents and caregivers are often in a unique position to help educate and protect children from abuse if they are able to have conversations with children that reinforce the child safe messages children are receiving from schools and other services they access. Education strategies for parents and caregivers should embed the confidence to ‘talk early and talk often’ with children about child abuse.⁸⁴

81 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 54.

82 Hon Peter Blaxell, *St Andrew’s Hostel Katanning: How the system and society failed our children*, Government of Western Australia, Perth, 2012, pp. 286, 314.

83 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 10.

84 *ibid.*, p. 80.

- 2.11 The Royal Commission recommended that prevention education, developed as part of a national strategy to prevent child abuse,⁸⁵ should be delivered through schools, day care, sport and recreational settings, other institutional and community settings, and through social media and other marketing campaigns.⁸⁶ The National Office for Child Safety is currently developing this strategy.⁸⁷ As part of this strategy, the Department of Communities informed the Committee about the plan to create a ‘Western Australian Centre for Excellence in responding to child abuse and neglect...to provide research, training and capacity building specific to the unique WA context’.⁸⁸
- 2.12 The Committee welcomes this development. There is clearly benefit in developing and delivering prevention education designed for parents and caregivers and others which caters to the specific needs of the Western Australian community as soon as possible.

Finding 7

There is clearly benefit in developing and delivering prevention education designed for parents and caregivers and others which caters to the specific needs of the Western Australian community as soon as possible.

Tailored education prevention strategies

[T]he safety of children should not depend on where they live, their right to safety should not depend on their social or economic position, their cultural context or their abilities and impairments.⁸⁹

- 2.13 Many of the strategies recommended by the Royal Commission involve delivering prevention education tailored to specific groups of parents, community groups, and children. This includes Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, people with disability, and regional and remote communities.

Education strategies should include information about children’s rights

- 2.14 Children are safer when they are valued, their rights are respected and their best interests are paramount.⁹⁰ As the Western Australian Council of Social Services (WACOSS) has pointed out, prevention education should include information about the value and status of children in order to influence community views of children and help bring about the cultural shift required to keep children safe.⁹¹
- 2.15 According to the submission from the Valuing Children Initiative, without strategies to highlight children’s ‘inherent value to both individual families and society,’ efforts to

85 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 107-108, recommendations 6.1, 6.2 and 6.3, see appendix 2 for full text of these recommendations.

86 *ibid.*, p. 107.

87 National Office for Child Safety, *National Office for Child Safety*, n.d, accessed 26 June 2020, <https://pmc.gov.au/domestic-policy/national-office-child-safety>.

88 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 3.

89 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 169.

90 *ibid.*, p. 157.

91 Submission 8, Western Australian Council of Social Service, p. 6.

improve child safety through implementing structural tools like child safe standards will 'always only be a partial response.'⁹² The Committee supports this view, noting evidence that children are more at risk of abuse and neglect when they lack status, dignity and respect.⁹³

Finding 8

Prevention and child safe education should include information about the inherent value and status of children in order to influence community views of children and help bring about the cultural shift required to keep children safe.

Finding 9

To complement the work underway to implement Royal Commission recommendations 6.1, 6.2, and 6.3, and the plan to create a Western Australian Centre for Excellence, the State Government must ensure the development and delivery of child safe education mechanisms tailored to parents, community groups, and children across the community. Further, the mechanisms should include information about the importance of children's rights.

Engagement and Co-design

Engaging the community will improve child safe approaches

2.16 Strategies that draw on the expertise of parents, carers and the broader community will assist institutions to implement their child safe policies.⁹⁴ Engaging with parents and carers also aids in the development of tailored and culturally relevant policies, and ensures the diverse circumstances of children are taken into account. These diverse circumstances could include:

- consideration of the cultural safety of Aboriginal children;
- the needs of children with a disability;
- the needs of children from diverse cultural or religious backgrounds;
- the needs of very young children;
- gender differences;
- the experiences of lesbian, gay, bisexual, transgender and intersex children, and
- the challenges of children living in remote locations.⁹⁵

2.17 With all of these children, the impact of prior trauma must be understood and accounted for by ensuring trauma informed approaches are incorporated into child safe approaches.⁹⁶

92 Submission 7, p. 2.

93 Submission 8, Western Australian Council of Social Service, p. 6; Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 157.

94 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 169.

95 *ibid.*, pp. 169-170.

96 *ibid.*, p. 170; Dr Nathan Gibson, Chief Psychiatrist of Western Australia, *Transcript of Evidence*, 8 May 2019, p. 9.

- 2.18 Co-designing systems in partnership with parents and carers, and paying special regard to engaging with interested stakeholders and advocacy groups in local communities, such as Aboriginal leaders and Aboriginal Community Controlled Organisations (ACCOs), will help ensure child safe approaches are culturally appropriate. It will also help governments and institutions recognise and understand the equity needs of children who receive services.⁹⁷
- 2.19 The Committee would be supportive of an approach, which may need to be led by Government, which directly engages with families and communities to ascertain the best way to develop and implement child safe approaches in their communities, including facilitating the means by which institutions can draw on the expertise of families and communities to help co-design their child safe approaches.

Finding 10

Direct engagement with families and interested stakeholders and advocacy groups in local communities will help ensure child safe approaches are culturally appropriate, and that the equity needs of children who receive services are met.

Children should be included in developing and implementing child safe approaches

What you need to be doing is come to us teens and just ask us the best way to get through to us. Asking other adults isn't very smart ...⁹⁸

- 2.20 Taking account of the diverse needs of children and their parents and carers is a very complex matter. It is now a well-established fact that any strategy that concerns the safety and wellbeing of children should engage with children directly. Actively engaging with children establishes a broader cultural shift around keeping children safe and increases their safety in practice. The Royal Commission found that children are safer when they are acknowledged, taught about their right to be heard, listened to, and taken seriously.⁹⁹
- 2.21 The Royal Commission emphasised the importance of safe and ethical participation by children and young people in decisions affecting them, stating that care must be taken to account for different ages, capacities, cultural and linguistic contexts 'to ensure that all voices are heard.'¹⁰⁰
- 2.22 Direct engagement with children must extend to the implementation process of the National Child Safe Principles. These will be more effective if account is taken of how children respond when they are asked what will make them feel safer when they are accessing services. The Children's Commissioner states that understanding and engaging with the views of children and young people is core to the effective implementation of the National Child Safe Principles.¹⁰¹

97 Submission 8, Western Australian Council of Social Service, pp. 4-5.

98 As quoted in Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions safe*, Commonwealth of Australia, 2017, p. 104.

99 *ibid.*, p. 157.

100 *ibid.*, p. 104.

101 Mr Colin Pettit, Commissioner for Children and Young People Western Australia, Letter, 16 April 2020, p. 12.

Finding 11

Direct engagement with children by the Government and institutions is a vital part of developing and implementing child safe approaches.

Teaching children about their rights will help protect them and improve services

- 2.23 WACOSS notes that when children are not ‘front and centre in any response’ child safe standards are ‘unlikely to be successful’.¹⁰²
- 2.24 The Youth Council of Western Australia (YACWA) spoke about the importance of adapting information about children’s safety and rights into language that can be understood by different ages and cohorts. This information should be designed in partnership with young people so they understand it, and, ultimately, are ‘empowered to stand up against [child abuse], to voice concern, to feel safe and have trusted people they can go to’.¹⁰³
- 2.25 Inter-jurisdictional evidence focusing on the rights of children in society and creating a conversation about their place in the community has helped embed the contemporary acceptance that children are citizens in their own right.¹⁰⁴ Children have the right to access proper services and protections, which in turn empowers parents and caregivers to demand better services for children in their care and encourages institutions to think about how they can enhance their services to improve the wellbeing of children.¹⁰⁵

Children’s rights in action – Youth Parliament of Wales

- 2.26 In 2014, the Welsh Assembly (the Senedd) developed a Youth Engagement Charter committing the Senedd to listen, respect, and act on ‘what young people across Wales say’.¹⁰⁶ After making this commitment, community pressure across Wales led to a “meeting of the whole” Senedd decision to establish the Youth Parliament of Wales.
- 2.27 Over 5,000 young people were consulted when determining how the Youth Parliament should be run.¹⁰⁷ The first elections were held in 2018 with over 28,000 young people registered to vote and 500 applicants for 40 open-ended constituency positions, with a further 20 positions nominated by partner agencies to ensure diversity amongst the members. Youth members, aged 11 to 18 years, are voted in on issues rather than alliance to a political party. They meet every 2-3 months and engage with children and young people all across the country. Concerns raised at these meetings are then raised during the formal Youth Parliament Sessions held in the Senedd over each 2-year term, including a joint sitting meeting of the whole Senedd where youth issues are discussed and voted on.¹⁰⁸ The First Minister of Wales, and other Assembly members, also attend Youth Parliament sessions.

102 Louise Giolitto, CEO, Western Australian Council of Social Service, Letter, received 22 July 2019, p. 2.

103 Mr Ross Wortham, Youth Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 10.

104 Ms Catriona Williams, Children in Wales, *Briefing*, 4 October 2019 (Cardiff, Wales);

105 Irish Ombudsman for Children, *Briefing*, 30 September 2019 (Dublin, Ireland); Centre for Wellbeing and Child Protection, University of Stirling, *Briefing*, 1 October 2019 (Edinburgh, Scotland); Scotland’s Commissioner for Children and Young People, *Briefing*, 3 October 2019 (Edinburgh, Scotland).

106 Welsh Youth Parliament, *Our History*, n.d., accessed 18 July 2020, <https://www.youthparliament.wales/history>.

107 *ibid.*

108 National Assembly for Wales Staff, *Briefing*, 4 October 2019 (Cardiff, Wales).

2.28 The Committee was briefed about the genuine engagement between the views and issues raised by the Youth Parliament members and Welsh Assembly members, who formally pledged to work together in the Senedd. The Welsh Assembly believes it is better placed to understand and make decisions on issues that are concerning young people across Wales. Youth Parliament members also assist the overall work of the Senedd; contribute to evidence gathering of committees; and have determined the terms of reference for one committee's inquiry.¹⁰⁹

Lessons from Ireland

Box 2.1: Hearing the views of children in Ireland is not an optional extra

Ireland has a well embedded system for hearing the views of children.

Background

Statutory obligations exist for organisations providing services for children to develop, implement and report against child safeguarding plans that must meet certain safety and wellbeing standards, not dissimilar in nature to the National Child Safe Principles. Part of the obligation placed on organisations is to engage with, and seek the views of, children.

Government activities to support this approach

- The Department for Children and Youth in Ireland produced a *National Strategy on Children and Young People's Participation in Decision Making 2015-2020* (National Strategy).¹¹⁰
- The strategy was strengthened by constitutional change in 2015 which gave status to the principles of the best interests of the child and hearing the views of the child.¹¹¹

Implications in practice

These different government supports work together in the following ways:

- they embed the idea and acceptance that children are citizens in their own right;
- statutory obligations reinforce the view that seeking the participation and views of children is not optional in circumstances where decisions have an impact on them; and
- children are consulted about the potential impacts policy and legislation may have on them, much like any other group that might be impacted about these matters, replacing the need for child impact statements.¹¹²

2.29 The experience in Ireland shows the impact of measures embedding a system for hearing the views of children was a revelation to organisations and government of just how useful consulting with children can be, creating opportunities for children to be listened to which in turn empowered caregivers and children to speak more openly about the quality of the services children were receiving.¹¹³

109 National Assembly for Wales Staff, *Briefing*, 4 October 2019 (Cardiff, Wales).

110 Department of Children and Youth Affairs, *National Strategy on Children and Young People's Participation in Decision Making 2015-2020*, Government Publications, Dublin, Ireland, June 2015.

111 The Thirty-first amendment to the *Constitution (Children) Act 2015 (Article 42A)* was added to the Constitution and signed into Irish law on 28 August 2015. This amendment provides a specific affirmation of rights and protections to be enjoyed by children as children.
https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_fundamental_rights.html.

112 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019 (Dublin, Ireland).

113 Department of Children and Youth Affairs, *Briefing*, 30 September 2019 (Dublin, Ireland).

2.30 Certainly, the Children’s Commissioner has statutory obligations to promote the participation of children and young people in making decisions that affect their lives, and to encourage and develop guidelines for government and non-government agencies to seek the participation of children in decision-making.¹¹⁴ For example, the Children’s Commissioner’s *Involving Children and Young People: Participation Guidelines*¹¹⁵ reflects similar principles to Ireland’s National Strategy (see Box 2.1). However, unlike in Ireland, Western Australia currently places no administrative or statutory requirements on government and non-government agencies to facilitate children’s participation in decision-making or even to seek out their views, reducing the motivation for these bodies to utilise the Children’s Commissioner’s resources.

2.31 In the Committee’s view, the implementation of the National Child Safe Principles presents an ideal opportunity for the active inclusion of children’s views in the policy-making process.

Finding 12

The implementation of the National Child Safe Principles presents an ideal opportunity for the active inclusion of children’s views in the policy-making process.

2.32 The Committee therefore suggests that, to support the implementation of the National Child Safe Principles, the Government should give urgent consideration to devising methods of incorporating the participation of children and young people to assist in decision-making as a key objective in policy development and design.

Recommendation 2

To support the implementation of the National Child Safe Principles, the Government should give urgent consideration to devising methods of incorporating the participation of children and young people to assist in decision-making as a key objective in policy development and design.

2.33 Witnesses in Ireland indicated this approach replaced the need for child impact statements. As representatives of the Irish Department of Children and Youth Affairs explained to the Committee, children in Ireland are consulted on the potential impacts any policy and legislation may have on them, much like any other relevant group. These consultations effectively take the form of child impact statements.¹¹⁶

2.34 In the Committee’s view, consideration of these matters in Western Australia would necessarily include questions about whether additional resources would be required by the Children’s Commissioner to further develop participation guidelines to build the capacity of the community, institutions and government to hear the voice of the child and seek the participation of children in decision-making.

114 *Commissioner for Children and Young People Act 2006*, s. 19(b), s. 20(d).

115 *Commissioner for Children and Young People, Involving Children and Young People: Participation Guidelines*, Western Australia, October 2009.

116 *Department of Children and Youth Affairs/TUSLA – Child and Family Agency, Briefing*, 30 September 2019 (Dublin, Ireland).

Finding 13

The Government consider whether additional resources would be required by the Commissioner for Children and Young People to further develop participation guidelines to build the capacity of the community, institutions and the government to hear the voice of the child and seek the participation of children in decision-making.

Recommendation 3

That the Government consider whether additional resources would be required by the Commissioner for Children and Young People to further develop participation guidelines to build the capacity of the community, institutions and the government to hear the voice of the child and seek the participation of children in decision-making.

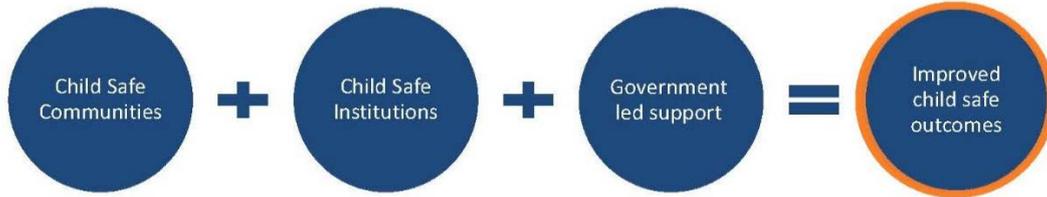
Creating a community that is hostile to child abuse

- 2.35 Once a community is armed with the information, language and resources to make appropriate changes to its own attitudes and behaviours, it will also put pressure on organisations to embed child safety as part of its processes.
- 2.36 Individuals in a well-informed and proactive community should be enabled and supported to do the following:
- Meaningfully challenge attitudes, beliefs or behaviour that enables or normalises sexually abusive behaviour towards children. This will make it harder for people living in those communities to groom and abuse children. It will also increase the likelihood of abuse being identified and reported, which will make it easier for victims to disclose abuse.
 - Understand and recognise the significant impact child abuse can have on an individual child, that child’s family and the broader community, and understand that responsibility for preventing abuse belongs to everyone.
 - Become mobilised agents of change which will empower individuals actively to assist in the prevention of child abuse and to respond to and support children who may be at risk of abuse.¹¹⁷
- 2.37 Child safe communities will hold governments to account for the provision of:
- appropriate child safe services and supports;
 - adequate access to capacity building resources for organisations seeking to become child safe or improve child safe approaches;
 - effective and genuine engagement with communities, families and directly with children; and
 - adequate education and understanding about child abuse to better protect children or respond appropriately to concerns.

117 Royal Commission into institutional responses to child sexual abuse, *Final Report, Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, pp. 9-10; Centre for Child Wellbeing and Protection, University of Stirling, *Briefing*, 1 October 2019 (Edinburgh, Scotland).

2.38 The interdependent relationship between child safe communities, child safe institutions and child safe supports working towards child safe reform is illustrated below.

Figure 2.1: Communities, institutions and Government-led child safe supports working towards improved child safe outcomes



2.39 Child safe communities, appropriate government-led policies and other supports, such as independent oversight advice and educational resources must support institutions and enable them to implement child safe approaches effectively. This will assist in ensuring any changes institutions make are effective at improving safety and wellbeing outcomes for children.

Finding 14

A whole-of-government response to the Royal Commission recommendations could involve direct engagement with families, interested stakeholders and advocacy groups in local communities with particular emphasis on considering specific strategies for how the community can become involved in the development of child safe approaches.

Chapter 3

Creating child safe organisations

Preventing child abuse in organisations takes more than policies and procedures; it requires leadership, accountability and culture change. It means listening to children and transforming an organisation to put children’s dignity, wellbeing and safety at the heart of every decision.

Keeping Children Safe ¹¹⁸

Positive outcomes for children

- 3.1 The underlying objective of any child safe process in an institutional setting is to establish beyond doubt that no child is exposed to the risk of abuse through the everyday working of the institution’s leadership and staff.
- 3.2 Child safety requires action by individual organisations to examine and then adapt their own processes. Essentially, institutions must have in place robust policies and procedures outlining how their services, operations, leadership and staff will not put children at risk of harm, and what constitutes an appropriate response when concerns and incidents arise.
- 3.3 Clearly, a lack of focus on child safety in organisational processes can have long term and costly impacts. In contrast, successfully implementing child safe approaches such as the National Child Safe Principles can have positive outcomes which, as reflected in the *Wheel of Safety* developed by the Australian Human Rights Commission, include children being safe, happy and engaged when accessing services.¹¹⁹

Finding 15

Positive outcomes of child safe approaches such as the National Child Safe Principles include children being safe, happy and engaged when accessing services outside the home.

Complex, challenging and far reaching cultural change

Genuine cultural change is needed for institutions to become child safe, but creating change in institutions and communities is complex and challenging.¹²⁰

- 3.4 As the previous chapter explained, before the goals of successful child safe reform in institutions are realised, wholesale cultural change is required.

118 Keeping Children Safe, Introduction, 2020, accessed 26 May 2020, <https://www.keepingchildrensafe.global/introduction/>.

119 See the *Wheel of Child Safety* in Australian Human Rights Commission, *National Principles for Child Safe Organisations*, Australian Human Rights Commission, Sydney, 2018, p. 5.

120 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 286.

- 3.5 Many of the institutions that may be required to implement the National Child Safe Principles are at the coal face of providing services to children, and a number of these services are vitally important to the health and wellbeing of the children they serve. The objective of implementing the National Child Safe Principles is not to prevent these services from working properly. This is an important point, worthy of some discussion.
- 3.6 The Department of the Premier and Cabinet (DPC) advised the Committee that the number of institutions to which the National Child Safe Principles could apply is approximately 25,000.¹²¹ This includes organisations of all different types and sizes, as children receive services from providers located across multiple industry sectors and service settings in government, non-government, community and religious organisations, and with a vast geographical spread across the State.
- 3.7 What has become clear during the course of this inquiry is that there is no simple way forward. Evidence received by the Committee suggests that organisations agree with and understand the importance of the National Child Safe Principles. Their demand is for straightforward information about how to incorporate the Principles into practice.¹²²
- 3.8 Some witnesses suggest the implementation of the National Child Safe Principles cannot occur without expending a lot of time and money to research ways in which they can be achieved.¹²³ Concern was expressed that if this time and money is taken away from providing essential services, it will be to the detriment of children they are seeking to serve –
- There is no funding for the training of the staff in child-safe stuff. There is no funding for someone to drive the work that needs to be done within an organisation. So if you do not have your own fundraising arm, you have to take it out of service delivery or not do it, so that is the bottom line. The child-safe stuff is critical and most agencies know it is critical, so they have actually had to either [fund it] out of reserves or have to fund it through cutting service delivery, or some other area, in order to do it, which is not an ideal situation.¹²⁴
- 3.9 Some services have already invested time and resources in child safe practices and systems and in training and employing staff with expertise in working with children, and they want to be sure this prior commitment can be built upon rather than displaced by processes to implement the National Child Safe Principles.¹²⁵
- 3.10 In the Committee's view, there is reason to be concerned for smaller organisations or organisations with very limited capacity to implement and provide services in accordance with the National Child Safe Principles. The Committee is very keen to encourage the Government to ensure adequate government and industry supports are in place and

121 Mr Scott Campbell, Principle Policy Officer, Social Policy Unit, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 3.

122 Ms Lorraine Donachie, Project Lead, SportWest, *Transcript of Evidence*, 4 March 2020, p. 3.

123 Mr Peter Walton, Honorary Commissioner, Scouts WA, *Transcript of Evidence*, 4 March 2020, pp. 5-6; Ms Katrina Lane, State Commissioner, Girl Guides Western Australia, *Transcript of Evidence*, 4 March 2020, p. 6.

124 Ms Jennifer Hannan, AM, Executive Officer, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 9.

125 Louise Giolitto, CEO, Western Australian Council of Social Service, Letter, received 22 July 2019, p. 2.

accessible for every organisation implementing the National Child Safe Principles without jeopardising the service provision to children.

3.11 It is worth noting that it may be helpful for an organisation to plan for the implementation of the National Child Safe Principles, even before they may be obligated to do so. This will clearly be most effective once a number of Government-led decisions have been made, including who will be required to implement the National Child Safe Principles and the timeframe for implementation. In the meantime, it would certainly be helpful for organisations to be made aware of the support, advice and assistance they may be able to access to help them become child safe.

3.12 One of the guiding principles in implementing these reforms is that even small organisations with limited capacity to comply with complex regulation can become effectively child safe. The objective of these reforms is not to divert services away from children but to ensure that in receiving those services children are not placed at risk of sexual abuse.

Finding 16

Approximately 25,000 organisations located across the State will be required to actively engage with the child safe reform process and implement the National Child Safe Principles.

Finding 17

There is no single-way for institutions to implement the National Child Safe Principles. Appropriate government and industry supports should be made available as soon as possible to support the realistic capacity of organisations to implement the National Child Safe Principles without jeopardising the services delivered to children.

3.13 Notwithstanding the above considerations, preventing child abuse is everybody’s business and ultimately organisations have a responsibility to successfully become child safe. There is a variety of ways in which organisations who expect to implement the National Child Safe Principles can prepare themselves to do so. In the Committee’s view, some of the most effective action involves organisations changing the culture of their operations and placing children and their safety at the centre of decision-making and activities. This chapter discusses ways in which an organisation can support its own cultural shift to become child safe.

Continuous routine improvement

3.14 The road an individual institution will take to become child safe will depend on its unique set of characteristics and its capacity to devote time and resources to implement child safe approaches. Focussing on the practices that can happen *every day* can make the implementation of the National Child Safe Principles feasible and practical.

3.15 According to the Children’s Commissioner, many of the changes recommended by the Royal Commission are routine and may not require a lot of changes to how an organisation operates.¹²⁶

3.16 The wholesale change required primarily relates to rebalancing the attitudes, behaviours and actions of people in organisations (and the community) to place the safety of children before other considerations. It may require “flipping” the way in which some decisions are made so that the safety of children is considered first, but it does not necessarily equate to changing entire processes.

Child sexual abuse can be prevented. However, there is no single solution and multiple complementary initiatives are required to address the complex issues involved.

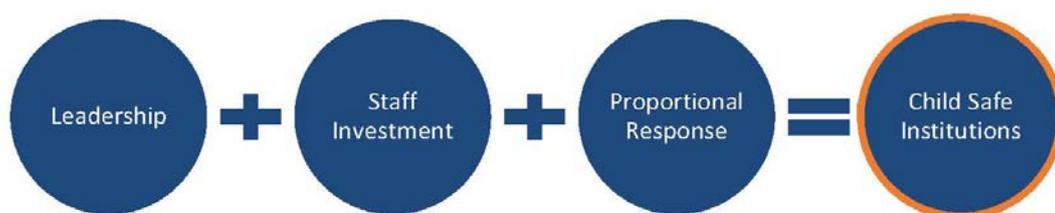
- Royal Commission, Volume x

3.17 What is needed is an assessment of an organisation’s processes to ensure children are not being put at risk of harm when using their services and to replace any attribute or activity in an institution that could undermine child safety.¹²⁷

3.18 After studying the National Child Safe Principles in some detail and considering the extensive body of evidence submitted to its inquiry, the Committee has formed the view that the following steps, stemming from the principles, will assist organisations build their internal capacity to make child safe decisions as a matter of course, every day:

- embedding child safety into their leadership and governance;
- investing in staff capacity to operate in a child safe manner; and
- implementing the National Child Safe Principles in a proportional and appropriate way

Figure 3.1: Building internal capacity of institutions to become child safe – every day



Embedding child safety in leadership and governance

3.19 The Royal Commission called for child safety to be a commitment at every level of an organisation, highlighting that if child safety became part of the organisation’s culture guiding the way things are done, then children will be better protected from abuse and the identification of, and proper response to, child sexual abuse would be facilitated.

126 Mr Colin Pettit, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2020, p. 17.

127 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 211; *ibid.*, p153.

Committing to child safety through organisational leadership

- 3.20 While it is very important that a child safe culture needs to encompass the entire organisation, to be successful in practice, a leadership body that creates specific and tangible actions on child safety will be effectively driving cultural change from the outset.
- 3.21 Organisational leaders must question themselves about what actions they can take to enhance child safety and create an ongoing focus on child safety by the entire organisation.
- 3.22 The Royal Commission provided examples of institutional leaders exhibiting attitudes and behaviours that support a child-focused culture through, for example, the kind of people they hire, encouraging staff members to embrace a child-focused culture and encouraging practices that symbolise and support a positive child-focused culture.¹²⁸
- 3.23 The Children’s Commissioner’s guidelines for the National Principles for Child Safe Organisations suggest making a public commitment to child safety and having the leadership champion and model a commitment to child safety from the top down and encourage it from the bottom up.¹²⁹
- 3.24 In the Committee’s opinion, one of the most important things leaders can do is actively engage with the concept of child safety by involving children and their families in decision-making. The Royal Commission noted that to be child safe, an organisation must be child friendly and embrace the participation and empowerment of children (see paragraph 1.36).
- 3.25 This is a child friendly approach and could be used by the leadership of an organisation to discuss with children and their caregivers, and the local community, whether children feel “safe, happy and engaged” when accessing their services.¹³⁰
- 3.26 The specific conversation would vary depending on the type of organisation, service context and the needs of children. Some organisations may require outside facilitators with the resources or expertise to achieve this engagement (see table 3.1). Whichever way it occurs the participation of leadership is crucial.
- 3.27 This type of child friendly approach would be understood by children and the community, and broadly across staff within an organisation, as signifying a willingness to engage directly with children and take their concerns seriously.
- 3.28 Lessons learnt from direct child friendly engagement by the leadership will also contribute to the effective development of governance procedures designed to support child safety, as discussed in the next section. Most importantly, having the leadership of an organisation

128 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 155.

129 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, November 2019, p. 10.

130 See the *Wheel of Child Safety* in Australian Human Rights Commission, *National Principles for Child Safe Organisations*, Australian Human Rights Commission, Sydney, 2018, p. 5.

engage in specific and tangible child friendly actions ensures that the organisational risk of being child safe is being borne by the right people — those who provide leadership.¹³¹

Finding 18

It is important that organisational leadership actively engages in tangible, child friendly actions and takes direct responsibility for the safety and wellbeing of all children accessing the organisation's services.

Finding 19

Organisational change is more effective where leadership engages directly with children and young people and their families about how the organisation can become child safe.

Governance

Integrity, transparency and accountability, risk management, culture and ethics are important elements of good governance and can help an institution to meet its objectives.¹³²

3.29 According to the Royal Commission, for an organisation to be child safe it must have governance arrangements in place to specifically support the implementation of child safe standards.¹³³ The Children's Commissioner suggests these governance arrangements should include:

- arrangements to facilitate the implementation of child safety and wellbeing policy at all levels;
- a code of conduct that provides guidelines about expected behaviours and responsibilities;
- risk management strategies that focus on the prevention, identification and mitigation of risk to children and young people; and
- staff and volunteers understanding their obligations on information sharing and recordkeeping.¹³⁴

3.30 These are important aspects of a governance structure that identifies how an organisation intends to meet its obligations under the National Child Safe Principles. They must be underpinned by a set of clear accountabilities for all levels of an institution's governance structure, including the leadership.¹³⁵

131 The importance of this was explained to the committee by Ms Sarah Blackmore, Keeping Children Safe, *Briefing*, 8 October 2019 (London, England). Also see *Case Study 1 – Role of a safeguarding manager* on page 38.

132 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 147.

133 *ibid.*

134 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, November 2019, p. 10.

135 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 147.

Governance structures must not replace action

- 3.31 There is a risk of putting too much importance on governance rather than engaging with the child safety practices the governance structures promote. The Children's Commissioner drew the Committee's attention to the importance of ensuring that child safe practices are actually applied rather than just being present in a policy document, noting evidence uncovered by the Royal Commission of situations where appropriate governance structures were in place but children were nonetheless put at risk.¹³⁶
- 3.32 In many ways, the Royal Commission provided the opportunity for organisations to reflect on their performance in providing a safe environment for children. This experience has led to some critical reflection about the effectiveness of child safeguarding policies, with many organisations becoming aware that improvements are needed.
- 3.33 A number of peak and national sporting bodies commented that having robust policies is not enough and will not achieve their intended outcome of child safety if the policies are not employed on the ground at a local club level, in every interaction a club might have with a child.
- 3.34 This point is demonstrated by Cricket Australia who, prior to the Royal Commission, had in place a Member Protection Policy that was circulated through state and territory cricket organisations. Subsequent to the Royal Commission, Cricket Australia identified that the policy was not getting the "cut through" to volunteers, members and parents: the importance of keeping the sporting environment safe, and how to achieve that, was not understood across the board.¹³⁷
- 3.35 A similar example is provided by Tennis Australia who have had a Member Protection Policy in place since 2000. Following the Royal Commission, a survey conducted by Tennis Australia found many of its own staff did not know about the policy or even where to find it. Tennis Australia acknowledged something needed to be done to "bring to life" their policy.¹³⁸
- 3.36 Evidence received by the Committee has highlighted that at times the existence of "dense policy" can be difficult—and costly—for organisations to decode and use and ensure that everybody in their organisations become familiar with its contents.¹³⁹ The Committee was reminded that people do not 'volunteer to work with youth to be an expert on a 20-page document. It is heavy reading, and to internalise it would be challenging for most people.'¹⁴⁰
- 3.37 These observations highlight that having good systems and processes for checking and maintaining safety and wellbeing is important but not sufficient in and of itself to maintain

136 Mrs Patricia Heath, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2020, p. 11.

137 Mr Andrew Ingleton, Executive General Manager, Cricket Australia, Child Safe Sport Toolkit online training module, Slide 4, Australian Sports Commission, viewed via login on 27 May 2019.

138 Mr Peter Petersen, Integrity Officer, Tennis Australia, Child Safe Sport Toolkit training module, Slide 4, Australian Sports Commission, viewed via login on 27 May 2019.

139 Mr Rob Thompson, Chief Executive Officer SportWest, *Transcript of Evidence*, 4 March 2020, p. 4.

140 Mr Peter Walton, Scouts WA, *Transcript of Evidence*, 4 March 2020, p. 4.

children’s safety. Cultural change within institutions to put the wellbeing of children and young people first must be a priority.¹⁴¹

- 3.38 Vicsport, who have experience with monitoring child safe standards,¹⁴² observe that organisations who are effectively child safe will have child safeguarding embedded as an action item throughout the organisation, from the board down, stating ‘policies are important, having them in place is important, but it is about embedding them into our day-to-day operation, because at the end of the day we are all responsible’.¹⁴³
- 3.39 Having child safety on the agenda at board meetings and at local team meetings can help keep child safety a priority. Even more significantly, it also highlights the importance leadership is attributing to embedding child safety into governance structures and every day practice.
- 3.40 There are numerous examples detailed by the Royal Commission where child safe policies and codes of conduct were in place but children were still abused.¹⁴⁴ In the Committee’s view, the importance of embedding the National Child Safe Principles in the culture of an organisation rather than simply overlaying them onto the governance structure as a “compliance” or “tick box” activity cannot be overstated.¹⁴⁵

Finding 20

The National Child Safe Principles should not be overlaid onto governance structures as a compliance or tick box activity. Instead, they must extend beyond codes of conduct and child safe policies to achieve the “cut through” to change everyday practice about how child safety is regarded.

Investing in child safe culture and staff capacity

- 3.41 Capacity building can improve child safe culture and is an important step towards implementing child safe approaches.¹⁴⁶ If an organisation’s leadership is actively seeking to embed child safe approaches into their core operations, adequate investment in the capacity of their staff—at every level of the organisation—will help this occur more effectively.
- 3.42 Good implementation requires attention to be paid to both the competencies and skills of the individuals and the institutions involved; capacity building strategies such as training, supervision, coaching, and consultation will improve the success of implementation.¹⁴⁷

141 Louise Giolitto, CEO, Western Australian Council of Social Service, Letter, received 22 July 2019, p. 6.

142 See from paragraph 4.26 for an explanation of child safe standards in operation in Victoria.

143 Mr Steven Potts, CEO Vicsport, Child Safe Sport Toolkit online training module, Slide 16, Australian Sports Commission, viewed via login on 27 May 2019.

144 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 286.

145 Submission 15, Commissioner for Children and Young People, pp. 12-13.

146 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 291.

147 *ibid.*, p. 287.

Creating a child-safe workforce

- 3.43 The extent to which individual organisations can invest internally will vary with services setting context, location, size and existing capacity.
- 3.44 Organisations should invest in the resources that are already available to them, such as the *National Principles for Child Safe Organisation Guidelines* and accompanying self-assessment and review tool.¹⁴⁸ The Children’s Commissioner has been conducting capacity building training sessions for institutional leaders as part of its voluntary child safe approach.
- 3.45 Once implementation of the National Child Safe Principles becomes mandatory,¹⁴⁹ the job of any team responsible for ensuring an organisation and its staff have the competencies and skills to operate in a child safe manner will be a challenging one.
- 3.46 The specific tasks are wide-ranging, and may entail differing levels of skills and expertise. Many competencies may need to be supported to translate an organisation’s child safe policies into a form suitable for guiding everyday activities. For example, SportWest observed that decoding the governance policies and procedures into user friendly material such as fact sheets, info graphs, posters, postcards or booklets is a way to bring dense policy into ‘common everyday use’.¹⁵⁰
- 3.47 Age-appropriate material for children and information tailored to caregivers is another way of helping staff and leaders embed child safe messages into their everyday practice. Training and ongoing information sessions for leaders, staff and the community are useful mechanisms to keep child safety front and centre in people’s minds.¹⁵¹
- 3.48 As noted above, the Committee is mindful that organisations of all sizes and resources must be able to apply the National Child Safe Principles. With this in mind, the Committee considered the possibility of professionalising the role of a safeguarding manager. What would the responsibilities and functions associated with such a position involve?
- 3.49 The Committee used as a case study the following description of such a role provided by Keeping Children Safe, an organisation based in the UK with years of national and international experience implementing child safe standards across the globe.

148 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, November 2019.

149 Mandatory child safe standards were recommended by the Royal Commission. For further information, see chapter 4.

150 Mr Rob Thompson, SportWest, Transcript of Evidence, 4 March 2020, p. 4.

151 Ms Lorraine Donache, SportWest, Transcript of Evidence, 4 March 2020, p. 5; Mr Peter Walton, Scouts WA, Transcript of Evidence, 4 March 2020, p. 3; Ms Katrina Lane, Girl Guides Western Australia, Transcript of Evidence, 4 March 2020, p. 4.

Case Study 1 – The role of a safeguarding manager¹⁵²

We need to think about what we ask a safeguarding manager to do

A safeguarding manager has to overhaul the entire organisation bit by bit at every single level to ensure that it is safe for children. That does not just mean from the top to the bottom, that means everywhere! They then have to train everybody; they have to be involved in recruitment, and then if they have a case or concern, or they might receive a disclosure and have to decide how the organisation is going to act on it. Does it need to be reported to the police, what does the organisation do about confidentiality, how do they keep this child safe, how do they ensure that the subject of the complaint has their rights respected? What do they do when it gets in the press?

Safeguarding managers are making such tough decisions, and they are having to defend them and sometimes they are having to defend them on television, in front of government, or to court; in front of families. People expect them to be a judge, a jury, a social worker, a child psychologist, an organisational development specialist, to be able to report to the board, shareholders, manage relations with the media.

They must be able to support the victims and survivors in a way that means they are able to move on. They are then expected to take that within an organisation and personally deal with the emotional fall out which is a really big issue.

Where has this practice failed?

Often a big failure is that the organisational risk is not taken on by all the people who should take in on. Sometimes that person is a junior person, and very often it can be difficult to get the ear of the CEO or the directors, the trustees — they think they have appointed someone and so they can forget about it.

These are complex and nuanced decisions and anyone who says that you can make one flow chart that will deal with all your issues has never done it. It's very easy for external people to say 'you know, why haven't they done this, or why couldn't they do that' and of course it just isn't that simple.

We talk a lot about safeguarding and we talk a lot about protection, preventions, all of those things. And then we talk about handling concerns and managing concerns and then we talk about investigation... what we don't focus on enough is decision making and how we can support effective decision making and support decision makers to make the rights decisions in the right way.

And we are absolutely not investing enough in professionalising that role and ensuring that people have those skills.

- 3.50 This case study demonstrates the complexity of the role of a safeguarding manager in practice.
- 3.51 The needs of children, their families, the community, the organisation, external stakeholders and the media all potentially need to be managed. Even if the leadership of an organisation takes on the appropriate responsibility for the organisational response to an allegation of

152 Mrs Sarah Blakemore, CEO, Keeping Children Safe, *Briefing*, 8 October 2019 (London, England).

abuse, the decisions made on these matters are nuanced and complex, and must be transparent, accountable, trauma informed, evidence based, and appropriate.

- 3.52 People working to safeguard children in Western Australia are facing these challenges every day. Many others, including people without professional qualifications in the area of children’s services, will be required to perform duties associated with child safety once organisations move towards implementing the National Child Safe Principles.
- 3.53 In the Committee’s view, the role of safeguarding manager is too challenging and complex to undertake in an ad-hoc way or — as would likely be the case in smaller organisations — as an adjunct to another role. Certainly, child safe approaches will not be at the centre of an organisation’s operations without adequate investment in the capacity of staff performing these duties. It is unlikely, however, that many individual organisations will be able to devote resources to investing in the capacity of its staff to raise it to the standard described above.
- 3.54 The Committee’s conclusion is that while child safety needs to become an organisation-wide responsibility, the Government should give serious consideration to the possibility of professionalising the role of safeguarding manager, recognising that adequate investment across government and non-government sectors may be required to provide people with the high-level skills needed to perform the role effectively.

Finding 21
 The role of safeguarding manager is too challenging and complex to undertake in an ad-hoc way or as an adjunct to another role.

- 3.55 Professionalising the role of safeguarding manager is only one element of investing in the development of a professional child safe workforce. The important point is that in a child safe workforce access to child safe professionals, i.e. safeguarding managers, could be made available in a variety of ways. Individuals performing safeguarding roles could be located across sectors or professional bodies, positioned within government, or have designated positions established as part of the independent oversight support role for the National Child Safe Principles.
- 3.56 To be effective, these roles would be interdisciplinary in nature and draw people from a variety of professional backgrounds and experiences of working with children. The roles would include responsibility for developing the workforce, governance and leadership of all institutions that work with children to become better at safeguarding.
- 3.57 Smaller organisations would expect to be able to look towards a government commissioning body, peak or industry body to provide access to such a role when required.
- 3.58 Alternatively, there is a possibility of establishing substantive access to the role under the auspices of any independent oversight established for the purposes of assisting organisations to implement the National Child Safe Principles. DPC agreed that professional safeguarding managers would be one means of building organisational capacity to comply with child safe standards, and confirmed there is possibility of having this sort of function

within the oversight body itself to carry out capacity building, advocacy and educational functions.¹⁵³

- 3.59 The Royal Commission recognised the importance such a role could bring through its recommendation for local governments to designate child safety officer positions.¹⁵⁴ Evidence received by the Committee suggests that this role should not be limited in function or location as suggested by the Royal Commission but supported broadly to drive and maintain the child safe reform process across all institutions and the community.
- 3.60 These professional safe guarding managers could support all organisations and communities through developing resources and tools to assist in the process of child safe reform.
- 3.61 Evidence received from both government and non-government bodies indicates support for a role of this kind provided it can be adequately resourced. The only substantive qualification of support for the establishment of a professional safeguarding role involved the risk of ‘siloining’ the responsibility for child safety.¹⁵⁵
- 3.62 However, the Committee is of the view that if the intent of the role is to build the capacity of an organisation or sector to comply with the National Child Safe Principles, it is unlikely ‘siloining’ would occur. To do so would be to go against the very intent of embedding child safety, and would directly contravene the first child safe principle: that child safety and wellbeing is embedded in organisational leadership, governance and culture (see Table 1.1).
- 3.63 Appropriate governance structures and clear reporting relationships in accordance with the remaining National Child Safe Principles would further ensure this does not happen. Nonetheless, in order to avoid any criticism on this point, it is worth mentioning that a key requisite of this role would be a requirement to create a high level practical commitment from organisational leadership and the general workforce about operating in a child safe manner.
- 3.64 DPC noted that all options are on the table and that the development of a professional safeguarding role would be considered. DPC further noted that the possibility of having such a function located within the oversight bodies is something that ‘will be subject to consultation with bodies external to government when we kick that process off’.¹⁵⁶
- 3.65 The Committee is mindful this consultation process has yet to occur. The Committee encourages DPC to take account of the evidence documented in this inquiry about the benefits of professionalising the role of safeguarding manager.

153 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 18. For more information on an oversight body for National Child Safe Principles and its potential functions, see chapter 7.

154 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 30, recommendation 6.12.

155 See, for example, Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 18; Mr Colin Pettit, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2020; Mr Ross Wortham, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 14.

156 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 18.

Finding 22

Access to child safe professionals, i.e. safeguarding managers, could be made available in a variety of ways to improve the ability of organisations to comply with the National Child Safe Principles.

Recommendation 4

That the Government give serious consideration to professionalising the role of a child safeguarding manager.

3.66 Table 3.1 reflects the Committee’s general analysis of the evidence about the potential benefits of investing in the workforce to improve the ability of organisations to comply with the National Child Safe Principles.

Table 3.1: Benefits of a child safe workforce

External capacity building across the Sector	Internal capacity building within organisations/peak bodies/industry groups/associations
Engaging in professional learning and collaboration through various forums including “communities of practice” highlighted in the Royal Commission as a way to share knowledge and experience and to forge better practice ¹⁵⁷	Be dedicated key contacts for community, children and other stakeholders, including participating in regular engagement. This could be particularly important for a child/ren or family where a concern of child abuse arises;
Developing resources that are age appropriate and culturally safe for engaging with children, youth, carers, stakeholders and local communities about child safe approaches	Provide advice and or ensure the institution is responding appropriately to any such concerns, including being a port of call and support for all staff and leaders in the organisation who may have become aware of a child abuse concern;
Developing trauma informed guidance material for organisations seeking the participation of children, or undertaking or facilitating direct engagement with children and young people, carers, stakeholders and local community groups	Provide trauma informed advice and implement strategies to manage vicarious trauma
Developing strategies, approaches and information about how to develop and create child safe governance structures; or create and put in place governance structures for individual organisations or groups	Be a key contact for an organisation with any regulating or oversight body – this would be useful for streamlining reporting and any communication processes with that body
Creating detailed guidance and assistance for specific sectors about how to implement the National Child Safe Principles	Be responsible for assessing, improving or ensuring internal governance structures are child safe
Developing or implementing evidence based strategies, approaches and evaluation methods for how to assess an institution’s child safe approaches	Be responsible for information sharing and record keeping protocols with respect to child safety

157 Research commissioned by the Royal Commission recommended that fostering communities of practice would encourage and facilitate collaboration between experts and practitioners and help with the development of evidence based resources and capacity building guidance for child safe approached. See Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, pp. 306-307, Recommendation 6.12.

External capacity building across the Sector	Internal capacity building within organisations/peak bodies/industry groups/associations
Establishing child safe outcomes and wellbeing measures to assist the evaluation of systemic child safe approaches	Be responsible for developing an organisation's ongoing commitment and public engagement on child safe issues
Developing policies, targets and action plans to improve outcomes for children and young people, particularly on the behalf of government and sector groups.	Be responsible for reviewing staff professional development and capacity building within an organisation, including keeping child safe an active action item within an organisation's operations
Facilitating sector/cross sector relationships to foster connectivity and consistency in child safe reform	Provide strategic advice and planning about child safety implications for future policy or operating decisions
Become community and sector champions of child safe culture and contribute to professional learning and improvement in child safe approaches	

Finding 23

The development of a child safe workforce is one of the most practical changes that can be made to improve child safety outcomes.

Flexible, proportional and proactive application

- 3.67 Considering the diversity of organisations to whom the National Child Safe Principles might apply, the Royal Commission was keen to avoid any system of implementation that could potentially 'prevent or impede' the ability of an institution to carry out its business or cause an institution to shut down because of 'unnecessary regulatory requirements'.¹⁵⁸ It recommended implementation should be flexible and proportional, taking into account specific characteristics of individual institutions.¹⁵⁹

Varying risk levels

- 3.68 Substantial research undertaken during the Royal Commission uncovered the different levels of risk of child sexual abuse some institutions pose depending on the characteristics and activities undertaken by institutions.¹⁶⁰
- 3.69 The Australian Children's Commissioners and Guardians (ACCG) note that child safety in institutions requires a proactive approach that can account for, and respond to, increased risks associated with the particular vulnerability of some children.¹⁶¹ This is an

158 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 261.

159 *ibid.*

160 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, Royal Commission into institutional responses to child sexual abuse, Sydney, 2017; Institutional risk factors are discussed in Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 2 – Nature and cause*, Commonwealth of Australia, 2017.

161 Australian Children's Commissioners and Guardians submission to the Royal Commission's *Issues Paper No 3: Child safe institutions*, cited in Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 263.

acknowledgment that some children are more vulnerable than others, and that accounting for the increased risks associated with these vulnerabilities is a complex task.

- 3.70 All organisations need to assess the level of risk and the level of vulnerability of children with whom they engage. Some organisations may benefit from external assistance in establishing appropriate ways to take varying levels of risk into account.

Finding 24

All organisations need to assess the level of risk and the level of vulnerability of children the organisation engages with when implementing the National Child Safe Principles. Some organisations will benefit from external assistance in establishing appropriate ways to take varying levels of risk into account.

High-risk environments

- 3.71 The office of the Children’s Commissioner suggests that the importance of adhering to the National Child Safe Principles increases as contact with a child increases, indicating the focus must be on more high-risk environments and warning against ‘trying to spread our resources too thinly and ending up with a veneer of child safe standards across all organisations’.¹⁶² This aligns with the proportional response preferred by the Royal Commission.
- 3.72 The Committee agrees that it is imperative to implement the National Child Safe Principles in organisations with a higher risk of child abuse occurring. This could include institutions with significant influence over the lives of children, high child participation rates and organisations that engage with vulnerable children.¹⁶³
- 3.73 The Committee’s view is that these higher-risk institutions will require support to ensure the National Child Safe Principles are implemented without delay. The Committee welcomes the advice that trial implementation of the National Child Safe Principles is already underway in some Government service settings¹⁶⁴ and encourages the extension of this action to other high-risk institutions as soon as practicable.
- 3.74 By engaging with children, carers, individual staff and families in these contexts, the National Child Safe Principles can be proactively implemented as recommended by the ACG.¹⁶⁵
- 3.75 According to extensive evidence received by the Committee, the Kath French Secure Care Centre (the KFSCC) is an institution requiring immediate focus. The KFSCC is a secure short-stay intensive intervention centre for children who are at extreme risk and cannot be managed by other services.¹⁶⁶ Some of the State’s most vulnerable children are

162 Mrs Patricia Heath, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2020, p. 33.

163 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, pp. 139-140.

164 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 10 April 2019, p. 3.

165 Australian Children’s Commissioners and Guardians submission to the Royal Commission’s *Issues Paper No 3: Child safe institutions*, cited in Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 263.

166 Department of Communities, *Secure Care – The Role*, accessed 6 July 2020, <https://childprotectioncareers.wa.gov.au/our-roles/secure-care>.

accommodated in this facility and, according to the Children’s Commissioner, oversight of the KFSCC is ‘severely inadequate’.¹⁶⁷ This concern was echoed by numerous other witnesses who advised the Committee that there is ‘no independent advocacy’ for children in the KFSCC, ‘no oversight at all’.¹⁶⁸

- 3.76 The Committee suggests that implementation and oversight of the National Child Safe Principles should be effected as soon as possible at the KFSCC. While overall decision-making processes about how the Government intends to implement and oversight the National Child Safe Principles is still in progress, the Committee is confident that there is sufficient expertise and experience at hand to put rigorous, transparent and accountability processes in place at the KFSCC on the understanding that the regulation of the National Child Safe Principles can be aligned to any future model of regulation and oversight once final Government decisions have been made.

Recommendation 5

That the Government ensure the implementation and oversight of the National Child Safe Principles are effected as soon as possible at the Kath French Secure Care Centre.

Tailoring implementation processes

- 3.77 As noted above, the Royal Commission recommended that institutions should implement the National Child Safe Principles in a flexible and dynamic way to suit their specific ‘characteristics’.¹⁶⁹
- 3.78 SportWest discussed the different characteristics of institutions which, in their view, need consideration. While there is a general willingness to implement the standards across the sporting groups, and an understanding about how important it is to protect children from harm, there is a different level of awareness among volunteers working in community sporting organisations than is found amongst those in paid positions. In SportWest’s view, it is important to ensure that ‘what is being asked of that volunteer is reasonable and practical’.¹⁷⁰

A phased approach will help organisations implement the National Child Safe Principles

- 3.79 DPC informed the Committee that the Government is favouring a phased and incremental approach to the implementation of the National Child Safe Principles¹⁷¹ in order to ensure organisations are not ‘required to comply with all their new obligations at the same time as they are starting to learn about them’, noting that to do so would ‘create a significant

167 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p. 33.

168 Ms Debora Colvin, Chief Mental Health Advocate, Mental Health Advocacy Centre, *Transcript of Evidence*, 28 March 2019, p. 5. See also Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 19 September 2018, p. 2 and Dr Nathan Gibson, Chief Psychiatrist, *Transcript of Evidence*, 8 May 2019, p. 12.

169 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 163.

170 Ms Lorraine Donachie, SportWest, *Transcript of Evidence*, 4 March 2020, p. 3.

171 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, pp. 4 and 10.

compliance challenge'.¹⁷² Stakeholder evidence received by the Committee confirms that organisations themselves would reasonably expect to be both informed and supported to understand any requirements about the National Child Safe Principles before compliance is enforced.¹⁷³

3.80 The Committee urges organisations to spend time considering how the National Child Safe Principles will align with existing processes. National Child Safe Principle 9 says that the process of implementation should be ongoing and include opportunities for organisations to learn how to improve their approaches. Adoption of this process will allow organisations to manage their own staged approach to implementing the National Child Safe Principles. Not every child safe approach will need to be worked through on day one, and an awareness of this could help reduce the administrative burden of any change.

3.81 Adequate time and support is required by organisations to establish how best to implement the National Child Safe Principles. Matters to be determined could include the following:

- child safe policies and practices appropriate to the institution's size, context and type of work;
- child safe approaches that can be supported—and communicated—by the leadership effectively and incorporated into their governance structures; and
- ways to engage with and adopt child safe approaches to the needs of their community and the children they serve.

3.82 With this in mind, it is clear that an indication from the Government about which institutions will be required to implement the National Child Safe Principles and by when, would assist institutions to move towards developing their child safe approaches in a systematic and supported way.

3.83 At the time of writing the Government has not made any determination about who will be required to implement the National Child Safe Principles and by when, what reporting burden might exist, or what assistance organisations can expect to access in order to help them become child safe.

Finding 25

Organisations are awaiting a Government decision about which organisations will be required to implement the National Child Safe Principles, and by when.

Cultural change

3.84 Child safe communities, appropriate government policies and other supports, such as engagement strategies and educational resources must support institutions and enable them to implement child safe approaches effectively. Figure 2.1 illustrates how communities and institutions and government must work together to create the level of change required for child safe reform to successfully occur.

172 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 9.

173 Louise Giolotto, CEO, Western Australian Council of Social Service, Letter, received 22 July 2019, p. 10.

- 3.85 The cultural shift required for both organisations and communities to become child safe represents a cultural shift that will not occur without the support of the Government.
- 3.86 The second part of our evidence from *Keeping Children Safe* illustrates why wholesale cultural change is important.

Case Study 2 - Knowing what good looks like ¹⁷⁴

Overall, how to improve child safety in organisations

Organisations must be clear - 'this is what good looks like, we know what bad looks like, but this is what good looks like, and this is what you can do to achieve it.

The more transparent we can be the more we can learn from our mistakes. We all know stories of people who turned away when they shouldn't. There are stories of people who have actively covered abuse up, but there are millions of stories of people who have not looked too hard.

If we are not clear about what is expected of us as individuals, and we do not support that process in a transparent way, we will continue to have child abuse because the perpetrators look just like the other people who are not trying to stop the situation.

If we can be really clear and empower people and make them not be frightened, then they will do the right thing. Otherwise, I think many people will think - "I'll just stay in my lane".

- 3.87 Clearly, the more people who know *what good looks like* when it comes to child safety, the safer children will be. When people working within organisations and the community are clear about what their responsibility is, what to look out for, and how to respond should any concern about child abuse arise, the more informed their decision making is and the better they respond to the challenge of protecting children.
- 3.88 This is the cultural change required for child safe reform to work. As Dr Joe Tucci notes, strategies to change people's attitudes and behaviours must be developed alongside any other initiatives to implement National Child Safe Principles, so that the value of keeping children safe can be fully realised.¹⁷⁵

Government-led support to date

Creating genuine change in institutions requires government investment to support and build the capacity of institutions to be child safe.¹⁷⁶

- 3.89 Research commissioned by the Royal Commission showed that for successful and sustained cultural change to occur, institutions need to be supported to build their capacity to

174 Mrs Sarah Blakemore, CEO, Keeping Children Safe, *Briefing*, 8 October 2019 (London, England).

175 Dr Joe Tucci, CEO, Australian Childhood Foundation, *Transcript of Evidence*, 6 March 2020, p. 4.

176 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 287.

implement reform. Implementation best practice suggests governments should consider readiness and the capacity of institutions to bring about change.¹⁷⁷

- 3.90 What is clear is that Government has a key role in both empowering the community and making the administrative decisions about how the National Child Safe Principles should be implemented and operated. The appropriate cultural reform will not occur without the Government making crucial decisions about ‘adequately resourcing organisations’ so they have the capacity to operate in a child safe manner.¹⁷⁸

Current responses

Implementation of the National Child Safe Principles – Department of Communities

- 3.91 The Department of Communities is responsible for leading the development of a whole-of-government approach to implementing the National Child Safe Principles, which is specifically being progressed through a ‘collaborative partnership between the Department of Communities, the Department of the Premier and Cabinet and the Commissioner for Children and Young People’.¹⁷⁹ The Department of Communities has developed a comprehensive work plan across 15 partner agencies which guides this whole-of-government approach, and includes a range of ‘capacity-building strategies to create the cultural change that is required for organisations to be child safe’.¹⁸⁰

- 3.92 The Committee was advised that ‘early priority strategies’ include:

- **Consultation of the community services sector** — Collaborating with WACOSS and YACWA in a consultation process intended to ‘ascertain the sector’s need and preparedness to implement the national principles, identify challenges and solutions, and inform the timely and effective implementation of the national principles’.¹⁸¹
 - *Phase 1* of this consultation process was an online survey, completed earlier in the year. The Department of Communities advised it expected the results analysis to be completed by mid-2020.¹⁸² The two peak bodies stated Phase 1 was a positive engagement process from their perspective.¹⁸³ There was mixed evidence from organisations who completed the survey. Some evidence stated respondents were ‘locked out’ from completing it as ‘[i]ts relevance in our [sporting] sector was somewhat narrow’.¹⁸⁴ Other evidence stated it ‘was a bit out of blue’ after ‘18 months of nothing and then a survey’.¹⁸⁵

177 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 291.

178 *ibid.*, p. 287.

179 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 2.

180 *ibid.*, pp. 2-3.

181 *ibid.*, p. 3.

182 *ibid.*

183 Mr Ross Wortham, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 4; Mr Chris Twomey, Leader Policy and Research, Western Australian Council of Social Service, *Transcript of Evidence*, 4 March 2020, p. 2.

184 Mr Rob Thompson, SportWest, *Transcript of Evidence*, 4 March 2020, p. 5.

185 Ms Jennifer Hannan, AM, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 8.

- *Phase 2* was intended to be a series of targeted focus groups with community sector organisations and a subsequent report with an analysis of the overall consultation process.¹⁸⁶ We received evidence *Phase 2* was planned to commence in March and April 2020.¹⁸⁷ At the time of writing, the Committee was unable to find publicly available information about the progress of *Phase 2* or results from the initial survey.¹⁸⁸
- **A risk and gap mapping exercise** — the Department of Communities is coordinating a ‘risk mapping process with all partner agencies’ using the self-assessment and review tool created by the Children’s Commissioner to determine the ‘risk profiles across the WA government and to inform implementation’.¹⁸⁹
 - DPC advised the Committee that when ‘the Department of Communities communicated formally with other organisations the need to do the risk-mapping work, they did allude to the fact that the Department of the Premier and Cabinet would be taking the information that came out of that process into consideration in the design of the oversight system’.¹⁹⁰
- **Updated child safe resources that align with the National Child Safe Principles** — the Department of Communities advised this work was done in conjunction with the Department of Local Government, Sport and Cultural Industries and the Children’s Commissioner to ensure the resources published by each agency aligned with the National Child Safe Principles and to ‘assist organisations to be safer’.¹⁹¹
 - This includes working with the National Office for Child Safety to ensure that Western Australia’s approach to child safe organisations is developed and aligned with a nationally consistent approach’.¹⁹² As stated previously, the Committee supports the proposition that the approach taken by Western Australia aligns with the broader intent of the National Child Safe Principles encapsulating both the safety and wellbeing of children (see chapter 1).

Public Engagement about oversight for the National Child Safe Principles – Department of the Premier and Cabinet

3.93 During a hearing in March 2020, DPC confirmed it is leading the whole-of-government approach to the independent oversight recommended in 6.10 and 6.11 of the Royal Commission.¹⁹³ As a part of this development process, DPC advised it ‘intends to undertake a significant consultation with non-government organisations and with private industry’ and

186 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 3.

187 Mr Chris Twomey, Western Australian Council of Social Service, *Transcript of Evidence*, 4 March 2020, p. 2.

188 The Committee notes that the Department of Communities has been impacted by the State’s response to the Covid-19 Pandemic and it is likely this has impacted on the work plan developed for the implementation of the National Child Safe Principles.

189 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 3.

190 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 14.

191 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 3.

192 *ibid.*

193 Chapter 7 provides further information on Royal Commission recommendations 6.10 and 6.11. See appendix two for the full text of these recommendations.

will be ‘broadening our engagement ... to talk to industry peaks and other bodies of that sort to get their views’ about how the oversight ought to be implemented, noting this would include examining co-design and proportional regulatory approaches.¹⁹⁴

3.94 Further questioning revealed that while there was only limited engagement at the time, a structured engagement process was intended to commence in April, which would comprise workshops with peak organisations in a position to advise DPC about how to proceed with a broader engagement. DPC further advised there is ‘the possibility at some point that there would be a public discussion paper or something of that nature so that we can ensure those organisations are able to feed into the process’.¹⁹⁵

3.95 In subsequent advice requested by the Committee about DPC’s engagement processes in relation to the operation of an integrated oversight system, the Committee was advised ‘pre-consultation engagement’ has occurred involving:

- relevant government agencies and oversight bodies;
- the Aboriginal Advisory Council WA; and
- non-government organisations. The specific non-government organisations engaged prior to any public consultation was determined by taking advice from sector peak bodies.¹⁹⁶

3.96 The Committee was further advised that these discussions have been underway since April 2020 but have been Cabinet in Confidence.¹⁹⁷

Support in the future

3.97 Both the Department of Communities and DPC have started to progress consultation and engagement processes with the organisations and sector bodies. The Committee notes these processes are only in initial stages and is completely cognisant of the effect of the COVID-19 state of emergency on consultations and engagement processes such as these.

3.98 With this in mind, the Committee notes that feedback from the Department of Communities Phase 1 survey of the community services sector has been delayed and the Phase 2 is yet to commence. While the risk and gap mapping exercise has commenced, the Department is still in the planning rather than implementation stage.

3.99 The Committee commends the work undertaken by the Department of Communities to align all publications on child safe standards with the National Child Safe Principles and looks forward to the establishment of a broader public engagement process with organisations, the community, parents, carers, and directly with children, about the National Child Safe Principles. In the Committee’s view, such engagement could include information about:

- why the National Child Safe Principles are important;

194 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 4.

195 *ibid.*, p. 5.

196 Ms Rebecca Brown, Department of the Premier and Cabinet, Letter, 12 June 2020, p. 1.

197 *ibid.*, p. 2.

- what they are trying to achieve; and
- how organisations and the community can contribute to the planning for their implementation.

3.100 The Committee has been unable to ascertain whether the ‘early priority strategies’ identified by the Department of Communities are having any significant impact outside of the Government or those peak bodies immediately involved in the design and delivery of the initial engagement.

3.101 The Committee has noted that the strategies currently being actioned by the Department of Communities are still identified as an early priority.¹⁹⁸

Finding 26

In order to create the significant cultural change required for the successful implementation of the National Child Safe Principles, the Department of Communities is encouraged to engage in a broader public engagement process about the National Child Safe Principles.

3.102 DPC, while providing evidence of strategies to engage with the many different types of organisations that may fall within scope of the National Child Safe Principles, has not been able to confirm the extent to which this engagement strategy has progressed. The ‘pre-consultation engagement’ has been underway since April 2020 and has clearly been disrupted by the COVID-19 state of emergency. The Committee has not been able to access information about the activities of the Oversight Working Group, chaired by DPC, and specifically funded for the purpose of developing a comprehensive independent oversight system.¹⁹⁹

3.103 The Committee is of the view that the feedback and engagement from organisations who may be impacted by the implementation process must be taken into account when a decision about how the oversight system should operate is taken.

3.104 While some information being sought by the Committee was limited due to Cabinet in Confidence provisions, it is the Committee’s view that open communication with individual organisations and industry sectors will assist these bodies plan and prepare their operations so they are best placed to assess any new regulatory requirements, once they become known.

3.105 The Committee respects DPC’s caution in its staged approach to engagement and accepts that the Government is keen to ensure that the establishment of oversight mechanisms do not transfer ‘accountability and responsibility to the state’ from organisations who have a

198 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 3.

199 The 2019-20 state budget allocated \$627,000 to developing the strategy for independent oversight of institutions providing child-related services. The Committee was advised that after several informal meetings, the Oversight Working Group was being reconvened on 16 May 2019, see Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, pp. 4 and 11.

responsibility to be accountable for their own actions.²⁰⁰ As DPC has stated, it is important to:

[A]void a situation where the state effectively takes responsibility for something that might occur in a church or some other context, or at least gives any implicit permission for those institutions not to take responsibility for their own actions and the conduct of their members and the culture they have created.²⁰¹

3.106 Indeed, the nature and intent of the child safe reform process is for Government to support individual organisations to embed—and take responsibility for—child safe practices in their own organisation. Risk for all parties will be minimised as the Government increases its commitment to child safe reform through:

- educating and engaging with the community;
- investing in the capacity of organisations to become child safe; and
- demonstrating its commitment to strategies that help create the cultural change required for the entire community to understand that preventing child abuse is everybody’s responsibility.

Finding 27

Risk for all parties will be minimised as the Government increases its commitment to child safe reform through:

- educating and engaging with the community;
- investing in the capacity of organisations to become child safe; and
- demonstrating its commitment to strategies that help create the cultural change required for the entire community to understand that preventing child abuse is everybody’s responsibility.

Engagement strategies for communities and organisations – a summation

3.107 The previous two chapters examine ways in which child safe communities and child safe organisations can be fostered. The actions outlined include the following:

- education about child abuse and its impacts, including information about grooming and how to respond appropriately to child abuse;
- information about the National Child Safe Principles, why they are important and why they should be implemented;
- active engagement with communities, families and children to determine ways to implement the National Child Safe Principles that will take into account their diverse needs and requirements;
- assistance for organisations to assess their readiness to implement the National Child Safe Principles;

200 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 10.

201 *ibid*.

- capacity building across the sector and amongst individual institutions to understand the different ways the National Child Safe Principles can be operated;
- investment in improving and supporting a child safe workforce which can match the expertise and skills required to advise and support institutions to keep children safe; and
- phased and proportional implementation approaches that are responsive to the readiness and capacity and risk profile of the organisations.

3.108 The capacity building strategies identified by the Department of Communities and DPC have included many of the actions above.

3.109 The Committee encourages both Department of Communities and DPC to plan further engagement processes that involve actions directly engaging with children and talking more broadly with organisations, parents, caregivers and community stakeholders about child abuse and its impact and how the Royal Commission recommendations should be progressed. Such engagement activity will reinforce the fact that implementation and oversight of the National Child Safe Principles in Western Australia are matters of urgent concern and not something that exists far off in the distant future.

3.110 Communities, organisations and government have to engage in this process for the Government's goal — A safer WA for Children²⁰² — to be realised.

Finding 28

Further engagement processes that involve actions directly engaging with children and talking more broadly with organisations, parents, caregivers or community stakeholders about child abuse and its impact and how the Royal Commission recommendations should be progressed will strengthen the capacity building strategies identified by the Department of Communities and the Department of the Premier and Cabinet.

Recommendation 6

That the Government should finalise the necessary determinations about how organisations will be supported to become child safe. This should include measures to increase the understanding within communities and organisations about:

- the impacts of child abuse; and
- how to respond appropriately to concerns of child abuse.

Further measures should include information about:

- why the National Child Safe Principles are important;
- what the ongoing operation of child safe approaches will mean for individual organisations required to become child safe; and
- the means by which organisations and the community can contribute to the planning for, and operation of, child safe approaches.

202 Government of Western Australia, *Royal Commission into institutional responses to child sexual abuse – 2018 Progress report*, Western Australia, December 2018, p. 9.

Chapter 4

Implementing the National Child Safe Principles

Children’s safety and their best interests must be at the core of all child-related institutions’ operation and purpose.

Royal Commission into institutional responses to child sexual abuse ²⁰³

Obligations to implement the National Child Safe Principles

4.1 This chapter examines the various approaches to implementing National Child Safe Principles examined by the Royal Commission; why the Royal Commission recommended making it mandatory for institutions to implement the National Child Safe Principles through legislation;²⁰⁴ and the current response of the State to this recommended approach.

A nationally consistent approach

4.2 The concept of “child safe” institutions, defined in chapter 1, emerged in Australia almost a decade ago and many institutions have been actively engaged with becoming child safe, with varying success. Approaches differ across national, state and territory levels in scope and content, creating ‘unequal and inadequate protection of children in institutions, as well as inefficiencies, additional costs and burdens.’²⁰⁵ A lack of consistency and inequity in the protection of children underpinned the Royal Commission’s recommendation for a nationally consistent approach. The endorsement by COAG of the National Child Safe Principles was testament to the acceptance of this approach (see paragraph 1.43).

Voluntary and mandatory approaches to implementation

4.3 The Royal Commission undertook extensive research into the range of voluntary and mandatory child safe approaches across Australia in order to determine if there was a preferable approach. The work classified the range of approaches in three ways:

- **direct government regulation** — formal legislative schemes exist, such as Working with Children Checks legislation;
- **co-regulation** — the sector is responsible for the level of activity, backed by ‘soft legislative support’ such as requiring policies about reporting child sexual abuse;
- **self-regulation** — the sector creates its own rules and is solely responsible for enforcing the rules. This category includes all voluntary aspects to regulating child safe approaches.²⁰⁶

203 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 136.

204 *ibid.*, p. 292, Recommendations 6.8 and 6.9. See appendix two for the full text of these recommendations.

205 *ibid.*, p. 15.

206 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 256.

A mandatory approach

- 4.4 The Royal Commission had a clear preference for a mandatory regulatory model, stating that this approach is the most appropriate model for preventing institutional child sexual abuse.²⁰⁷ Consequently, recommendations 6.8 and 6.9 of the Royal Commission urged governments to ensure relevant organisations are required to comply with child safe standards through legislation (see appendix 2 for full text of relevant recommendations).
- 4.5 While the State Government accepted these recommendations in principle, there is currently no mandatory requirement for organisations to implement the National Child Safe Principles in Western Australia. The Committee was keen to ascertain if this would occur and if so, the form such a mandatory requirement might take as, for example, an amendment to existing legislation, or as a new stand-alone statute. The Department of the Premier and Cabinet (DPC) noted that legislating compliance with the National Child Safe Principles is a ‘step [that] would need to be taken.’²⁰⁸ However, DPC was not in a position to comment on what format the legislation might take or where any legislative requirements might sit.

Other jurisdictions

- 4.6 In the absence of a government decision about details of the legislative requirements for mandating the National Child Safe Principles, the Committee sought evidence in other jurisdictions about whether the presence of legislated obligations on organisations to become child safe had any impact on the safety and wellbeing of children in those jurisdictions, and if so, what they were. The Committee hoped this information would help inform the debate about what form the introduction of a mandatory scheme in Western Australia might take.

Ireland and the United Kingdom

- 4.7 Initiatives that operate in Ireland and locally in Wales, Scotland and England are grounded in legislated regimes that include a focus on regulating and monitoring services provided to children. Each jurisdiction grappled with revelations about historical or emerging child sexual abuse and their models to regulate and monitor children’s services have been designed in response to these revelations. There is no single approach in operation. The Committee explored how these jurisdictions helped to ensure the safety and wellbeing of children within institutional settings through legislation.

Quick facts about two Stand-alone Acts

- 4.8 Two examples of standalone legislation, the Irish *Children First Act 2015* and the Scottish *Children & Young People Act 2014* are noteworthy for contributing to improved child safe approaches in institutions. Ways in which the operation of these Acts have, in the Committee’s assessment, led to positive outcomes for children’s safety and wellbeing are

207 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 258.

208 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 9.

provided below. Box 4.1 and box 4.2 summarise the key features of each Act (and corresponding guidance).

Box 4.1: Ireland

*Children First Act 2015 (Ireland)*²⁰⁹

Ireland's *Children First Act 2015* requires providers of relevant organisations to keep children safe from harm.²¹⁰

The Act sets out requirements for these organisations to:

- undertake a risk assessment to identify the potential for harm to a child;
- prepare a child safeguarding statement which 'sets out the policies and procedures which are in place to mitigate the risks identified'; and,
- outline how the organisation has aligned these policies and procedures to a standard set of principles, set out in the *Children First: National Guidance*.²¹¹

The *Children First Principles* are a set of high level standards which inform policy and best practice for any agency or organisation dealing with children.

The Act establishes the *Children First Interdepartmental Implementation Group* that requires every government department to report on its compliance with the Act. This provision requires departmental representation at the most senior levels of government to focus on child safeguarding and participate in cross-departmental forums.²¹²

Better Outcomes, Brighter Futures

The *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* establishes a shared set of outcomes for children and young people under the age of 25. All government departments and agencies, statutory services and the voluntary and community sectors must work towards these outcomes.

This outcomes approach is based on a number of "transformational goals" that apply across government, such as listening to the voices of children and young people, ensuring they receive quality services, and engaging in cross-government and interagency collaboration and coordination.

These goals are intended to achieve five defined outcomes for children and young people with a focus on wellbeing, participation and keeping them safe and protected from harm. The importance of children and young people having a voice in decisions that affect their lives is integral to this approach.²¹³

209 Electronic Irish Statute Book, *Children First Act 2015*, accessed 22 January 2020, <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/print#sched1>.

210 A relevant organisation is defined in Schedule 1 of the *Children First Act 2015 (Ireland)*. The definition is similar in scope to organisations defined by recommendation 6.9 of the Royal Commission.

211 Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, Government Publications, Dublin, Ireland, 2017, p. 2.

212 Department of Children and Youth Affairs, *Children First Interdepartmental Implementation Group*, 28 August 2019, accessed 5 September 2019, <https://www.gov.ie/en/policy-information/5360ac-children-first-interdepartmental-implementation-group-cfidig/>.

213 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020*, 13 March 2019, accessed 14 August 2019, <https://www.gov.ie/en/publication/775847-better-outcomes-brighter-futures/>.

Box 4.2: Children and Young People (Scotland) Act 2014

Scotland has a child-centred policy and service delivery framework for every child. Central to this is the GIRFEC approach — Getting It Right For Every Child. The premise behind GIRFEC is everyone should work together to ensure each child has the best start in life. It is a ‘way for families to work in partnership with people who can support them, such as teachers, doctors and nurses’.²¹⁴

The *Children and Young People (Scotland) Act 2014* formalises GIRFEC.

Wellbeing²¹⁵ sits at the heart of GIRFEC and reflects the need to tailor the support and help that children, young people and their families require.

The definition of wellbeing is enshrined in the legislation to ensure children, young people, parents, carers and service providers have a common understanding. Wellbeing is defined in terms of eight indicators commonly referred to by their acronym — SHANARRI: Safe, healthy, achieving, nurtured, active, respected, responsible and included.

Part 4 of the Act establishes the “named person” provision.

A named person is to be a clear point of contact if a child or young person (from birth to 18) and/or their parents want information or advice, or if they want to seek support.²¹⁶

Note: The named person provision was subject to legal challenge (see paragraph 6.89) but remains within the Act.

- 4.9 Differences in existing regulatory frameworks and cultural attitudes about child sexual abuse and appropriate child protection responses do not allow for a single regulatory model across jurisdictions. Despite this, the Committee’s observation is that commonalities can be discerned across other jurisdictions, many of whom have already enacted legislation, and that noting these commonalities will assist Western Australia in finalising its approach to implementing and overseeing its National Child Safe Principles.

Mandatory approaches in action

- 4.10 Developed to assist organisations keep children safe from harm, the Committee was advised that the wording and intent of the Irish *Children First Act 2015* is designed to focus responsibility for child safety on everybody. One example of this is the obligation it places on an organisation to produce child safeguarding statements. These statements must specifically outline how an organisation intends to protect children from harm. They can include information to assist people in identifying and reporting child abuse and neglect and how to deal effectively with concerns, emphasising that the needs of children and families must be at the centre of every service. The safeguarding statements must also include clear descriptions of responsibility across an organisation, expectations of best professional practice, arrangements for ongoing training and support, and procedures for information sharing and reporting criteria.²¹⁷

214 Scottish Government, *Getting it right for every child (GIRFEC)*, n.d., accessed 23 April 2020, <http://www.gov.scot/policies/girfec/>.

215 Scottish Government, *Getting it right for every child: understanding wellbeing leaflet*, 23 March 2016, accessed 23 April 2020, <https://www.gov.scot/publications/getting-right-child-understanding-wellbeing-leaflet/pages/1/>.

216 Scottish Government, *Getting it right for every child (GIRFEC)*, n.d., accessed 23 April 2020, <http://www.gov.scot/policies/girfec/>.

217 Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, Government Publications, Dublin, Ireland, 2017, pp. 2, 4, 92.

- 4.11 Aside from focusing an organisation’s operations on child safety, safeguarding statements have been purposefully designed as a tool for parents to help them make informed choices about which services to access. The assumption made by the Irish Government is that parents will refrain from using any service without a safeguarding statement. Parents therefore share in the responsibility of ensuring organisations protect children and provide an imperative for organisations to focus on safeguarding children.²¹⁸
- 4.12 Scotland’s GIRFEC approach (see box 4.2), aims to ensure every child in Scotland gets access to the services that they need, based on their individual circumstances. The *Children and Young People (Scotland) Act 2014* and related policies enshrine a number of defined wellbeing indicators (known as SHANARRI) and firmly place the responsibility for each child’s safety and wellbeing on caregivers, child service organisations, service professionals and government. Aspects of the legislation faced a number of obstacles with regard to information sharing provisions (see chapter 6). However, the Committee was advised the GIRFEC approach has been successful in ensuring the following outcomes:
- placing the best interests of the child at the centre of decision making in Scotland;²¹⁹
 - creating a focus on the safety and wellbeing of children in the community;
 - reframing the conversation on child abuse from being about individual children who have experienced abuse to one where responsibility for prevention and protection against child abuse is shared by everyone.²²⁰

Service improvement

- 4.13 The Irish *Children First Act* focusses the attention of all relevant providers on how they deliver services to children. The Committee was told the preparation of safeguarding statements, together with the risk assessment, has actually led to an improvement in service provision.²²¹ The risk assessments require an organisation to set out how it will:
- consult with children;
 - report concerns;
 - internally investigate concerns;
 - recruit staff to ensure safeguarding practices can be followed;
 - provide training on safeguarding; and
 - appoint a relevant point of contact for safeguarding concerns.²²²

218 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019, (Dublin, Ireland).

219 Directorate of Children and Families, *Briefing*, 1 October 2019, (Edinburgh, Scotland).

220 Centre for Child Wellbeing and Protection, University of Stirling, *Briefing*, 1 October 2019 (Edinburgh, Scotland); Scotland’s Commissioner for Children and Young People, *Briefing*, 3 October 2019 (Edinburgh, Scotland).

221 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019, (Dublin, Ireland).

222 Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, Government Publications, Dublin, Ireland, 2017, pp. 2, 4, 92.

- 4.14 The Irish Department of Children and Youth Affairs observed that individual service providers are moving beyond thinking about safety to thinking about how they can enhance their services to improve the wellbeing of children.²²³
- 4.15 The implementation of GIRFEC in Scotland enabled the delivery of services in a way that improves the experiences of children and their families. The Committee was advised that prior to this, the provision of services to children in Scotland could be confusing to access and at times imbalanced, with some children unable to access services appropriate to their needs.²²⁴ The provision of wellbeing principles within the *Children & Young People (Scotland) Act 2014* and a common set of guidelines in GIRFEC combine to deliver joined up services that are focussed on meeting the service needs of every child, regardless of the type of service they need or their locality.²²⁵

Focus on outcomes

- 4.16 Experience overseas suggests that having a statutory instrument helps ensure ongoing political and administrative commitment.²²⁶ For example, in Scotland, the SHANARRI (see box 4.2) wellbeing reforms, enshrined in legislation, gained prominence among the community, media and senior political figures. The First Minister takes a very active interest in these reforms and has personally committed to consulting with 1,000 children who are either in care or who have had a care experience.²²⁷
- 4.17 A significant provision within Ireland's *Children First Act 2015* was the establishment of the Children First Interdepartmental Implementation Group,²²⁸ which includes all government departments, and is required to review the Children First Legislation on an annual basis. This is considered to be a crucial 'top down' piece of the legislation that helps everybody understand what is required of them and places responsibility for protecting children and ensuring organisations keep children safe from harm at the most senior level of government. Providing a statutory footing for the CFIDIC in the Act reflects the importance attached to having every government department adhere to the ethos of the Child First reforms.²²⁹
- 4.18 The Child First legislation includes a capacity for the Irish Government to effectively make public the name of any organisation found to be non-complaint.²³⁰ This provision was intended to be a mechanism that will increase the expectation placed upon the Government by the community to sanction organisations found to have poor safeguarding practices,

223 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019 (Dublin, Ireland).

224 Children in Scotland, *Briefing*, 3 October 2019 (Edinburgh, Scotland).

225 *ibid.*

226 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019 (Dublin, Ireland); The Ombudsmen for Children's Office, *Briefing*, 30 September 2019 (Dublin, Ireland); Children and Families Directorate, *Briefing*, 1 October 2019 (Edinburgh, Scotland); Children in Scotland, *Briefing*, 3 October 2019 (Edinburgh, Scotland).

227 Children and Families Directorate, *Briefing*, 1 October 2019 (Edinburgh, Scotland).

228 *Child First Act 2015*, (Ireland), s. 20-26.

229 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019 (Dublin, Ireland).

230 *Children First Act 2015*, (Ireland), s. 13.

thereby holding government to greater account to ensure the Child First legislation is adhered to.²³¹

Creating a common language

- 4.19 Several witnesses gave evidence that requiring both government and non-government agencies to adhere to a common set of principles through legislation compels them to adopt the same language when talking about child safety and wellbeing. This can lead to improvements within children’s services such as fostering a common understanding about child abuse, its impacts and how to enhance the safety and wellbeing of children through the services they access.²³² The National Society for the Prevention of Cruelty to Children spoke about the complexity of understanding child safety and wellbeing issues—and the danger of trying to measure the prevalence of existing or emerging child protection issues— where no common and agreed set of principles exist.²³³
- 4.20 The inclusion of the SHANARRI wellbeing indicators, which set out what every service provider is being asked to adhere to, is widely regarded as one of the most successful attributes of the Scottish approach. The wellbeing indicators created a reporting imperative for service providers to document improved safety and wellbeing outcomes for children, rather than reporting on other outputs unrelated to these outcomes.²³⁴

Social change levers

- 4.21 The Committee was advised that the Irish *Children First Act* is changing the attitudes of civil society and empowering parents and caregivers to speak up and demand that organisations have the appropriate measures in place to protect the safety and wellbeing of children.²³⁵ The Office of the Irish Ombudsmen for Children advised that legislation enshrining the right for children to have access to proper services and protections empowers parents and caregivers to demand better services for children in their care.²³⁶
- 4.22 Furthermore, Irish statutory obligations for child safeguarding, which incorporate obligations to engage with and seek the views of children, has helped embed the idea and acceptance that children are citizens in their own right. This was strengthened by constitutional change in 2015, which gave statutory affirmation to the rights of children with particular reference to the principles associated with the best interests of the child and hearing the views of the child.²³⁷

231 The Act prescribes the publication of a register for non-compliant organisations. The Committee heard that TUSLA, the Agency responsible for this provision, was working cooperatively with relevant organisations to become compliant and had not been required to add any name to the register. Department of Children and Youth Affairs/TUSLA – Child and Family Agency, Briefing, 30 September 2019 (Dublin, Ireland).

232 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, Briefing, 30 September 2019 (Dublin, Ireland).

233 National Society for the Prevention of Cruelty to Children, *Briefing*, 7 October 2019 (London, England).

234 Children and Families Directorate, *Briefing*, 1 October 2019 (Edinburgh, Scotland).

235 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, *Briefing*, 30 September 2019 (Dublin, Ireland).

236 The Ombudsmen for Children’s Office, *Briefing*, 30 September 2019 (Dublin, Ireland).

237 The Thirty-first Amendment of the *Constitution (Children) Act 2015 (Article 42A)* was added to the Constitution and signed into Irish law on 28th April 2015. This amendment provides a specific

- 4.23 As the Department of Children and Youth Affairs explained, in practice this means children are consulted on the potential impacts any policy and legislation may have on them, much like any other relevant group, replacing the need for child impact statements.²³⁸ To reinforce the ethos of the Child First legislation, the Department for Children and Youth Affairs produced a *National Strategy on Children and Young People's Participation in Decision Making 2015-2020*.²³⁹
- 4.24 There is copious evidence that embedding the right of a child to be safe from harm in legislation is having a positive impact in Scotland. Organisations, the Government and the community are reflecting on the improvements in the protection of children and the engagement with children.²⁴⁰ Legislation such as the *Children and Young People Act 2014*, which requires organisations to become informed about child abuse and how to prevent it, or respond appropriately should it occur, can lay the foundations for examining other settings which can pose a risk, such as a child's home.²⁴¹

Legislation is necessary to underpin all child safe approaches

- 4.25 Without doubt, the most notable feature observed in these jurisdictions is the overarching awareness of child safety and wellbeing across government and the broader community, and of the importance of keeping children safe and well when they are accessing services. Throughout the Committee's discussions with witnesses, the legislated schemes were credited for underpinning this awareness, and for sharpening the focus and increasing the prominence of child safe approaches in organisations. In the Committee's view, the most effective approaches were those that supported service providers - government or non-government, big or small - to make appropriate, practical, everyday decisions about the safety and wellbeing of any child accessing their services. This was achieved in those jurisdictions with specific and targeted legislation placing a legal obligation on service providers to become child safe.

Victoria

- 4.26 Victoria was the first Australian jurisdiction to implement mandatory child safe standards, which have been fully operational in that state since January 2017. It is worth noting, however, that the drive to develop and implement the Victorian standards predates the

affirmation of rights and protections to be enjoyed by children as children. Citizens Information, *Fundamental rights under the Irish Constitution*, 24 December 2018, accessed 6 August 2020, https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_fundamental_rights.html.

238 Department of Children and Youth Affairs/TUSLA – Child and Family Agency, Briefing, 30 September 2019 (Dublin, Ireland).

239 Department of Children and Youth Affairs, *National Strategy on Children and Young People's Participation in Decision Making 2015 -2020*, Government Publications, Dublin, 2015. This is discussed in chapter 2.

240 Centre for Wellbeing and Child Protection, University of Stirling, *Briefing*, 1 October 2019 (Edinburgh, Scotland); Children in Scotland, *Briefing*, 3 October 2019 (Edinburgh, Scotland).

241 Centre for Wellbeing and Child Protection, University of Stirling, *Briefing*, 1 October 2019 (Edinburgh, Scotland); A specific example provided to the Committee of the way that change in the public sphere can precipitate change in the private realm was smoking: restrictions on smoking in public places prompted a change in attitudes about smoking in vehicles and homes where children were present. The example was provided by Carnegie Trust UK, *Briefing*, 1 October 2019 (Edinburgh, Scotland).

Royal Commission recommendations. Rather, they were developed in response to the 2013 *Betrayal of Trust* report²⁴² that found serious incidences of child abuse in institutions and organisations providing services to children and young people in Victoria. As a result, seven child safe standards were developed and subsequently prescribed in the *Child Wellbeing and Safety Act 2005 (Vic)*.

4.27 In addition to the seven standards, the Victorian legislation establishes a number of statutory protections for children’s safety and wellbeing:

- compliance arrangements for the child safe standards;
- the Victorian reportable conduct scheme;
- the Victorian Commissioner for Children and Young People as the oversight body for the standards and the reportable conduct scheme;
- principles for the wellbeing of children upon which the development and delivery of services must be based;
- a ministerial level commitment to promote the co-ordination of programs that affect child wellbeing and safety;
- information sharing principles, guidelines, timeframes and protections which promote the wellbeing and safety of children; and
- a broad range of boards or other bodies and functions to ensure the wellbeing and safety of children in Victoria.²⁴³

4.28 The Act provided for the establishment of the Victorian Children’s Council²⁴⁴ which provides the Premier and the relevant Minister with ‘independent and expert advice relating to policies and services that enhance the health, wellbeing, development and safety of children’.²⁴⁵

4.29 Following the COAG endorsement of the National Child Safe Principles, the Victorian Government commenced a review of its child safe standards. The review, completed in December 2019, found strong support to align Victoria’s standards with the National Child Safe Principles, and recommended amendments to the *Child Wellbeing and Safety Act 2005 (Vic)* to reflect this alignment. Additional amendments were suggested to strengthen the oversight and compliance aspects of the Child Safe Standards and to provide the Children’s Commissioner with more comprehensive regulatory compliance and enforcement powers.²⁴⁶ It is estimated approximately 50,000 Victorian organisations are required to comply with the National Child Safe Principles.²⁴⁷

242 Following the Parliament of Victoria’s *Inquiry into the Handling of Child Abuse by Religious and Other Non-government Organisations* the report, *Betrayal of Trust*, was tabled in two volumes on 13 November 2013. See Family and Community Development Committee (Victoria), *Betrayal of Trust (Volume 1 and 2)*, November 2013.

243 *Child and Wellbeing Safety Act 2005* (Victoria).

244 *ibid.*, s. 8.

245 *ibid.*, s. 10.

246 Department of Health and Human Services, *Review of Victorian Child Safe Standards*, Victorian Government, December 2019, pp. 43-44.

247 *ibid.*, p7.

Western Australia – Stakeholder views

- 4.30 The majority of evidence received by the Committee from non-government stakeholders supports the mandatory implementation of the National Child Safe Principles.²⁴⁸ The reasoning was in line with the Royal Commission arguments that a mandatory approach will provide the impetus for the standards to be adhered to in the first instance. The Youth Council of Western Australia (YACWA) stated that legislation for the National Principles is a critical ‘front end’ element to give the National Child Safe Principles effect.²⁴⁹ Similarly, former Royal Commissioner Professor Helen Milroy advised, a legislative framework is important at the ‘hard end’ of the implementation process.²⁵⁰
- 4.31 The Australian Childhood Foundation reinforced the view that a mandatory approach will provide the motivation for institutions to implement the National Child Safe Principles in a more thorough way than might be achieved through less direct regulatory methods. Drawing on his extensive experience in implementing child safe standards and accrediting child safe organisations, Dr Joe Tucci expressed the view that a regulatory framework without legislation is not enough, stating that while ‘organisations all have a good intention to be child safe’, competing demands can lessen the rigour with which child safe standards will be implemented over time.²⁵¹
- 4.32 Dr Tucci also drew attention to the ‘symbolic meaning’ legislating the National Child Safe Principles would have, concluding ‘[w]hen legislation is enacted, that is the highest form of community commitment to children. I think legislation will provide both the impetus and the mandate for the state to ensure that child-safe principles are implemented effectively’.²⁵²
- 4.33 Evidence opposing a legislative scheme was mainly expressing concern about the varying capacity of organisations to comply with the potential requirements and an increase in the existing regulatory burden already in place. The Alliance for Children at Risk, which represents community sector providers of out-of-home care, cautioned that the introduction of regulation in an already heavily regulated sector may create more of a burden on institutions.²⁵³ The difficulty of ensuring that legislation is sufficiently broad to accommodate all types of organisations was also raised as a potential hurdle.²⁵⁴
- 4.34 SportWest spoke about the willingness of sporting clubs to become child safe but highlighted the need to ensure that any legislation and subsequent obligations imposed on sporting clubs can be clearly understood and applied in a community sporting context.²⁵⁵ Potential conflicts between state sporting clubs which fall under the banner of national sporting bodies, and national regulations, was also raised as a concern.²⁵⁶ Scouts (WA)

248 See for example Mr Chris Twomey, Western Australian Council of Social Service, *Transcript of Evidence*, 4 March 2020, p. 3.

249 Mr Ross Wortham, Youth Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 5.

250 *Transcript of Evidence*, 4 March 2020, p. 5.

251 *Transcript of Evidence*, 6 March 2020, p. 3.

252 *ibid.*

253 Mrs Joanna Collins, Chair, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 3.

254 Ms Jennifer Hannan, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 3.

255 Mr Rob Thomson, SportWest, *Transcript of Evidence*, 4 March 2020, pp. 3-4.

256 *ibid.*, p. 2.

suggested that making the National Child Safe Principles obligatory through legislation was commendable but may not work across the board, suggesting that responsibility for implementation should fall on individual organisations.²⁵⁷

- 4.35 In the Committee’s view, the concerns raised about the capacity of legislation to appropriately capture an organisation’s practice and to effect change in an institution’s child safe practice are valid.
- 4.36 It seems to the Committee, however, that the question of how legislation can account for these concerns is answered through taking a proportional and principle-based approach, as recommended by the Royal Commission.²⁵⁸ Professor Milroy spoke about the effort taken by Royal Commissioners in developing the child safe standards to ensure they were both ‘appropriate and applicable across a wide variety of institutions’.²⁵⁹ That the standards were principle-based was a deliberate strategy to enable them to be ‘applied in different ways for different institutions and adapted for their needs’.²⁶⁰
- 4.37 The Western Australian Council of Social Services (WACOSS) highlighted that the proportional and principle-based approach should not be seen as a hindrance to the establishment of a direct-regulatory scheme, as the legislation should be written in a way that allows for ‘the implementation and interpretation of that act ... to be scalable and appropriate’ for individual institutions.²⁶¹ Such an approach, the Committee suggests, goes a long way towards mitigating the concerns expressed about legislating the National Child Safe Principles.
- 4.38 In the Committee’s considered opinion, mandatory implementation of the National Child Safe Principles through legislation is a necessary part of a successful implementation strategy.

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Evidence obtained in Western Australia, interstate and overseas jurisdictions suggest that mandatory implementation of the National Child Safe Principles through legislation is a necessary part of a successful implementation strategy.

Other regulatory models

- 4.39 Other regulatory approaches are currently being used to implement the National Principles within Western Australia. The Committee focussed on two main approaches: **Contract management** - which the Royal Commission categorised as a type of co-regulation; and **voluntary approaches** - including self-assessment tools, which the Royal Commission categorised as self-regulation (see paragraph 4.3). The Committee examined how co-

257 Mr Peter Walton, Scouts WA, *Transcript of Evidence*, 4 March 2020, p. 9.

258 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 261. See also chapter 3.

259 *Transcript of Evidence*, 4 March 2020, p. 1.

260 *ibid.*

261 Mr Chris Twomey, Western Australian Council of Social Service, *Transcript of Evidence*, 4 March 2020, p. 4.

regulation and self-regulation operate, and their potential effectiveness when combined with a legislated compliance model introduced for the National Child Safe Principles.

Contract management

- 4.40 The Royal Commission noted funding and procurement processes may be a useful mechanism to promote child safety in organisations, but recommended against using it as the only tool to enforce the standards. While acknowledging that imposing a requirement through funding agreements can be a ‘powerful motivator’, it noted not all institutions have equal funding arrangements in place with the Government.²⁶² For example, private organisations may not have any public funding in place while community organisations engaged in child-related work often rely on government funding. Organisations may therefore be disproportionately affected by compliance methods enforced at the level of funding and procurement processes.
- 4.41 A further difficulty arises in that the scrutiny of government funding also varies across different funding arrangements. Individual organisations may receive funding from several bodies at different levels of government with potentially conflicting requirements.²⁶³
- 4.42 The Victorian review established that many authorities relying on funding mechanisms to ensure implementation of their mandatory standards ‘have very limited ability or skills to oversight compliance with Standards and no powers to respond to non-compliance except to withdraw funding, which does not address risks to children’.²⁶⁴ Accordingly, the review recommended the *Child Wellbeing and Safety Act 2005* be amended to remove the link between funding arrangements and regulatory compliance and enforcement.²⁶⁵
- 4.43 The Department of Local Government, Sport and Cultural Industries (DLGSC) is currently incorporating the National Child Safe Principles into funding contract and grants.²⁶⁶ This approach can be justified in that it assists those organisations who are part of national networks, such as sporting federations, demonstrate their compliance with the *Commonwealth Child Safe Framework*.²⁶⁷
- 4.44 Despite that fact the DLGSC provides many kinds of support, including capacity building, to community or volunteer sporting, recreation and cultural organisations across the State, the reality is that at the local level many clubs which provide services to children may not actually receive any direct State funding. SportWest advised ‘[v]ery little funding actually gets to the community level of sport. Junior sport is largely self-funded. It is mums and dads

262 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 297.

263 *ibid.*

264 Department of Health and Human Services, *Review of the Victorian Child Safe Standards, Final Report – December 2019*, Victorian Government, Melbourne, December 2019, p. 10.

265 *ibid.*, p. 46.

266 Mrs Patricia Heath, Commissioner for Children and Young People, *Transcript of Evidence*, 19 February 2020, p. 6.

267 Under this Framework, Commonwealth entities were required to implement the National Child Safe Principles within 12 months of them being endorsed by COAG on 1 February 2019. Department of Prime Minister and Cabinet, *Commonwealth Child Safe Framework*, accessed 7 February 2020, <https://pmc.gov.au/domestic-policy/national-office-child-safety/commonwealth-child-safe-framework>.

fundraising, paying the membership, the registration of their children and so on. Not a lot of grant activity actually occurs at a community level'.²⁶⁸ This means that opportunities to regulate the National Child Safe Principles through contract management with these bodies, despite children being very active recipients of services provided by the organisations, are effectively limited.²⁶⁹

4.45 As witnesses representing DPC confirmed, the State Government sees a role for using contract management in building the capacity to implement the National Child Safe Principles that can extend beyond a form of 'tick-the-box or a compliance-based exercise'.²⁷⁰ The Committee accepts that this form of regulation could be one mechanism for quality assurance, whereby 'government funding is going to organisations that are child safe in the same way as you might want to ensure that government funding is going to organisations ... exhibiting good practice in other ways'.²⁷¹ DPC confirmed that maintaining requirements to implement the National Child Safe Principles through funding agreements is being actively considered. DPC stressed, however, that if there was a statute mandating compliance with the National Child Safe Principles, then the legislation would take precedence.²⁷²

4.46 In the Committee's view, using contract management as a form of co-regulation for the National Child Safe Principles is problematic unless the limitation of scope issues identified above are addressed. If this approach is to be expanded, attention must also be given to how the outcomes of the National Child Safe Principles (which include children being safe, happy and engaged) can be incorporated into a contract.²⁷³ Even if this approach is employed solely as a quality assurance mechanism the risk that it will turn into another "tick-box" exercise must be mitigated.

4.47 It is the Committee's view that careful consideration needs to be given to ensuring that if contract management is used as either a form of regulating for compliance with the National Child Safe Principles, or as a form of quality assurance, it is supported by an independent strategy to measure and build an organisation's capacity to become child safe.

268 Mr Rob Thompson, SportWest, *Transcript of Evidence*, 4 March 2020, p. 5.

269 For example, the 2012 Children's Participation in Cultural and Leisure Activities survey undertaken by the Australian Bureau of Statistics (ABS) showed that 64 per cent of Western Australian kids participated in organised sport outside of school hours in the 12 months to April 2012, which is most likely organised through community level sports club. See: ABS, *Media Release, Swimming and soccer the most popular sports for children*, 21 October 2012, accessed 6 February 2020, <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4901.0Media%20Release1Apr%202012?op=endocument&tabname=Summary&prodno=4901.0&issue=Apr%202012&num=&view=>.

270 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 13.

271 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 13.

272 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 13.

273 See the *Wheel of Child Safety: Australian Human Rights Commission, National Principles for Child Safe Organisations*, Australian Human Rights Commission, Sydney, 2018, p. 5.

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Careful consideration needs to be given to ensuring that if contract management is used as either a form of regulating for compliance with the National Child Safe Principles, or as a form of quality assurance, it is supported by an independent strategy to measure and build an organisation's capacity to become child safe.

Voluntary approaches

- 4.48 When taking into account the risk of child sexual abuse across the range of organisations and the severity and long-term nature of its impact, government must hold organisations to account for child safety.²⁷⁴ The strong advice from the Royal Commission is that voluntary child safe standards are 'not sufficient to effectively address the issue of institutional child sexual abuse for many institutions that provide or deliver services to children'.²⁷⁵
- 4.49 In the absence of a mandatory requirement, the majority of organisations within the State seeking to implement the National Child Safe Principles are currently doing so on a voluntary basis.

Voluntary approaches developed by the Children's Commissioner

- 4.50 As stated in the introductory chapter, the Children's Commissioner can be credited for many of the self-regulatory efforts made to improve child safe approaches within this State.²⁷⁶ According to the WA Work Plan²⁷⁷ the Children's Commissioner is the 'Lead Agency' responsible for developing and distributing a suite of child safe resources 'contextualised for Western Australia'.²⁷⁸ The Commissioner's office is also meeting with individual agencies to assist with 'planning to address gaps and make improvements' in preparation for implementing the National Child Safe Principles.²⁷⁹ The Commissioner produced a Self-Assessment and Review Tool for the National Child Safe Principles which is widely used within community sector organisations to help assess preparedness to implement the National Child Safe Principles.²⁸⁰
- 4.51 Reviewing the Children's Commissioner's involvement in these activities illustrates two elements about the current approach within Western Australia. First, the Government is still in the initial stages of planning the approach for implementation. Second, a substantial amount of this effort has involved the development and promotion of voluntary approaches to implementing child safe approaches.

274 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 256.

275 *ibid.*

276 See chapter 1, page 16 for more information about the Children's Commissioner work in this area.

277 This is referring to the *WA Work Plan to Implement National Principles for Child Safe Organisations*, a copy of which was provided to the Committee by the Department of Communities. Ms Michelle Andrews, Director General, Department of Communities, Letter, 21 April 2020, n.p.

278 Ms Michelle Andrews, Director General Department of Communities, Letter, 21 April 2020, n.p.

279 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, p. 8.

280 Ms Jennifer Hannan, AM, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 4.

Legislating the National Child Safe Principles

- 4.52 The Royal Commission stated that the implementation of their recommendations for improving child safe approaches should be a priority for governments.²⁸¹ The timeframe provided by the State Government suggests the Oversight Working Group (see paragraph 7.21) was on track to provide advice to Cabinet in May 2020 about how the implementation will be oversighted.²⁸² The Committee has worked on the assumption that this advice would include details about how the National Child Safe Principles would be made mandatory for relevant institutions. With the State Budget now delayed due to the COVID-19 pandemic, the Committee does not expect this advice to be made public prior to the release of the 2020–21 budget.²⁸³
- 4.53 The Committee has therefore not been able to determine precisely how the Government intends to progress the implementation of the National Child Safe Principles. The Government’s 2019 Progress Report does not mention any intent to specifically mandate them, and at the time of writing, the Government has not found itself in a position to determine what format legislation might take or where it might sit.
- 4.54 DPC informed the Committee that the first step has been to examine which oversight body will take on the regulatory function of administering the standards and that the intention has been that this decision will precede others. Once that oversight body decision has been made, other questions about whether to include the new child safe standards requirements in that body’s enabling act or to craft a new standalone statute will be addressed. DPC has advised the Committee that at this point no decisions have been made about any of these issues.²⁸⁴
- 4.55 Information provided by the Department of Communities has confirmed that ‘legislative change to give effect to this recommendation [6.9] is being investigated and considered’.²⁸⁵ In the short term, it would appear organisations will be encouraged, through either contract management measures, or through self-assessment and other voluntary mechanisms, to implement the National Child Safe Principles in order to be ‘well placed to meet future legislative and oversight requirements’.²⁸⁶
- 4.56 The justification for the Royal Commission’s recommendation that child safe standards should be mandated through formal legislation is, in the Committee’s view, relevant to the

281 The proposed timeframe set out by the Royal Commission for the relevant funded organisations to be required to implement the National Child Safe Principles was within a three-year, short to medium term, timeframe. Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 330, table 6.2.

282 The Work Plan notes ‘Provide advice to Cabinet in May 2020 on independent oversight in WA’ which accords with evidence provided to the Committee by the Department of the Premier and Cabinet. The Work Plan was provided via correspondence on the 21 April 2020 and may not be current after this date: Ms Michelle Andrews, Director General Department of Communities, Letter, 21 April 2020, n.p.

283 At the time of writing, the State Budget is expected to be released in October 2020.

284 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, pp. 4-5.

285 Ms Michelle Andrews, Director General Department of Communities, Letter, 21 April 2020, n.p.

286 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, November 2019, p. 8.

provision of children's services in Western Australia. Children receive a great variety of services from providers who are located across multiple industry sectors and service settings in government, non-government, community and religious organisations. The geographical spread of these entities across the State is vast. The Royal Commission argued that, when taking these differences into account, successful implementation of child safe standards through the 'less direct means' of co-regulation or self-regulation would be very difficult to achieve.²⁸⁷ The Royal Commission also noted that either the limited capacity or commitment of some institutions to reduce the risk of child sexual abuse from occurring and implement the child safe standards without legislation contributed to a high risk of 'non-compliance or active subversion'.²⁸⁸

- 4.57 Perhaps the most compelling reason provided by the Royal Commission for mandating the implementation of child safe standards is that child safety in institutions is 'not optional'.²⁸⁹ The improvement of child safety approaches in institutions is critical to ensure the protection of children and young people within Western Australia. Beyond preventing child abuse, child safe approaches enhance the wellbeing outcomes of children and can improve day to day experiences of children in institutions.²⁹⁰
- 4.58 The State Government has committed to making a 'safer WA for children' by 'protecting children now and preventing further harm' specifically through progressing its response to the Royal Commission recommendations.²⁹¹ It is the Committee's opinion that it is essential this response gives serious consideration to the introduction of legislated requirements to implement child safe standards as a priority.
- 4.59 The Committee understands the complexity of the questions which arise in relation to implementing these measures. The Committee is also aware that the Government is working on a 10-year program of reform and has commenced work on planning a legislative model for oversight. It is, however, vitally important to avoid unnecessary delays and care must be taken to make sure that delaying the decision about mandating the National Child Safe Principles until after the decision is made about the oversight of the Principles does not add an additional layer of complexity to an already complex issue.
- 4.60 All the evidence shows that children are more at risk in the absence of child safe approaches and it is entirely appropriate that the Government and community is compelled by a great sense of urgency. In the Committee's view, the creation of a standalone piece of legislation that enshrines both the National Child Safe Principles and the requirement to adhere to them, would represent a useful first step in embedding child safe approaches in Western Australia.

287 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 258.

288 *ibid.*

289 *ibid.*, p. 16.

290 *ibid.*, p. 260.

291 Government of Western Australia, *Healing Past Hurts, Protecting Children Now, Preventing Further Harm*, Western Australia, 2019.

Finding 31

The creation of a standalone piece of legislation that enshrines both the National Child Safe Principles and the requirement to adhere to them would represent a useful first step in embedding child safe approaches in Western Australia.

Recommendation 7

That the Government considers the creation of a standalone piece of legislation that enshrines both the National Child Safe Principles and the requirement to adhere to them.

Chapter 5

Applying the National Child Safe Principles

“Almost every type of institution”

5.1 The Royal Commission established that sexual abuse of children has occurred in ‘almost every type of institution where children reside or attend for educational, recreational, sporting, religious or cultural activities’.²⁹² By the time the proceedings were concluded, the Commissioners had heard from 3,489 institutions where child sexual abuse had occurred.²⁹³ Table 5.1 below illustrates the prevalence of reported child sexual abuse in institutions categorised by the services they were providing at the time the abuse was reported to have occurred.

Table 5.1: Number and proportion of survivors by institution type ²⁹⁴

Institution type	Number	Proportion (%)
Out-of-home care	3,277	41.1
<i>Out-of-home care: pre-1990</i>	2,809	25.2
<i>Out-of-home care: 1990 onwards</i>	298	3.7
<i>Unknown era</i>	205	2.6
Schools	2,521	31.6
Religious activities	1,162	14.6
Youth detention	639	8.0
Recreation, sports and clubs	482	6.0
Health and allied	221	2.8
Armed forces	105	1.3
Supported accommodation	84	1.1
Family and youth support services	66	0.8
Childcare	41	0.5
Youth employment	23	0.3
Other	295	3.7
Unknown	96	1.2
Note: Survivors told the Royal Commissioners they were abused in more than one institution type. These survivors have been counted under each institution type identified.		

292 Royal Commission into institutional responses to child sexual abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, p. 5.

293 Royal Commission into institutional responses to child sexual abuse, *Final Information Update*, accessed 19 December 2019, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_information_update.pdf.

294 *ibid.* Note: This information is based on private sessions held by the Royal Commission between 7 May 2013–24 November 2017.

- 5.2 It is clear that child sexual abuse can occur in any type of institution where there is potential to come into contact with a child.

Finding 32

Evidence shows that child sexual abuse can occur in any type of institution where there is potential to come into contact with a child.

- 5.3 The Royal Commission’s definition of institution was broad and included any entity that has at any time provided the means through which adults have contact with children, including through their families.²⁹⁵ This could include an entity that does not directly provide a service, activity or program to a child, but where adults working within that entity could encounter a child by providing a service to that child’s parent, caregiver, or other adult family member, for example an agency providing housing services to a child’s family, or an aged care provider where a child may visit an adult relative.

The threshold measure

- 5.4 The Royal Commission considered which institutions should be required to comply with the recommended child safe standards and determined that only those engaged in “child-related work” should be legally required to comply. Recommendation 6.9 provides a list of these institutions, see table 5.2 below.

Table 5.2: Recommendation 6.9 (reproduced) ²⁹⁶

Legislative requirements to comply with the Child Safe Standards should cover institutions that provide:	
a.	accommodation and residential services for children, including overnight excursions or stays
b.	activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children
c.	childcare or childminding services
d.	child protection services, including out-of-home care
e.	activities or services where clubs and associations have a significant membership of, or involvement by, children
f.	coaching or tuition services for children
g.	commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions
h.	services for children with disability
i.	education services for children
j.	health services for children
k.	justice and detention services for children, including immigration detention facilities
l.	transport services for children, including school crossing services accommodation and residential services for children, including overnight excursions or stays

295 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 1 – Our inquiry*, Commonwealth of Australia, 2017, p. 17. “Institution” is also defined in chapter 1.

296 *ibid.*, p. 28.

- 5.5 The Royal Commission decided to limit the scope of organisations to whom the standards should apply for a number of reasons:
- the recognition of the administrative (and other) burdens the implementation process could impose on institutions;
 - that ‘the nature and characteristics of [some] institutions do not justify child safe standards being mandated’; and
 - that the cost and oversight burdens of monitoring institutions could become unmanageable if all institutions were mandated to become child safe.²⁹⁷
- 5.6 In deciding which institutions should be included in recommendation 6.9, account was taken of the “level of contact”²⁹⁸ an institution has with a child (rather than whether it has any contact at all) as well as the type of work undertaken and whether that work falls within the scope of “child-related work” as defined under Working With Children Check (WWC Check) legislation.²⁹⁹ The rationale for making this latter determination was that, in practice, it was already operating in Australian jurisdictions where mandatory child safe standards were in place.³⁰⁰
- 5.7 The Department of Communities, the State regulator for the WWC Check scheme in Western Australia, describes child-related work as whether ‘in the normal course of the functions of that duty’ it requires a person to have ‘interaction ... with children’.³⁰¹ Under the legislation, work is considered child-related if ‘the usual duties of the work involve, or are likely to involve, contact with a child, in connection with designated child-related businesses ...’.³⁰²
- 5.8 Using this definition, the WWC Check legislation does not apply to the aged-care facility or housing services examples provided above; therefore, these types of institutions would be under no obligation to comply with the National Child Safe Principles.
- 5.9 The Committee is cautious about accepting this outcome given the Royal Commission uncovered child abuse in institutions providing services of almost every description (refer back to table 5.1).

297 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 266.

298 In Western Australia, “contact” is defined under section 4 of the *Working with Children (Criminal Record Checking) Act 2004* as any form of physical contact; any form of oral communication, whether face to face, by telephone or otherwise; and any form of electronic communication, excluding contact between employer and an employee or employees of the same employer.

299 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, pp. 265-266. Note: The Royal Commission cited the criteria for “child-related work” as being those organisations that fell within the scope of this work as it is defined under the Victorian, Queensland and South Australian Working with Children Check legislation.

300 *ibid.* Note: Institutions required to comply with Child Safe Standards in Victoria, Queensland and South Australia are involved in “child-related work” as defined within the WWC Check schemes in their respective jurisdictions.

301 Mr Phil Payne, Executive Director, Regulation and Quality, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 5.

302 *Working with Children (Criminal Record Checking) Act 2004*, s. 6.

- 5.10 The Committee examined the appropriateness of using the “child-related work” definition found in legislation and found that the existing obligation to meet the criteria of the WWC Check legislation ultimately rests with the individual performing the child-related work.³⁰³ By contrast, the responsibility for the successful operation of the National Child Safe Principles is expected to rest with the employing institution.
- 5.11 The Department of the Premier and Cabinet (DPC) confirmed the Committee’s finding that working with children checks relate to individuals, while the National Child Safe Principles relate to organisations.³⁰⁴
- 5.12 The risk of accepting that the WWC Check threshold be applied to determining the scope of the National Child Safe Principles is that the two are conflated. To help mitigate this, the Committee suggests that the Government develop appropriate resources to educate individual employees, employers and organisations about the differences between the two schemes and, especially, the different accountability requirements for each.

Finding 33

Information and education materials designed to educate institutions, employers and employees about the National Child Safe Principles should explain how the threshold of “child-related work” is applied.

Is “child-related work” broad enough?

- 5.13 The Committee has closely considered the possibility that the use of the child-related work test may inadvertently ‘lock out’ some institutions who have indirect but regular contact with children from being required to implement the National Child Safe Principles.
- 5.14 The Royal Commission provided some examples of institutions that have contact with children but would not meet the requirements for implementation of the National Child Safe Principles: shopping centres, public transport, restaurants, theatres and stadiums, and medical centres that do not provide children’s health services.³⁰⁵
- 5.15 It is accepted that if a child attends an institution with a caregiver, then that caregiver is responsible for that child. This position was reiterated to the Committee by the Alliance for Children at Risk, but they suggest an issue could arise when ‘that supervision is delegated to somebody’.³⁰⁶
- 5.16 The Committee is aware of situations where employees of institutions that children normally attend under the responsibility of a caregiver may in practice have direct or regular contact with and/or responsibility for a child. The Committee seeks an assurance that if the decision

303 Much like obligations placed on professionals who are mandatory reporters, the WWC Check provides an important building block to contribute to child safety; however, neither of these schemes focus the obligation on the employing institutions.

304 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 4.

305 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 268

306 Ms Joanna Collins, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 2.

is taken to exempt such institutions from the requirement to implement the National Child Safe Principles, child safety would not potentially be compromised.

5.17 A concomitant concern of the Committee is that the exclusion of some services may decrease the ability of a child safe system to respond to emerging risks to child safety and wellbeing.

5.18 For these reasons, the Committee believes further discussion is required as to whether institutions with indirect contact with children should be exempt from an obligation to implement the National Child Safe Principles. This is discussed further at paragraph 5.31.

Stakeholder feedback about extending the scope of the National Child Safe Principles

5.19 The Committee asked witnesses if they believed institutions in Western Australia which have indirect contact with children should be required to implement the National Child Safe Principles. The responses varied.

5.20 The Australian Childhood Foundation believes the National Child Safe Principles should apply to all organisations, even those with no direct service to children (aged care providers was the given example).³⁰⁷ They highlighted that the National Child Safe Principles have symbolic meaning but also the practical effect of making institutions safer for children and reducing the risk of child abuse.³⁰⁸

5.21 The Youth Affairs Council of Western Australia (YACWA) stated that all government agencies, local governments, church groups, volunteer and scouting groups, and sport and recreation entities should adhere to the National Child Safe Principles, stating that an institution would have to be 'very far and indirect for [the National Child Safe Principles] not to be relevant, such as the Department of Commerce'.³⁰⁹

5.22 The Children's Commissioner noted that anywhere a child is involved with an institution, it must ensure it applies the National Child Safe Principles, but qualified this by adding that 'obviously [they] become more important where children are [present] on a regular basis'.³¹⁰ This observation is in keeping with the preference by the Royal Commission for a proportional implementation in which the requirement to adhere to the National Child Safe Principles increases as contact with a child increases.

5.23 The Alliance for Children at Risk felt the institutions listed in recommendations 6.9 were adequately broad, but made the point that there has to be equal responsibility for government agencies who provide services to children to implement and adhere to the National Child Safe Principles.³¹¹

5.24 When asked if the limited scope of application for the National Child Safe Principles posed any risks, Professor Helen Milroy described the delicate balance between making the

307 Dr Joe Tucci, Australian Childhood Foundation, *Transcript of Evidence*, 6 March 2020, p. 2.

308 *ibid.*, p. 2-3.

309 Mr Ross Wortham, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 3.

310 *Transcript of Evidence*, 19 February 2020, p. 2.

311 Ms Joanna Collins, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 1.

requirements too narrow and risk excluding some types of institutions or making the requirements so far reaching that the system becomes unwieldy. She indicated that the intent of the Royal Commission recommendation was ‘trying to get the best coverage you can in a way that is achievable’.³¹²

- 5.25 The Victorian mandatory child safe standards, fully operational since January 2017, have a broader scope than the list of institutions within table 2.1. A recent review of their own standards recommended the broader scope be maintained while recommending the standards themselves migrate over to the National Child Safe Principles.³¹³ The scope of organisations to which their standards apply is pegged to the definition of child-related work as defined in the Victorian Working with Children legislation. The Victorian State Government has endorsed this recommendation and is intending to implement the National Child Safe Principles with a broader scope than that recommended by the Royal Commission.³¹⁴

State Government response

- 5.26 The Committee questioned relevant government agencies about extending the scope of organisations to which the National Child Safe Principles should apply. The Department of Communities stated that the intent is to apply them to all of the organisations listed in recommendation 6.9 and ‘there is no intent to redefine’.³¹⁵
- 5.27 In contrast, DPC indicated it was still a matter under consideration for Government and it ‘would not arrive at a final position without consulting with the industries that might be affected’.³¹⁶ As noted previously, DPC’s “best estimate” is that between 20,000 and 25,000 organisations across Western Australia will be required to implement the National Child Safe Principles.³¹⁷

The need for greater clarity

- 5.28 The Committee has found that there is a variety of opinions about the scope of institutions to which the National Child Safe Principles should apply. Consideration of how a threshold might operate will assist in providing greater clarity about how to determine which institutions will be mandated to adhere to the standards and which will not.

Defining how threshold applies to a whole organisation

- 5.29 The Committee understands the “child-related work” definition and application under the Working with Children Check legislation is designed to determine if the normal functions of a single position involves children-related work. Under these circumstances, the threshold

312 Professor Helen Milroy, Former Commissioner, Royal Commission into institutional responses to child sexual abuse, *Transcript of Evidence*, 4 March 2020, pp. 3-4.

313 Department of Health and Human Services, *Review of the Victorian Child Safe Standards, Final Report – December 2019*, Victorian Government, Melbourne, December 2019, p. 8.

314 *ibid.*, p. 30.

315 Ms Helen Nys, Assistant Director General, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 5.

316 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 3.

317 *ibid.*

seems straightforward. It is not clear, however, how this threshold would apply to an entire organisation.

- 5.30 If this is going to be the only threshold for determining the scope of the National Child Safe Principles, then it would assist organisations if the State Government could provide clarity on how the terms “the usual duties of work” and “contact with a child” may operate from a whole-of-organisation perspective. The Committee is aware the Department of Communities is ‘investigating and considering’ change to the *Working with Children (Criminal Record Checking) Act 2004* to give effect to a number of Royal Commission recommendations.³¹⁸

Finding 34

If the “child-related work” definition under the *Working with Children (Criminal Record Checking) Act 2004* is adopted to determine the scope of organisations to which the National Child Safe Principles will apply, it would assist organisations if the State Government were to provide clarity on how the terms “the usual duties of work” and “contact with a child” may operate from a whole-of-organisation perspective.

Defining scope around the margins

- 5.31 As noted above, (paragraph 5.19) it is the Committee’s view that further discussion is required about whether institutions falling outside of the scope of child-related work should be exempt. These discussions should include circumstances where there may still be an impact on a child’s safety and wellbeing. This will ensure that Western Australia avoids a situation in which an organisation may pose a risk to a child while not required to become child safe.
- 5.32 The Committee suggests that the Government should consider some form of engagement with the community and stakeholders about which institutions should be obliged to become child safe.
- 5.33 Any decision made by the Government should include advice and guidance about how all organisations, in scope or not, can respond to emerging risks to child safety and wellbeing.
- 5.34 It was expected that an announcement about how the Government would respond to recommendation 6.9 would occur within this inquiry’s reporting timeframe. We acknowledge that the impact of the COVID-19 state of emergency has delayed this process, but nevertheless urge that information about the scope of organisations to whom the National Child Safe Principles will apply, and associated guidance about the application of the threshold, is communicated to organisations at the earliest opportunity.
- 5.35 Given that Royal Commission recommendation 6.9 lists the types of organisations which should have a statutory requirement to comply with the National Child Safe Principles, the Committee suggests that decisions taken by the Government in this regard should be supported by legislation. Any such statutory provisions should give due regard to the need

318 Ms Michelle Andrews, Director General, Department of Communities, Letter, 21 April 2020, n.p.

for child safe approaches to adapt swiftly to changing circumstances and emerging risks and therefore include mechanisms for the provisions to be amended in a timely manner.

Finding 35

Using the “child-related work” threshold for determining to which institutions the National Child Safe Principles apply may result in some organisations, which may still have an impact on a child safety and wellbeing, falling outside of the scope.

Recommendation 8

That the Government should consider some form of engagement with the community and stakeholders about which institutions should be obliged to become child safe.

Recommendation 9

That if the “child-related work” definition is to be the single threshold for determining to which institutions the National Child Safe Principles should apply, direction be provided by the Government about how the “the usual duties of work” and “contact with a child” as determined under Section 6 of the *Working with Children (Criminal Record Checking) Act 2004* may operate from a whole-of-organisation perspective.

Chapter 6

Importance of Information Sharing

Information sharing between institutions with responsibilities for children’s safety and wellbeing, and between those institutions and relevant professionals, is necessary to identify, prevent and respond to incidents and risks of child sexual abuse.

Royal Commission into institutional responses to child sexual abuse³¹⁹

Information sharing is critical

- 6.1 Information sharing is critical for the operation of a child safe system. Without appropriate measures in place, many of the Royal Commission recommendations related to the operation of the National Child Safe Principles and the associated oversight will not be able to function.
- 6.2 For a successful child safe system to operate, it is crucial that any concern or worry about a child is shared appropriately to ensure the safety of that child. Considering how this can happen in practice became a central concern of this inquiry. This chapter focusses on the question of how privacy can be maintained alongside responsible information sharing to ensure children’s safety and wellbeing.

What is “information sharing”?

- 6.3 The Committee acknowledges the importance of collecting, sharing and linking data to aid research and policy development and identify strategies for intervention and prevention.³²⁰ However, for the purposes of the inquiry, the Committee decided to focus on the sharing of information, and specifically personal information, by agencies and individuals.
- 6.4 The definitions of information sharing and personal information adopted by the Committee are included in chapter 1.

Privacy vs safety

- 6.5 The question about whether safety comes only at the expense of privacy is a vexed issue that held the attention of the Royal Commissioners for some time. Ultimately, according to Professor Milroy, it was determined that privacy concerns should not be prioritised over the wellbeing of the child.³²¹
- 6.6 Worryingly, evidence provided to the Royal Commission suggests a ‘persistent culture that privileges privacy and confidentiality over the need to share information relevant to the

319 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 8 – Record keeping and information sharing*, Commonwealth of Australia, 2017, p. 138.

320 Data Linkage Expert Advisory Group, *A review of Western Australia’s data linkage capabilities*, Western Australia, December 2016, p. 17.

321 *Transcript of Evidence*, 4 March 2020, p. 7.

health, safety and wellbeing of children’ despite information sharing legislation or guidelines in place is evident in some agencies.³²²

- 6.7 When the Committee asked about privacy concerns, the CEO of the Youth Affairs Council of Western Australian (YACWA) acknowledged the enormous amount of data collected and held across multiple agencies and the complexity of sharing that information while balancing the “sanctity of privacy”. At the same time, he continued ‘if we know something and we know that information sharing is in the best interests of the child, it is critical that that information be enabled’.³²³
- 6.8 The Committee believes that there is broad agreement when it comes to the notion of child safety overriding privacy concerns for the purposes of information sharing. The challenge lies in ensuring people understand when and how to share information and developing systems to enable that sharing to occur.

Finding 36

There is broad agreement that when deciding to share information, the safety and wellbeing of a child should always outweigh privacy concerns.

- 6.9 There is a perception in the community that “government” already shares data; for example, if a child comes into contact with protective services, health and education agencies would share that information. There are others who would not differentiate between departments, believing “government is government”. It can seem strange when they discover their information is not shared.³²⁴
- 6.10 This was confirmed by then Department of the Premier and Cabinet (DPC) Director General, Mr Darren Foster, who stated ‘[t]hat is exactly my experience as well. People assume government departments share data’.³²⁵ Notwithstanding this assumption, there is, however, an uncertainty among the public about where their information is going; people are becoming more sceptical about their online privacy and are often frustrated when required to provide their information to multiple agencies.³²⁶
- 6.11 Taking these concerns on board it is the Committee’s view that opportunities exist for the Government to take a leading role in educating the public on the importance of appropriately sharing information when it comes to the safety of children.

322 South Australian Child Protection Systems Royal Commission referenced in Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 8 – Record keeping and information sharing*, Commonwealth of Australia, 2017, p. 172.

323 Mr Ross Wortham, Chief Executive Officer, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 15.

324 Exchange between Ms Jessica Stojkovski and Mr Darren Foster, *Transcript of Evidence*, 15 May 2019, p. 13.

325 *Transcript of Evidence*, 15 May 2019, p. 13.

326 Government of Western Australia, *Privacy and Responsible Information Sharing for the Western Australian public sector - Discussion paper*, Western Australia, August 2019, p. 10.

Finding 37

Opportunities exist for the Government to take a leading role in educating the public on the importance of appropriately sharing information when it comes to the safety of children.

- 6.12 The Committee is aware the State Government is piloting a one-stop-shop initiative, ServiceWA, which will bring together services currently delivered by five different agencies and provide a single point of contact for users.³²⁷ While not currently tailored for children, the Committee hopes that, in time, ServiceWA will include departments that typically interact with children.

Royal Commission Recommendations

- 6.13 The importance of appropriate information sharing is threaded throughout the final report of the Royal Commission and reflected within a number of the recommendations relevant to this inquiry.

Child Safe Standards (Recommendation 6.6; Recommendation 6.11(b))

- 6.14 The Child Safe Standards recommended by the Royal Commission included a number of 'core components' to guide organisations seeking to implement the Standards. A core component of leadership, governance and culture in a child safe institution (Child Safe Standard 1) is met when 'staff and volunteers understand their obligations on information sharing and record keeping'.³²⁸
- 6.15 Recommendation 6.11, which is concerned with the oversight of these standards, states that an essential role of the oversight body is to 'collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety'.³²⁹
- 6.16 The State Government has accepted these recommendations in principle. However, at this point in time, discussion and planning is still underway to determine how implementation is to proceed.
- 6.17 According to the Children's Commissioner, 'all child focused oversight should come under the auspices of one agency that can facilitate the sharing of information and coordination of systemic advocacy to provide a cohesive system of service accountability'.³³⁰ What the Royal Commission recommendations and the Children's Commissioner's view highlight is that appropriate sharing of information is crucial for the operation of child safe systems. Any considerations made by the Government about the implementation of the National

327 Hon Mark McGowan, Premier of Western Australia, *ServiceWA to reform government service delivery for Western Australians*, media release, 10 May 2019.

328 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 413

329 *ibid.*, p. 29.

330 Submission 15, p. 15.

Child Safe Principles or its oversight must include the manner in which information about a child's safety and wellbeing can be appropriately shared.

- 6.18 Clearly, decisions about how to implement the National Child Safe Principles and establish the independent oversight body for the National Child Safe Principles are highly pertinent to questions about the regulation of information sharing. Hence, there is a timeliness about the discussion in this chapter and it is the Committee's hope that the evidence it has collected and the findings and recommendations to which that evidence gives rise will be of interest and practical assistance as the decision-making process proceeds.

Finding 38

Decisions about how to implement the National Child Safe Principles and establish the independent oversight body for the National Child Safe Principles are highly pertinent to questions about the regulation of information sharing.

Institutional complaint handling: Recommendations 7.9 and 7.10

- 6.19 The Royal Commission found –

In each state and territory, certain individuals and institutions are legally obliged to report suspicions, risks and instances of child abuse and neglect, including child sexual abuse, to the police or child protection or oversight agencies. This type of reporting is known as 'obligatory reporting'. The aim of obligatory reporting is to detect, stop and prevent child abuse and neglect by requiring certain individuals and institutions to report to an external government authority.³³¹

- 6.20 There are three main types of obligatory reporting in Australia – mandatory reporting to child protection authorities; failure to report offences; and reportable conduct schemes.³³² In Western Australia, a mandatory reporting scheme has been operational since 2009.
- 6.21 Royal Commission recommendations 7.9 and 7.10 call for the introduction of a nationally consistent reportable conduct scheme 'based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institutions' employees'.³³³ In New South Wales reportable conduct is defined under the *Children's Guardian Act 2019* as 'a sexual offence, sexual misconduct, ill-treatment of a child, neglect of a child, an assault against a child, failure to protect and failure to report (as under the *Crimes Act 1900*), and behaviour that causes significant emotional or psychological harm to a child'.³³⁴

331 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 7 – Improving institutional responding and reporting*, Commonwealth of Australia, 2017, p. 38.

332 *ibid.*, p. 39.

333 *ibid.*, p. 283. See appendix two for the full text of these recommendations.

334 New South Wales Government, Office of the Children's Guardian, *Identifying reportable allegations*, no date, accessed 19 June 2020, https://www.kidsguardian.nsw.gov.au/ArticleDocuments/1021/Identifying_reportable_allegations.pdf.aspx?Embed=Y.

- 6.22 The State Government has accepted these recommendations in principle and asked the Western Australian Ombudsman to plan and develop the scheme.³³⁵ The Committee supports the introduction of a reportable conduct scheme to help protect the safety and wellbeing of children as well as the development and operation of such a scheme sitting with the Ombudsman as the Ombudsman's office already has the specialist skills for investigating and resolving complaints.

Finding 39

It is important for the State to introduce a reportable conduct scheme to help protect the safety and wellbeing of children.

National information exchange scheme: Recommendations 8.6 and 8.7

- 6.23 Royal Commission recommendation 8.6 stipulates that the Australian Government and each State and Territory Government should develop nationally consistent legislation to enable information sharing related to the safety and wellbeing of children and that these arrangements should feed into the establishment of an information exchange scheme to operate in and across Australian jurisdictions.³³⁶ Recommendation 8.7 sets out the minimum nationally consistent provisions that should be developed for the establishment of the information exchange scheme.³³⁷
- 6.24 Recommendation 8.7(a) states the proposed information exchange scheme should —
- Enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing.³³⁸
- 6.25 Information relevant to the safety and wellbeing of a child may include a child's personal information, where it relates to their own, or someone else's, safety and wellbeing. It may also include information about adults who work in or volunteer with organisations providing services to children.³³⁹
- 6.26 The State Government accepted these recommendations in principle and, in its 2019 Progress Report, advised it would be one of the first states to use the national information sharing platform established by the Federal Government.³⁴⁰ The aim of this platform, known as the National Child Protection Information Sharing Solution, is to improve collaboration between state and territory child protection agencies.³⁴¹

335 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 20 February 2019, p. 15.

336 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 8 – Record keeping and information sharing*, Commonwealth of Australia, 2017, p. 239

337 *ibid.*

338 *ibid.*, p. 24.

339 *ibid.*, pp. 210 and 218. See appendix two for the full text of these recommendations.

340 Government of Western Australia, *Healing Past Hurts, Protecting Children Now, Preventing Further Harm*, Western Australia, 2019, p. 15.

341 Australian Government, *Annual Progress Report*, Commonwealth of Australia, 2019, p. 28.

- 6.27 The Committee welcomes the State Government’s commitment to be an early adopter of the platform.

Finding 40

The State Government has committed to being an early adopter of the National Child Protection Information Sharing Solution.

Information sharing in Western Australia

- 6.28 Western Australia currently has provisions enabling the sharing of information related to the safety and wellbeing of children.

Children and Community Services Act 2004 – Information sharing provisions

- 6.29 New information sharing provisions came into effect in January 2016 following amendments to the *Children and Community Services Act 2004 (CCS Act)*. These amendments set out provisions enabling information sharing between agencies and services to protect the wellbeing of children in Western Australia.³⁴²
- 6.30 To enable a better understanding of these sections of the CCS Act, the Department of Communities directed the Committee to the *Working together for a better future for at risk children and families – A guide on information sharing for government and non-government agencies*. This guide was developed to clarify the information sharing provisions within the CCS Act and to assist agencies and individuals to make the right decision when sharing information.³⁴³
- 6.31 Significantly, the information sharing provisions under the CCS Act enable but do not compel information sharing. Rather it is up to the individual and/or agency to decide whether information should be shared. While this may be subjective, according to the information sharing guide, the decision to share ‘should be based on sound professional judgement about wellbeing and safety; and legal ethical and professional obligations’ and the best interest of the child must be ‘regarded as the paramount consideration’.³⁴⁴
- 6.32 According to the Department of Communities, the CCS Act represents the ‘broadest enabling legislation in relation to the exchange of information’, the only limitation is the sharing of information with non-government agencies.³⁴⁵ The legislative provisions even allow the exchange of information without consent; although, obtaining information consent is preferred.³⁴⁶
- 6.33 The CCS Act protects those who share information in good faith and in line with the legislation. According to the Department of Communities:

342 *Children and Community Services Act 2004*, s. 23 and s. 28B.

343 Government of Western Australia, Department of Child Protection and Family Support, *Working together for a better future for at risk children and families*, Western Australia, Revised October 2015.

344 *ibid.*, p. 11.

345 Ms Renee Gioffre, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 9.

346 *ibid.*, p. 10.

The CCS Act enables relevant information to be shared under sections 23 and 28B despite any enactment that prohibits or restricts its disclosure. ... [N]o civil or criminal liability will be incurred in respect of the disclosure, the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law, and the disclosure is not to be regarded as a breach of professional ethics or standards or any principles of conduct applicable to the person's employment or as unprofessional conduct.³⁴⁷

Children and Community Services Act 2004 – Mandatory reporting provisions

- 6.34 Introduced in Western Australia in January 2009, mandatory reporting is governed by the CCS Act and requires certain professionals to report reasonable beliefs of child sexual abuse to the Department of Communities.³⁴⁸
- 6.35 Currently, mandatory reporters include doctors, nurses and midwives, teachers, police officers and boarding supervisors. However, amendments before Parliament at the time of writing seek to extend mandatory reporting obligations to ministers of religion including priests, imams, rabbis, pastors, and Salvation Army officers.³⁴⁹
- 6.36 One of the principles underpinning mandatory reporting in Western Australia is 'keeping children safe from abuse is the responsibility of individuals, families, communities and the society as a whole'.³⁵⁰ While mandatory reporting focuses on child sexual abuse and the legal requirement for mandatory reporters it does not preclude the reporting of other forms of abuse, such as physical and emotional abuse, or neglect. Neither does it impede individuals outside the prescribed professions from reporting concern. Anyone with a concern regarding the safety or wellbeing of a child can report their concern to the Department's Central Intake Team.³⁵¹

Failing to share

- 6.37 Despite the provisions in the CCS Act, evidence suggests there remains a reluctance or disinclination to share information. While the message is consistently repeated that enhanced collaboration and information sharing is key to improving the outcomes for children and young people, it remains the case that 'sustained collaborative practice and timely information sharing across systems continues to be problematic in WA'.³⁵²

347 Ms Michelle Andrews, Director General, Department of Communities, Letter, 21 April 2020, n.p.

348 Department of Communities, *Mandatory reporting of Child Sexual Abuse in Western Australia*, no date, accessed 19 June 2020, <https://www.communities.wa.gov.au/services/child-protection-and-family-support/mandatory-reporting-of-child-sexual-abuse-in-western-australia/>.

349 Hon Simone McGurk, Minister for Child Protection, *Mandatory reporting legislation to be extended to ministers of religion*, media release, 23 May 2019.

350 Department of Child Protection, *Mandatory Reporting of Child Sexual Abuse in Western Australia – A Guide for mandatory reporters*, Government of Western Australia, Western Australia, 2008, p. 5.

351 Department of Communities, *Mandatory reporting of Child Sexual Abuse in Western Australia*, no date, accessed 19 June 2020, <https://www.communities.wa.gov.au/services/child-protection-and-family-support/mandatory-reporting-of-child-sexual-abuse-in-western-australia/>.

352 Submission 15, Commissioner for Children and Young People, p. 15.

- 6.38 A disastrous consequence of this reluctance to share information was evident in the widespread child sexual abuse that took place in the Western Australian town of Roebourne.

Roebourne – an account from the Children’s Commissioner

How was it that no child reached out about their concerns to the multitude of professionals working with these 60 agencies, or if they did, why was nothing done sooner? The fact is that the children and young people allegedly subject to this horrible abuse were able to reach out and have their voices heard as soon as the appropriate resources and systems were put in place for them to do so.³⁵³

- 6.39 In June 2016, allegations of child sexual abuse surfaced in Roebourne. The Western Australian Police established a taskforce to investigate the allegations. The Children’s Commissioner visited the Pilbara twice in response to the allegations, first in November 2016 to meet with agencies and again in September 2017 when he accompanied the Commissioner of Police and the former Director General of the Department of Communities. The Committee subsequently asked for an account of the issues in the region from the Children’s Commissioner’s perspective.
- 6.40 According to the Children’s Commissioner, in June 2016, individuals who previously worked in and around the community of Roebourne came to him and raised concerns about the health of children and young people in the town, particularly the high rate of sexually transmitted diseases amongst children.³⁵⁴
- 6.41 The Children’s Commissioner wrote to four different agencies – Health, Child Protection, Western Australian Police and Education – asking about the extent and nature of any issues of concern that had been raised through their processes. Mandatory reporting provisions were in place, so if any child had disclosed abuse it should have been reported.³⁵⁵ According to the Children’s Commissioner, ‘no child had come forward with a concern’.³⁵⁶
- 6.42 In the Children’s Commissioner’s view, it was very concerning that, despite over 60 government and non-government agencies operating in and around Roebourne, no child had come forward so the ‘alleged abuse was not detected earlier’.³⁵⁷
- 6.43 This failure of the agencies to identify earlier the extent and nature of the abuse gives rise to the question about why the affected children and young people of Roebourne did not come forward and how the agencies failed to identify the extent of the problems.
- 6.44 According to the Children’s Commissioner, the children in Roebourne did not reach out for help because the appropriate resources and systems were not in place to support them to

353 Mr Colin Pettit, Commissioner for Children and Young People, *Stronger communities the key to keeping children safe*, 8 August 2018, accessed 19 June 2020, <https://www.cyp.wa.gov.au/news/stronger-communities-the-key-to-keeping-children-safe/>.

354 Mr Colin Pettit, Commissioner for Children and Young People, *Transcript of Evidence*, 13 September 2017, p. 2.

355 *ibid.*

356 *ibid.*

357 Mr Colin Pettit, Commissioner for Children and Young People, *Stronger communities the key to keeping children safe*, 8 August 2018, accessed 19 June 2020, <https://www.cyp.wa.gov.au/news/stronger-communities-the-key-to-keeping-children-safe/>.

do so.³⁵⁸ As for the agencies, it was hard to monitor and compare specific situations which involve different agencies working at the level of individual service provision operating with different regional boundaries and different ways of gathering and recording information. This lack of consistency presents problems for working collaboratively.³⁵⁹

6.45 As noted by Mrs Patricia Heath, Director Policy and Research, of the Children’s Commissioner’s Office:

That is something that the commissioner has been very concerned about in terms of the way different departments operate with different regional boundaries and record information differently. It makes it very hard to monitor situations and compare, and for people to work collaboratively too because they are talking about different things. That has been one of the feedbacks to the agencies that we really need to get much better at working collaboratively and having consistent boundaries across information and the way we share information, because it just gets very confusing.³⁶⁰

6.46 The Children’s Commissioner summarised the situation:

So everyone knew a bit and no-one knew the whole picture. And it is one of the things, obviously, that successive governments have tried very hard to look at: how do you get a collaborative approach, both inside government but also with not-for-profits? [Information] sharing is one of those that is a real problem, and it only really manifests when you have an issue like this suddenly occur and everyone goes, “Oh, we knew but we didn’t know.” As Trish said, we have been pushing with all agencies to say part of that is that many of the agencies do not have the same boundaries, so therefore their data and the people who are involved with different sets of kids report to different areas. That needs to be supported differently. We have talked to government currently about how do you line up all the agencies so they have a consistent boundary, consistent messaging, consistent leadership, that can tackle local problems at the local level, and that may be a resolution that would be a good step moving forward.³⁶¹

6.47 The Committee finds itself in complete agreement with the Children’s Commissioner’s conclusion that meaningful action will continue to stall as long as each outcome of disadvantage experienced by children is considered separately.³⁶² Conversely, consistent information collection and a collaborative approach between agencies will improve the overall safety and wellbeing of children and young people.

358 *ibid.* Note: This observation reflects the Committee’s position that for communities to be child safe they must be hostile to child abuse. See chapter 2 for a discussion on child safe communities.

359 Mrs Trish Heath, Commissioner for Children and Young People, *Transcript of Evidence*, 13 September 2017, pp. 3-4.

360 *ibid.*

361 *Transcript of Evidence*, 13 September 2017, p. 4.

362 Mr Colin Pettit, Commissioner for Children and Young People, *Stronger communities the key to keeping children safe*, 8 August 2018, accessed 19 June 2020, <https://www.cyp.wa.gov.au/news/stronger-communities-the-key-to-keeping-children-safe/>.

Roebourne – comments by the former Director General of Communities

6.48 Noting the then Director General of the Department of Communities, Mr Grahame Searle, visited Roebourne with the Children’s Commissioner in September 2017, the Committee, at a public hearing, asked him to give his account of what was happening there. According to Mr Searle, the delivery of government services is fragmented and the ‘net effect ... is relatively disastrous in terms of what it actually means on the ground’.³⁶³

6.49 Mr Searle stated that:

If you are in a relatively small regional town or community, you could be dealing with 10 or 12 state government agencies, two commonwealth agencies, local government and four or five NGOs, all of which have their own single, specific targets that they are interested in and no-one who is accountable for the outcome.³⁶⁴

6.50 He continued:

[T]here are probably a dozen to 15 files across government on any individual family with complex needs, none of which is shared. ... Families have to tell their story 15 or 16 times rather than once.³⁶⁵

6.51 These comments highlight the problems that arise and are compounded when there is a lack of collaboration, and a failure to share appropriate information, within and between organisations, both government and non-government.

Why is information not being shared?

6.52 With the situation in Roebourne very much in mind, the Committee pursued with witnesses their views on information sharing in the state.

6.53 DPC advised there is a lack of collaboration with agencies taking a siloed approach stating, ‘no matter how well-defined your rules are or your operating procedures, the critical thing in a public sector, particularly a relatively small public sector like this, is the strength of personal relationships and the capacity of departments to collaborate’.³⁶⁶

6.54 This view was supported by the Ombudsman who said that ‘too often in government, and disappointingly for all of us, the right hand will not necessarily be talking to the left hand. Now, that may be in the one department or it may be across departments’.³⁶⁷

6.55 According to YACWA:

Reporting and information collection is very clunky across agencies and different within agencies, let alone across agencies, to contracted services. To transition to a

363 Mr Grahame Searle, Director General, Department of Communities, *Transcript of Evidence*, 8 November 2017, p. 2.

364 *ibid.*, p. 3.

365 *ibid.*

366 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 6 March 2020, p.7

367 Mr Chris Field, Ombudsman of Western Australia, *Transcript of Evidence*, 28 March 2019, p. 7.

point where we have streamlined, readily accessible and live information about families and those involved in services, we have a long journey.³⁶⁸

6.56 The Alliance for Children at Risk believes there needs to be ‘a portal where the shareable information is accessible by agencies, both government and non-government’.³⁶⁹

6.57 The inability to track at risk or vulnerable children effectively was raised by WACOSS:

... [O]ne of the concerns that we have in those interactions for particular individual children or young people who will be interacting across education, health, mental health, child protection, juvenile justice, the police and so on, often the concern is that those kinds of overarching whole-of-government issues in those interactions are not being picked up. So, if you have the one child kind of raising the issues in four or five different places, they are not necessarily being joined up.³⁷⁰

6.58 This concern was echoed during the Committee’s investigative travel when the Committee met with What Works – Children’s Social Care and was informed that information providing a holistic view of the life of a child and their family was not available in England. He went on to say that, by contrast, there is a lot of good data collected for measuring things governments want to know; for example, administrative data is generally of a high quality.³⁷¹

6.59 This observation was reflected in Western Australia by two independent statutory authorities. The Office of the Auditor General advised ‘agencies are pretty good at monitoring instances of service but they are less good at monitoring individuals as they track through those instances of service’.³⁷²

6.60 The Inspector of Custodial Services supported this view when he indicated [the Department of Justice]:

has been very good at counting certain things but probably not very good at putting some of that together in a more strategic way. What I mean by that is they are quite good at counting, for instance, the number of people who do programs but not quite so good at working out what the effect of those programs might be.³⁷³

6.61 WACOSS is of the view that the information sharing provisions within the CCS Act have not been implemented as intended and, in practice, there is an ‘excess of caution’ in the

368 Mr Ross Wortham, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 16.

369 Mrs Joanna Collins, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, p. 12.

370 Mr Chris Twomey, Western Australian Council of Social Service, *Transcript of Evidence*, 12 June 2019, p. 4.

371 What Works – Children’s Social Care, *Briefing*, 8 October 2019 (London, England).

372 Mrs Sandra Labuschagne, Acting Auditor General, Office of the Auditor General, *Transcript of Evidence*, 28 March 2019, p. 3.

373 Professor Neil Morgan, Inspector of Custodial Services, *Transcript of Evidence*, 20 March 2019, p. 3.

approach taken, with the focus on the perceived risks to government rather than the risks to the child if the information is not shared.³⁷⁴

6.62 The Department of Justice acknowledges the overarching information sharing provisions within the CCS Act, but believes the ability to share remains limited by the legislation.³⁷⁵ According to the Acting Commissioner for Victims of Crime, ‘most officers on the ground will take a conservative approach unless there are clear parameters that allow people to share information’.³⁷⁶

6.63 All this evidence is consistent with the conclusions drawn by the Royal Commission:

Even where information sharing is legally permitted or required, there may be reluctance to share. Concerns about privacy, confidentiality and defamation, and confusion about the application of complex and inconsistent laws, can create anxiety and inhibit information sharing. Institutional culture, poor leadership and weak or unclear governance arrangements may also inhibit information sharing and, as a result, undermine the safety of children.³⁷⁷

New Legislation

6.64 Western Australia is the only remaining Australian jurisdiction without privacy legislation. The Committee has heard evidence indicating that in Western Australia the lack of consistent legislation leads to a risk-averse approach to information sharing.

6.65 This message was consistent with evidence collected during the Committee’s investigative travel: complex legislation and rules governing information sharing result in limited or inconsistent information sharing. Legislation needs to be clear; there needs to be an appropriate balance between privacy and the safety and wellbeing of a child; and those sharing information need to be protected providing they are acting in the best interest of the child.

6.66 As outlined above, the Royal Commission made multiple recommendations related to record keeping and information data sharing. The State Government has acknowledged the need to improve information sharing between institutions and across states while protecting an individual’s privacy and has committed to introducing privacy and information sharing legislation to align Western Australia with other jurisdictions.

Discussion Paper highlights

6.67 In August 2019, the State Government released a discussion paper – *Privacy and Responsible Information Sharing for the Western Australian public sector* (the Discussion Paper). The aim of the Discussion Paper is to seek feedback from stakeholders on the State Government’s

374 Mr Chris Twomey, Western Australian Council of Social Services, *Transcript of Evidence*, 4 March 2020, p. 12.

375 Ms Kati Kraszlan, Acting Commissioner for Victims of Crime, Department of Justice, *Transcript of Evidence*, 17 April 2019, p. 5.

376 *ibid.*, p. 5.

377 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 8 – Record Keeping and Information Sharing*, Commonwealth of Australia, 2017, p. 139.

proposed approach to ‘protecting privacy and enabling safe information sharing with the public sector and with authorised third parties’.³⁷⁸

6.68 The Discussion Paper proposes the following model:

- a strong framework to protect privacy of personal information;
- whole-of-government standards for the responsible collection, management and use of personal information;
- a comprehensive and consistent framework to govern the responsible sharing of information within government and with authorised third parties;
- provisions to enable the use of information to deliver better services and outcomes; and
- mechanisms to ensure accountability and public confidence through independent oversight and clear pathways for resolving complaints.³⁷⁹

6.69 Of particular interest to the Committee in the suggested approach is the proposal to appoint a privacy commissioner to promote privacy measures, ensure accountability and transparency, and receive and resolve complaints.³⁸⁰

6.70 DPC confirmed considerable feedback from the consultation has been received and it is understood a short report summarising the outcomes of the process will be published. However, at the time of writing, this remains forthcoming.³⁸¹

Additional considerations

6.71 The Committee agrees that there is a need to develop and introduce privacy and information sharing legislation in Western Australia. While noting any new information sharing regime would likely be broad in nature, there are a few issues relevant to its inquiry which the Committee believes warrant specific consideration:

- alignment with the recommendations from the royal commission;
- information sharing with third parties;
- the ability to compel information;
- explicit protections for those who share information in good faith;
- the role of the proposed privacy commissioner; and
- the ability to see “the whole picture” of a child.

Alignment with the recommendations from the Royal Commission

6.72 Any proposed legislation should reflect the intent behind the relevant recommendations from the Royal Commission. Regarding information sharing provisions, the Royal Commission recognised the NSW Information Sharing Exchange Scheme (NSW Scheme) as

378 Government of Western Australia, *Privacy and Responsible Information Sharing for the Western Australian public sector - Discussion Paper*, Western Australia, August 2019, p. 4.

379 *ibid.*, p. 9.

380 *ibid.*, p. 7.

381 *ibid.*, p. 46; and Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 6 March 2020, p. 15.

providing the ‘greatest scope for sharing information to prevent and respond to child sexual abuse in institutional contexts’.³⁸²

Information sharing with third parties

- 6.73 The Committee acknowledges that the Discussion Paper introduced the notion of responsible information sharing with authorised third parties, including other Australian jurisdictions and non-government organisations.³⁸³
- 6.74 In particular, the Committee would like to see improved information sharing capability between government agencies and relevant private sector organisations, particularly those working in child-related industries (for example, out-of-home care providers).

The ability to compel information

- 6.75 DPC informed the Committee that there is an appetite in Western Australia to include ‘provisions that would actually compel authorities to share information’.³⁸⁴ Attention is drawn to the NSW Scheme (see box 6.1), in which ‘all prescribed bodies – including the jurisdictional child protection agency – are able to share information without a request (proactive sharing), and must share information (subject to certain limitations) following an appropriate request’.³⁸⁵
- 6.76 The ability to compel information would be particularly useful in circumstances where organisations (or individuals within organisations) are erring on the side of caution in determining when information should be shared, particularly if sharing can be shown to be in the best interest of a child.
- 6.77 This provision would also be useful if extended to the oversight body responsible for the National Child Safe Principles, particularly when requesting information from institutions about child safe issues, including complaints made about services with regard to child safety (see paragraphs 7.88 to 7.94 for further exploration of this point).

Protecting those who share information

- 6.78 The CCS Act currently enables relevant information to be shared in good faith based on sound professional judgement. However, the evidence suggests a reluctance to share (see paragraphs 6.37, 6.38 and 6.63). The Committee notes that the intent of the approach put forward in the Discussion Paper is to provide clarity about acceptable reasons to share information for the purposes of the wellbeing, welfare or protection of a child.³⁸⁶

382 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 8 – Record Keeping and Information Sharing*, Commonwealth of Australia, 2017, p. 147.

383 Government of Western Australia, *Privacy and Responsible Information Sharing for the Western Australian public sector - Discussion paper*, Western Australia, August 2019, p. 33.

384 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 8.

385 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 8 – Record Keeping and Information Sharing*, Commonwealth of Australia, 2017, p. 147.

386 Government of Western Australia, *Privacy and Responsible Information Sharing for the Western Australian public sector - Discussion paper*, Western Australia, August 2019, p. 34.

6.79 The Committee is of the view that individuals with concerns about the wellbeing, welfare or protection of a child should be protected if they have shared information in good faith in the same way as child care professionals are currently protected under the CCS Act. The Committee draws attention to similar protections from liability for giving information which currently exist under the *Commissioner for Children and Young People Act 2006*.³⁸⁷

6.80 The Committee also notes the statutory provisions of the Duty of Candour procedure in Scotland,³⁸⁸ which extend to organisations providing social work, child protection and child care services and provide protection for these organisations, or any person working within them, to encourage the transparent reporting of incidents.³⁸⁹

The role of the proposed Privacy Commissioner

6.81 Should a privacy commissioner be introduced, the Committee believes that it must specifically be mandated to:

- view the safety of children and young people as paramount;
- take into consideration the recommendations of the Royal Commission in the execution of its duties; and
- work collaboratively with the proposed oversight body of the National Child Safe Principles in whichever form it takes.

The ability to see a child’s “whole picture”

6.82 The Department of Communities shared the concerns raised by WACOSS (see para 6.57) that there is not ‘an established systemic process at the moment where those children are named and then the data around those children that sits in Communities or sits in Health is brought together to tell us what that holistic story looks like for that child’.³⁹⁰ Encouragingly, however, DPC advised that a number of Directors General are “keen” for the introduction of an information sharing system that enables access to real-time data to help identify children at risk.³⁹¹

6.83 The Committee supports any system that provides a holistic approach to case management to better inform decision-making and improve the overall wellbeing of a child.

387 *Commissioner for Children and Young People Act 2006*, s. 41. This provision only applies for the purposes of a special inquiry, prescribed in Part 5 of this Act.

388 *Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016*, Part 1, Duty of candour procedure, s. 22-25.

389 Scottish Government Directorate for Children and Families, *Briefing*, 1 October 2019 (Edinburgh, Scotland).

390 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 9.

391 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 17.

Box 6.1: New South Wales Information Exchange Scheme

The New South Wales Information Exchange Scheme (NSW Scheme), established under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (NSW), enables the exchange of information between prescribed bodies.

Chapter 16A sets out four underlying principles:

- organisations that have responsibilities for children or young persons should be able to provide and receive information that promotes the safety, welfare or wellbeing of children or young persons
- organisations should work collaboratively and respect each other's functions and expertise
- organisations should be able to communicate with each other to facilitate the provision of services to children and young persons and their families
- the needs and interests of children and young persons, and of their families, in receiving services relating to the care and protection of children or young people takes precedence over the protection of confidentiality or of an individual's privacy

Legislative changes in 2016 and 2019 expanded the original list of prescribed bodies included in the scheme. The full list of prescribed bodies now includes:

- NSW Police Force
- a children's service
- registered midwives
- speech pathologists
- occupational therapists
- a registered agency
- a designated agency
- Any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.
- a State government department or a public authority
- an accredited adoption service provider
- nurses (enrolled and registered)
- a public health organisation or a private health facility
- a registered community housing provider
- Australian Capital Territory Community Services Directorate
- South Australian Department for Child Protection
- a government school or a registered non-government school or a TAFE
- registered medical practitioners
- registered psychologists
- an unborn child (if subject to a report)
- Northern Territory's Territory Families
- Department of Communities Tasmania
- Western Australian Department of Communities

Source: NSW Government, *Exchanging information related to children protection and wellbeing*.
<https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/exchanging-information/chapters/chapter-16a>

Recommendation 10

Should any new information sharing regime for Western Australia be established, the Government ensures that it includes:

- alignment with the recommendations from the royal commission;
- information sharing with third parties;
- explicit protections for those who share information in good faith;
- the ability to compel information;
- specific child safety functions pertaining to a privacy commissioner including a function to work collaboratively with the oversight body of the national child safe principles; and
- the ability to see "the whole picture" of a child.

Legislation and cultural change

- 6.84 The widespread abuse in Roebourne, discussed above, remained undetected for so long in part because existing information sharing provisions were not effectively used. This demonstrates the problems that arise when people are not confident about sharing information.
- 6.85 The Committee heard evidence that fears about over-sharing information are just as troubling as the results of under-sharing. Over-sharing can occur when the threshold for sharing information on the grounds of concerns for the safety or wellbeing of a child is too low, and there is an obligation to share. These circumstances result in an increase in distrust of and scepticism about child care professionals and a real risk of the system becoming overwhelmed with too much irrelevant information.
- 6.86 The Committee was given a particularly compelling example of what happens when the threshold for sharing information is too low when it visited Scotland as part of its investigative travel.

Scotland – the risk of over-sharing

- 6.87 In Scotland the *Children and Young People (Scotland) Act 2014* (the Act) aims to put children at the centre of planning and delivery of services and ensure their rights are respected across the public sector.³⁹² As explained in box 4.2, the Act formalises the Getting it right for every child (GIRFEC) policy.
- 6.88 The Act requires broad information sharing provisions to meet some of its obligations, particularly, the named person scheme under section 4 (see box 4.2). This ‘requirement’ was challenged and the Supreme Court ruled the provisions were not in accordance with the law and were outside the power of the Scottish Government.³⁹³ In response to the ruling, a bill was introduced to amend the relevant sections of the Act. The amendments included a requirement for a code of practice to support information sharing and a panel was established to draft the code of practice.³⁹⁴ However, in response to the Panel’s report, the Scottish Government announced it would withdraw the Bill, repeal the relevant sections of the Act, and develop policy and practice guidance to support GIRFEC and information sharing instead of legislation.³⁹⁵

392 Scottish Government, *Getting it right for every child (GIRFEC)*, accessed 20 May 2020, <https://www.gov.scot/policies/girfec/>.

393 The Scottish Parliament, *Children and Young People (Information Sharing) (Scotland) Bill*, accessed 20 May 2020, <https://beta.parliament.scot/bills/children-and-young-people-information-sharing-scotland-bill>.

394 Scottish Government, *Getting it right for every child (GIRFEC) Practice Development Panel: final report*, 19 September 2019, accessed 20 May 2020, <https://www.gov.scot/publications/getting-right-child-practice-development-panel-report/pages/1/>.

395 Scottish Government, *Getting it right for every child (GIRFEC) Practice Development Panel final report: our response*, 19 September 2019, accessed 20 May 2020, <https://www.gov.scot/publications/getting-right-child-girfec-practice-development-panel-report-scottish-government-response/>. Note: this section is still within the current Act.

- 6.89 The Committee arrived in Scotland to conduct a series of hearings in relation to its inquiry less than two weeks after the announcement to withdraw the Bill was made, with the result that the subject of information sharing was very topical amongst witnesses.³⁹⁶
- 6.90 According to representatives from the Centre for Child Wellbeing and Protection, the named person scheme under the Act not only helped individuals navigate the system, it also helped agencies account for individual people.³⁹⁷ When the Act was introduced, there was an attempt to shift the “Scottish conscience” which included campaign slogans on the back of buses saying, “it’s everyone’s job to make sure I am alright”. Advice received was that the campaigns worked and the culture did start to shift in that teachers, doctors and the general public were sharing information. However, there was a potential, perceived or otherwise, to overshare, with social workers being accused of snooping on families.³⁹⁸ Professionals became concerned they were breaching boundaries and there was a growing belief they would not be supported by their institutions if they did share information, regardless of their intention.³⁹⁹
- 6.91 On a site visit to the Office of the Scottish Commissioner for Children and Young People, the problems with over-sharing were made clear by example. First, because information sharing was linked to the broad definition of wellbeing set out in legislation, the threshold to share information became too low.⁴⁰⁰ Second, under the legislation, everything about a child who encountered a statutory body could be shared through the system, which in practice meant a teacher could access all the information on record about a student, including the medical history of their parents.⁴⁰¹
- 6.92 According to the Scottish Children’s Commissioner’s Office, the legal and political atmosphere following the Supreme Court decision undermined people’s confidence in sharing information.⁴⁰²
- 6.93 As can be seen by comparing the example of the Scottish experience with that of other jurisdictions, the risk of over-sharing is reduced where legislation ensures that information sharing is necessary, proportionate, relevant, adequate, timely and done with the best interest of the child at its core.
- 6.94 The introduction of clear and appropriate privacy and information sharing legislation with easy to read guidelines in place may increase confidence and drive cultural change to overcome institutional and individual reluctance to share information. However, the Committee is not suggesting that information sharing legislation in and of itself will create child safe communities and organisations.

396 The Scottish decision to withdraw the Bill occurred in the broader context of the EU General Data Protection Regulation (GDPR) coming into effect in the UK and across the European Union. This topic is too broad for the current inquiry, but the introduction of GDPR created further complexities for information sharing and child safety.

397 Centre for Child Wellbeing and Protection, *Briefing*, 1 October 2019 (Edinburgh, Scotland).

398 *ibid.*

399 *ibid.*

400 Children and Young People’s Commissioner, *Briefing*, 3 October 2019 (Edinburgh, Scotland).

401 *ibid.*

402 *ibid.*

- 6.95 According to the Independent Community Submission to the information sharing Discussion Paper, it would be ‘unrealistic to expect a legislative solution to completely resolve a risk-averse information sharing culture in the public sector’.⁴⁰³ The submission goes on to say any legislation ‘should be supported by other initiatives that address the cultural, structural and other impediments to information sharing’.⁴⁰⁴
- 6.96 Child abuse will not be identified and prevented in institutions until people within those institutions feel supported to communicate any concerns and understand what to do to help stop abuse from occurring or continuing.

Ireland - Dare to share

- 6.97 The Committee was very impressed with the system in place in Ireland where there is clear evidence that there is no longer tolerance for institutions that do not regard the safety of children as their highest priority.
- 6.98 In Ireland, several pieces of legislation relate to the welfare of children and young people. To simplify the legislative complexity, the *Children First: National Guidance for the Protection and Welfare of Children* (the National Guidance) was developed. It sets out, in plain language, steps for protecting children and young people. Of particular relevance to this chapter are the sections relating to information sharing; essentially, the legislation in Ireland has created a “dare to share” culture.⁴⁰⁵
- 6.99 The purpose of the National Guidance is to help people recognise child abuse and understand when and how to report a concern about the welfare of a child.⁴⁰⁶ The chapter of the National Guidance on recognising and reporting child abuse (including neglect, and emotional, physical and sexual abuse) is written to be of practical use to everyone who encounters children – family, friends, neighbours, professionals and volunteers.⁴⁰⁷
- 6.100 The National Guidance sets out basic principles for reporting child abuse or neglect – the safety and wellbeing of the child must take priority over concerns about adults against whom an allegation may be made, and reports of concerns should be made without delay.⁴⁰⁸
- 6.101 Individuals who report suspected child abuse or neglect are protected by legislation provided the report is made in good faith and is not malicious. Furthermore, it is a criminal

403 Pip Brennan et al, *Independent Community Submission to the Privacy and Responsible Information Sharing for Western Australia Discussion Paper*, n.d., p. 6.

404 *ibid.*, p. 11.

405 The ‘Dare to Share’ motto originated in the Oxford Police Department following an investigation into widespread sexual assault. The investigation uncovered that information has not been shared because the professionals involved felt it was “too little to worry about”. Now police and all other relevant child protection/support agencies use the motto. Data protection and privacy considerations are seen as subservient to the best interest of the child. Mr Niall Muldoon, Irish Ombudsman for Children, email, 22 July 2020, n.p.

406 Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, Government Publications, Dublin, 2017, p. 4.

407 *ibid.*, p. 6.

408 *ibid.*, p. 7.

offence in Ireland to withhold information relating to a serious offence against a person under 18 years or a vulnerable person.⁴⁰⁹

- 6.102 The Department of Children and Youth Affairs stated that there had been a shift in the “Irish conscience” – child protection is seen as everyone’s responsibility and there is no longer tolerance for an organisation not sharing information if sharing will protect a child or young person from harm.⁴¹⁰ It is their firm belief that child safety overrides everything. That is, if an individual has information but does not disclose, it is considered a dereliction of duty.⁴¹¹
- 6.103 The Ombudsman for Children confirmed this shift in culture when he explained that an individual would be ‘more protected by sharing information on a child protection issue than if [they] don’t’.⁴¹²

Education and support

- 6.104 What is clear from the Irish example is that a cultural shift in understanding about the effectiveness of information sharing is an integral part of a system that works. The creation of child safe communities and organisations requires solid information sharing legislation with user-friendly guidelines, backed by an education campaign.
- 6.105 According to Dr Joe Tucci of the Australian Childhood Foundation, professional education campaigns help adults in child-related work identify the early markers of abuse and neglect and help them understand what information can and cannot be shared and under what circumstances information can be shared.⁴¹³
- 6.106 The Committee’s evidence demonstrates that accurate advice and education resources about appropriate information sharing needs to be included as part of any material developed to raise community and organisation awareness of child abuse and its impacts. Likewise, education campaigns about the employment of the National Child Safe Principles can encourage appropriate information sharing.
- 6.107 The evidence cited in this chapter demonstrates that the critical outcome of any information sharing regime is to ensure privacy concerns are not prioritised over the wellbeing of the child. Evidence received by the Committee shows that an effective regime increases an individual’s confidence that they will receive adequate protection should they share information. In other words, the greater the level of comfort a person has about not being punished for sharing information in good faith, the more likely they will be to share. The “Dare to Share” approach in Ireland, which with its robust statutory protections supported by education programs empowering adults to use their professional or common sense judgment about what is appropriate to share, provides a useful model.

409 Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, Government Publications, Dublin, 2017, pp. 16-17.

410 Department of Children and Youth Affairs, *Briefing*, 30 September 2019 (Dublin, Ireland).

411 *ibid.*

412 Dr Niall Muldoon, Ombudsman for Children, *Briefing*, 30 September 2019 (Dublin, Ireland).

413 *Transcript of Evidence*, 18 March 2020, p. 8.

Finding 41

Education campaigns about the practical employment of the National Child Safe Principles can encourage appropriate information sharing.

Finding 42

Professional education campaigns help adults in child-related work identify the early markers of abuse and neglect and assist them to understand what information can and cannot be shared and under what circumstances information can be shared.

Finding 43

Accurate advice and education resources about appropriate information sharing needs to be included as part of any material developed to raise the awareness of the community and organisations about child abuse and its impacts.

Recommendation 11

That accurate advice and education resources about appropriate information sharing be included in any material developed to raise the awareness of the community and organisations about child abuse and its impacts.

Recommendation 12

That professional education campaigns be undertaken to help adults in child-related work identify the early markers of abuse and neglect and assist them understand the importance and effectiveness of appropriate information sharing.

Recommendation 13

That community information and education campaigns be undertaken to demonstrate how practical employment of the National Child Safe Principles can encourage appropriate information sharing.

Chapter 7

The need for independent oversight

[A] comprehensive system of independent oversight that works across all service delivery sectors, using a range of proactive mechanisms that monitor the lived experience and outcomes for children and young people, is the ultimate outcome of independent oversight reform.

Commissioner for Children and Young People ⁴¹⁴

A focus on outcomes

7.1 Chapter 1 made reference to a number of reports published in the last decade that identified the vulnerability of children in institutional settings and the ‘unique barriers they face in speaking up and seeking help’.⁴¹⁵ Collectively these reports made hundreds of recommendations about ways in which organisations, governments, the community and families can improve the safety of children and help reduce the risk of abuse (see paragraphs 1.25-1.28).

7.2 These reports all reached the conclusion that an effective means of preventing abuse and supporting positive safety and wellbeing outcomes for both services and children is the establishment of independent oversight bodies.⁴¹⁶ As the Children’s Commissioner noted:

The vulnerability of children and young people and the challenges they face in raising issues, navigating systems and understanding their rights requires a strong proactive and supportive approach to oversight.⁴¹⁷

7.3 Oversight that examines the safety and wellbeing outcomes of children when accessing services is able to provide ‘parliament, government and the public with important information about service standards and performance.’⁴¹⁸ It also informs service providers about challenges children may face when accessing services and offers direction about how challenges can be overcome.⁴¹⁹ The Children’s Commissioner added that:

While ultimately seeking to ensure that service provision is safe and fit-for-purpose, oversight can also support efforts to direct services more appropriately and foster broad improvements in sector practice.⁴²⁰

414 Submission 15, Commissioner for Children and Young People, p.7.

415 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p.2.

416 *ibid.*

417 *ibid.*, p.4.

418 *ibid.*, p.6.

419 *ibid.*

420 *ibid.*

- 7.4 The Royal Commission specifically recommended the establishment of independent oversight to ensure that the implementation of the National Child Safe Principles is effective and highlighted the need for the oversight to focus on achieving better safety outcomes for children.⁴²¹

Inquiry timing

- 7.5 The Committee commenced its inquiry in November 2018, one year after the Children’s Commissioner published his *Oversight of services for children and young people in Western Australia* report (the Oversight Report) and the Royal Commission tabled its Final Report. The Committee commenced the inquiry by conducting hearings with relevant agencies and statutory authorities to examine their progress with the implementation of the Oversight Report recommendations and the recommendations of the Royal Commission. This chapter is an account of what the Committee discovered during those and subsequent hearings about Western Australia’s progress toward the development of a system of independent oversight.
- 7.6 The final section of the chapter, which forms the conclusion to this report, outlines the Committee’s view about how independent oversight should operate in Western Australia to ensure a ‘safer WA for children’.⁴²²

Results of the Children’s Commissioner’s oversight mapping project

Mapping the oversight of service provision

- 7.7 The Children’s Commissioner undertook a project to map the oversight of services provided to children and young people in Western Australia.⁴²³
- 7.8 The Children’s Commissioner identified seven independent statutory bodies in Western Australia with functions which either relate specifically to or include the safety and wellbeing of children and young people:
- the Office of the Inspector of Custodial Services;
 - the Mental Health Advocacy Service;
 - the Chief Psychiatrist;
 - the Commissioner for Children and Young People;
 - the Health and Disability Services Complaints Office;
 - the Office of the Auditor General; and

421 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 16.

422 Government of Western Australia, *Royal Commission into institutional responses to child sexual abuse – 2018 Progress report*, Western Australia, December 2018, p. 9.

423 This occurred in response to a recommendation from the Joint Standing Committee on the Commissioner for Children and Young People of the 39th Parliament. See Joint Standing Committee on the Commissioner for Children and Young People (39th Parliament), *Everybody’s Business*, June 2016, p. 88.

- the Ombudsman.⁴²⁴

7.9 As discussed in chapter 1, the report published at the conclusion of the mapping project identified gaps and made recommendations to improve the operation of the system of independent oversight of services provided to children and young people.⁴²⁵

What is effective oversight?

7.10 According to the Oversight Report there is a broad range of factors that influence the effectiveness of oversight mechanisms. All effective oversight bodies, however, have some basic elements in common in that they are:

- independent;
- invested with sufficient powers to fulfil their purpose;
- adequately resourced;
- able to report publicly on findings and make recommendations; and
- able to access specialist knowledge in relevant fields.⁴²⁶

7.11 In addition to these five points, in the case where there is no single overarching independent oversight body, there is a critical need for systematic communication and collaboration between oversight bodies to ensure their effectiveness.⁴²⁷

7.12 The Commissioner found ‘a comprehensive system of oversight with a network of complementary agencies, broad jurisdiction and robust powers, must also be able to modify its operations to the specific needs and vulnerabilities of children and young people’; for example, adopting child friendly complaints systems.⁴²⁸

7.13 Further, oversight is enhanced, and accountability is strengthened, through a requirement for the Government to respond formally to recommendations from oversight bodies.⁴²⁹

Recommendations for change

7.14 The Oversight Report found that the coverage of services provided, and their alignment with best practice, varies across sectors and between independent oversight bodies.⁴³⁰ The Oversight Report made six intentionally broad recommendations aimed at strengthening comprehensive independent oversight of services provided to children and young people in Western Australia.⁴³¹

7.15 The mapping exercise revealed a fragmented approach to independent oversight with significant gaps in the coverage of vulnerable populations of children and young people. The Children’s Commissioner concluded that the current system is heavily weighted to

424 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p. 21.

425 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p. 7.

426 *ibid.* pp. 9-10 and 15.

427 *ibid.*, p. 9.

428 *ibid.*, p. 10.

429 *ibid.*, p. 16.

430 *ibid.*, p. 25.

431 *ibid.*, pp. 4-5.

complaints mechanisms and investigation functions, with limited scope for recourse to more proactive or preventative mechanisms.⁴³²

Finding 44

The Children’s Commissioner’s *Oversight of services to children and young people in Western Australia* Report shows that the current independent oversight system in Western Australia is fragmented with significant gaps in coverage for children and young people. It is weighted towards complaints systems and investigation functions with limited scope for recourse to more proactive and preventative mechanisms.

- 7.16 The Oversight Report highlighted the importance of establishing robust independent oversight. Standards and processes can be in place to protect the safety and wellbeing of children, but without effective independent oversight, ways of ensuring the intended outcomes are being achieved are reduced.

Finding 45

The absence of effective independent oversight reduces ways of ensuring the intended outcomes of procedures and processes for the prevention of child abuse and the promotion of child safety and child wellbeing are being achieved.

Results of the Royal Commission

- 7.17 In its Final Report, published in December 2017, the Royal Commission made a series of recommendations relating to the establishment of nationally consistent independent oversight as it relates to four separate areas: child safe standards, youth detention, out-of-home care, and reportable conduct. For the purposes of this inquiry, the Committee’s main focus was on the recommendations relating to establishing independent oversight for child safe standards.

- 7.18 The Royal Commission recommended the enabling or establishment of an oversight body with responsibility for: monitoring and enforcing the child safe standards; monitoring the outcomes of child safe approaches; and building the capacity of institutions to become child safe (see Box 7.1 below for these recommendations in full).

Box 7.1: Recommendations 6.10 and 6.11 – Child safe standards

Recommendation 6.10

State and Territory Governments should ensure that:

- a. an independent oversight body in each state and territory is responsible for monitoring and enforcing the Child Safe Standards. Where appropriate, this should be an existing body.
- b. the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory government body, such as a sector regulator.
- c. regulators take a responsive and risk-based approach when monitoring compliance with the Child Safe Standards and, where possible, utilise existing regulatory frameworks to monitor and enforce the Child Safe Standards.

432 Submission 15, Commissioner for Children and Young People, p. 6.

Recommendation 6.11

Each independent state and territory oversight body should have the following additional functions:

- a. provide advice and information on the Child Safe Standards to institutions and the community;
- b. collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety;
- c. partner with peak bodies, professional standards bodies and/or sector leaders to work with institutions to enhance the safety of children;
- d. provide, promote or support education and training on the Child Safe Standards to build the capacity of institutions to be child safe; and
- e. coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards.

Source: Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 29.

7.19 The Royal Commission proposed that, where appropriate, the oversight body should be an existing body, noting that 'Governments might enhance the roles of existing children's commissioners or guardians for this purpose'.⁴³³ This proposal led to the Committee's particular focus on exploring with Government what role might be considered for the Children's Commissioner in implementing these independent oversight recommendations.

Establishing the model of independent oversight in Western Australia

An integrated approach

7.20 Evidence provided by the Department of the Premier and Cabinet (DPC) indicated an intent to develop an 'integrated oversight system'.⁴³⁴ The integrated approach was to incorporate each of the separate areas of oversight recommended by the Royal Commission (see paragraph 7.17)

Finding 46

The Government is pursuing an integrated independent oversight system in the areas of child safe standards; out-of-home care; juvenile justice; and reportable conduct.

Oversight working group

7.21 DPC established and chairs an oversight working group comprising all key agencies impacted by the oversight recommendations, including the Departments of: Communities; Justice; Treasury; Local Government, Sport and Cultural Industries; Education; and Health. The Ombudsman; the Commissioner for Children and Young People; the Officer of the Inspector of Custodial Services; and the Mental Health Commission also participated.⁴³⁵

433 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 16.

434 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 3.

435 Mr Darren Foster, Director General, Department of the Premier and Cabinet, Letter, 11 June 2019, n.p.

- 7.22 The Committee was advised that the oversight working group met informally in early 2018 to contribute to the State Government's six-month's response to the recommendations from the Royal Commission. Following a 12-month hiatus, the working group was reconvened in May 2019.⁴³⁶ The Committee requested a copy of the working group's terms of reference. While this was not provided, the Committee was informed that the working group's purpose is the development of a comprehensive independent oversight system in the areas of child safe standards, out-of-home care, juvenile justice, and a reportable conduct scheme.⁴³⁷
- 7.23 In the 2019-20 state budget, \$627,000 was allocated to developing the strategy for the whole-of-government approach for independent oversight. DPC advised that the 'scope and scale of this work is quite significant and covers establishing a reportable conduct scheme; monitoring and enforcement of the child safe standards; independent oversight of out-of-home care providers; and independent oversight of youth detention.'⁴³⁸ Prior to the COVID-19 state of emergency declaration, the oversight working group was expected to provide advice to Cabinet in May 2020, advising the Committee in March 2020 that 'we are on track to provide that advice to Government in that time frame'.⁴³⁹

Models of integration

- 7.24 At the time of writing, it is clear that the model of integrated independent oversight has not yet been agreed, with DPC confirming as part of its March advice that 'all options are still on the table'.⁴⁴⁰
- 7.25 When asked what the model might look like, DPC offered the following:

Potentially, any of [the] oversight bodies, hypothetically, could take forward some of the functions envisaged by the recommendations of the royal commission, around oversight, but some are better placed. ... [The questions is] whether the best next step would be to expand their powers, build on their powers and responsibilities, or whether there are gaps that are better filled by another organisation. We also need to work through how in fact the current entities can be organised and augmented in order to create the system that is envisaged by the recommendations that go to regulatory arrangements—learning from ... other jurisdictions. In some jurisdictions, the model is the children's commissioner; ... in other jurisdictions, it is a children's guardian [or] the Ombudsman or somehow the functions ... are split between several bodies that collectively have the set of responsibilities for the oversight framework. We need to work through that—what is best for WA, bearing in mind we have our regional and remote element, which adds complexity.⁴⁴¹

436 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 4.

437 Mr Darren Foster, Director General, Department of the Premier and Cabinet, Letter, 11 June 2019, np.

438 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 2.

439 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 9.
The Committee notes the impact of COVID-19 may have delayed any advice to Cabinet.

440 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 9.

441 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 13.

7.26 In its 2019 Progress Report, the State Government indicated that the establishment of an integrated system of independent oversight would continue as a multi-agency project in 2020, stating the new oversight measures will:

- build on the State’s existing measures to manage complaints and report allegations;
- assist public, private and community organisations that work or undertake activities with children to prevent child abuse;
- ensure there are appropriate responses where institutions do not meet certain standards or obligations relating to child safety; and
- ensure allegations relating to child abuse are shared appropriately within the State and with other states and territories.⁴⁴²

7.27 When asked specifically what was meant by an ‘integrated oversight system’, DPC provided the following:

An integrated system is one where the individual components of the oversight system work effectively together so, in effect, the oversight system is greater than the sum of its parts in terms of its ability to cover risks to children within organisations or with individuals. ... For example, in an integrated system, information about an individual who presented a risk to children or an organisation that is not complying with its regulatory obligations would be shared between those functions. That would allow each oversight body and other authorities a fuller picture of the allegations or findings about that individual or about that organisation.⁴⁴³

7.28 The Committee supports the establishment of an integrated system of oversight, recognising that in the long term it may realise efficiencies. However, the Committee cautions that in the short term this approach may give rise to complexities in an already complicated and nuanced service delivery setting, and that these complexities may cause delays in the adequate provision of oversight designed to keep children safe.

Avoiding delays

7.29 At the time of writing, Western Australia is still responding to the COVID-19 pandemic. In the Committee’s view, COVID-19 represents an example of risk to which an integrated system of oversight must be responsive. All four areas of oversight identified by the Royal Commission are intended to prevent harm to children.⁴⁴⁴ In planning the next stage of implementation, care must be taken to ensure that the social and economic costs of child abuse highlighted in chapter 1 of this report are not compounded by the social and economic costs associated with the COVID-19 pandemic. For this reason, the Committee urges that delays to the process of finalising the planning of and implementing the integrated oversight system should be minimised.

442 Government of Western Australia, *Healing Past Hurts Protecting Children Now Preventing Further Harm*, Western Australia, 2019, p. 21.

443 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 6.

444 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p. 10.

- 7.30 There has been some deliberation in the past 12 months about what form and function oversight might take. It is the Committee’s view that direct engagement with organisations, communities, and children, to establish how child safety and wellbeing can be improved and how oversight could improve child safety outcomes, should now occur.
- 7.31 The Committee is also aware that the Government is working on a 10-year program of reform. However, having considered the evidence in detail, the Committee suggests that there is merit in investigating the extent to which the four areas of oversight may be individually implemented as a priority in a way that will allow for integration into a broader system, once that system has been developed in the coming years.
- 7.32 By way of example, the Government could consider progressing oversight of the National Child Safe Principles as a standalone measure in a way that is consistent with the phased and incremental approach already endorsed above. An outline of this approach to implementing oversight provisions in the short to medium term is presented at the conclusion of this chapter.

Finding 47

To avoid delays in the matter of integrated oversight in the short term, an interim standalone approach could be considered for the oversight of the National Child Safe Principles.

- 7.33 In Western Australia, implementation of the Royal Commission recommendations will usefully have regard to the current local context to ensure that a body provided with the authority to perform oversight functions for children and young people is also provided with all the elements of effective oversight recognised in the Oversight Report (see Paragraphs 7.10-7.13). This is critical to ensure existing gaps in oversight are filled.

Finding 48

Existing gaps of oversight will be filled if any oversight established to satisfy the Royal Commission recommendations also has regard to the elements of effective oversight established by the Children’s Commissioner’s *Oversight of services for children and young people in Western Australia* Report.

Royal Commission priorities

- 7.34 After being advised of the Government’s intent to implement all of the Royal Commission recommendations for independent oversight in an integrated way (see paragraph 7.20), the Committee considered which oversight bodies might be involved and sought to establish if the implementation of these recommendations would have an impact on the oversight of the National Child Safe Principles. Several witnesses indicated a preference for which oversight bodies should be responsible for the recommended oversight. Their evidence is presented below.

Youth Detention

- 7.35 The Department of Justice (Justice) is represented on the oversight working group and acknowledged DPC’s intention of delivering ‘integrated, comprehensive and streamlined oversight of child safety’.⁴⁴⁵ Nonetheless, in relation to the Royal Commission’s recommendation about independent oversight in youth detention,⁴⁴⁶ Justice indicated a preference for maintaining the current model of oversight in youth detention under the Office of the Inspector of Custodial Services.⁴⁴⁷

Out-of-home care

- 7.36 Currently, the Department of Communities is overseeing out-of-home care (OOHC) in addition to directly providing OOHC services to children and funding other OOHC providers.⁴⁴⁸
- 7.37 This apparent conflict of interest is acknowledged by the Department of Communities, who advise it is ‘very keen for out-of-home care to progress to independent oversight’ and that even prior to the Royal Commission recommendations, the Department of Communities had been ‘progressing independent oversight’ but ‘that work is [now] being led by the Department of the Premier and Cabinet’.⁴⁴⁹
- 7.38 The Royal Commission recommendations for independent oversight within the OOHC sector include incorporating National Child Safe Principles into the accreditation of both government and non-government providers, with compliance checked through audits undertaken by a statutory body ‘independent of the relevant child protection agency and out-of-home care service providers’.⁴⁵⁰
- 7.39 In the Committee’s view, implementation of the Royal Commission recommendations will help remedy the lack of independent oversight currently in the system, particularly if the audit includes a sufficient level of engagement with children and their families.
- 7.40 The Royal Commission noted that an existing statutory body such as a Children Guardian should perform this oversight role. There is no Children Guardian in Western Australia. It is the Committee’s view that the Children’s Commissioner has the expertise to assess whether OOHC providers are meeting the National Child Safe Principles, and has the advocacy experience to perform compliance audits to an appropriate level, including consulting with children in care, their caregivers, and their families.

445 Ms Kati Kraszlan, Department of Justice, *Transcript of Evidence*, 17 April 2019, p. 2

446 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 15 – Contemporary detection environments*, Commonwealth of Australia, 2017, p. 18, Recommendation 15.10.

447 Ms Kati Kraszlan, Department of Justice, *Transcript of Evidence*, 17 April 2019, p. 9.

448 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, p. 31; Mrs Joanna Collins, Alliance for Children at Risk, *Transcript of Evidence*, 6 March 2020, pp. 1-2.

449 Ms Renee Gioffre, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 12.

450 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 12 – Contemporary out-of-home care*, Commonwealth of Australia, 2017, p. 25, Recommendations 12.4 and 12.5.

- 7.41 The Children’s Commissioner would need sufficient statutory power and additional resources to fulfil this role; this point is discussed in more detail below. Taking into account both the intent of the National Child Safe Principles and the statutory obligation of the Children’s Commissioner to give priority to children and young people who are vulnerable or disadvantaged,⁴⁵¹ the experience of the Children’s Commissioner could provide an additional layer of systemic advocacy if charged with the oversight role recommended for the OOHC sector. In the Committee’s view, given further statutory power and resources, the Children’s Commissioner is well placed to perform this oversight role.

Finding 49

The expertise of the Children’s Commissioner could provide an additional layer of systemic advocacy if charged with the oversight role recommended for the out-of-home care sector.

Advocate for Children in Care

- 7.42 An area of concern for the Committee with regard to OOHC is the oversight function currently pertaining to the role of the Advocate for Children in Care (the Advocate). The Advocate role was described as:

A senior position reporting to an assistant director general in service delivery. Any young person in care, anyone significant in their life, can approach the advocate over any matter and get their support. The advocate, in some way, provides an enhanced complaints function. Rather than just responding to a complaint, they can work with the young person and assist them work with the districts to try and get their matter addressed.⁴⁵²

- 7.43 It is an important role that contributes to the ability of children in care to express their concerns. However, the legislative review of the *Children and Community Services Act* recommended the Advocate be external to the Department.⁴⁵³ A final position on this matter has not been reached as the Department of Communities subsequently decided to ‘progress that work through the Royal Commission, through the Department of the Premier and Cabinet external oversight group’.⁴⁵⁴ DPC advise that individual and systemic advocacy ‘are important components of an oversight system, so ... the right place for a role like the Advocate for Children in Care would be examined as part of the development process’.⁴⁵⁵ To date, there has been no firm view expressed about where the role should sit.
- 7.44 The Committee agrees access to independent individual advocacy for children in care is crucial and recommends that attention is given to this matter as a priority.

451 *Commissioner for Children and Young People 2006*, s. 20 (1) (ii).

452 Mr Mark Crofts, Department of Communities, *Transcript of Evidence*, 10 April 2019, p. 10.

453 Ms Renee Gioffre, Department of Communities, *Transcript of Evidence*, 10 April 2019, p. 12.

454 *ibid.*

455 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 10.

- 7.45 The Committee’s additional concern is about the resourcing of this role. Despite very positive feedback about the capacity of the incumbent,⁴⁵⁶ there is one advocate position for over 5,000 children in care.⁴⁵⁷ The Committee agrees with the witness who described this as ‘woefully inadequate’.⁴⁵⁸
- 7.46 In April 2019, the Department of Communities advised the Committee that it was considering ‘interim options such as additional resources’ to expand the capacity of the Advocate for Children in Care and to ‘provide more outreach services to children in care.’⁴⁵⁹ In March 2020, the Department of Communities again acknowledged that one advocate for all children in care ‘is not sufficient’ but advised they are still waiting for the oversight work ‘to be progressed because the department did not want to be presumptuous and roll out changes’ as ‘there may be recommendations made about where that function sits in the longer term’.⁴⁶⁰
- 7.47 The capacity of the Advocate has been expanded through ‘piloting a new app “My View” in three districts’, described as having a ‘user-friendly questionnaire for children and young people in care to express their concerns and complaints’.⁴⁶¹
- 7.48 This provision of outreach services to children through an app will have some use for some children in some cases, but the Committee finds that, at a time when the importance of engaging with children could not be more strongly highlighted, the concern being raised about the resourcing of the Advocate for Children in Care position has not been adequately addressed. The Committee suggests that consideration be given to the immediate provision of additional resources for the Advocate until a long-term solution is developed.

Finding 50

There is one Advocate for Children in Care servicing over 5,000 children in out-of-home care. This is acknowledged as insufficient by the Department of Communities.

Finding 51

Access to independent individual advocacy for children in care is crucial.

Finding 52

The concern being raised about the lack of advocacy services for children in out-of-home care has not been adequately addressed.

456 Mr Ross Wortham, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 11.

457 Mr Mark Crofts, Department of Communities, *Transcript of Evidence*, 10 April 2019, p. 12.

458 Mr Ross Wortham, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 11.

459 Ms Renee Gioffre, Department of Communities, *Transcript of Evidence*, 10 April 2019, p. 12.

460 Ms Nys, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 13.

461 Ms Renee Gioffre, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 13.

Recommendation 14

That attention is given to improving access to independent individual advocacy for children in care as a priority.

Recommendation 15

That consideration be given to the immediate provision of additional resources for the Advocate of Children in Care until a long-term solution is developed.

Reportable conduct scheme

7.49 The Committee agrees with the Ombudsman that it would make sense for his office to take on board the reportable conduct scheme.⁴⁶² DPC confirmed \$589,000 was apportioned in the 2019-20 state budget for the Ombudsman to complete the work in relation to reportable conduct.⁴⁶³ The funding was allocated to progress the planning and development of a reportable conduct scheme that will provide 'independent oversight of institutional responses to complaints of child abuse and neglect by providing scrutiny of systems and monitoring of handling of complaints'.⁴⁶⁴

7.50 In the Committee's view, the expertise of the Ombudsman's office aligns well with the investigatory nature of the reportable conduct scheme recommended by the Royal Commission.⁴⁶⁵ While the Committee would be looking to see that child friendly complaints mechanisms are introduced under the reportable conduct scheme in accordance with National Child Safe Principle 6 (see table 1.1), the Committee would expect this to occur in coordination with the responsible oversight body for the National Child Safe Principles.

Finding 53

The expertise of the Ombudsman's office aligns well with the investigatory nature of the reportable conduct scheme recommended by the Royal Commission.

Child safe standards

According to the Director General of the Department of Communities:

The Commissioner for Children and Young People has enabling legislation to provide ongoing capacity building to create child safety through supporting government agencies to implement the national principles. ... Communities has led the development of a whole-of-government approach to implementing the

462 Mr Chris Field, Ombudsman Western Australia, *Transcript of Evidence*, 28 March 2019, pp. 12-13.

463 Ms Kim Lazenby, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 15.

464 *Western Australia State Budget 2019-20, Budget Paper No.3, Economic and Fiscal Outlook*, Government of Western Australia, May 2019, p. 96.

465 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 7 – Improving institutional responding and reporting*, Commonwealth of Australia, 2017, pp. 24-25, Recommendations 7.9, 7.10.

national principles. The Commissioner for Children and Young People has had a key role in formulating that approach.⁴⁶⁶

7.51 The existing statutory reach of the Children’s Commissioner includes provisions consistent with many of the oversight functions for child safe standards recommended in the Royal Commission. DPC confirmed that the Children’s Commissioner’s legislation does align with some of the Royal Commission’s recommendations and that it ‘examined what the level of coverage and what the gaps might be of using that piece of legislation as a starting point for the future oversight system’ while also noting they did ‘likewise with other organisations’.⁴⁶⁷

Using an existing body

7.52 The Committee notes the specific reference in Royal Commission recommendation 6.10 that ‘[w]here appropriate, [the independent oversight body in each state or territory] should be an existing body.’⁴⁶⁸

7.53 It is clear to the Committee that statutory changes will be required to the Children’s Commissioner Act if the Children’s Commissioner is charged with undertaking the role of oversight recommended in Royal Commission recommendations 6.10 and 6.11.

7.54 It is equally clear, however, that the Children’s Commissioner’s office fulfils a majority of the requirements of an effective oversight body (outlined in paragraph 7.10), including:

- statutory independence;
- the ability to report publicly on findings;
- ready access to specialist knowledge in relevant fields; and
- the ability to make recommendations.

7.55 The two elements currently missing from the Children’s Commissioner enabling Act and current practice are:

- sufficient powers to compel a response from institutions with regard to monitoring and enforcing compliance with the standards; and
- adequate resources to provide all the functions described in recommendations 6.10 and 6.11.

7.56 In particular, to fulfil the recommended oversight of the National Child Safe Principles the Children’s Commissioner would need sufficient resources to ensure that the existing advocacy and oversight functions of the office, which already perform a crucial function in providing a level of protection to all children and young people in this State, are not jeopardised.⁴⁶⁹

466 Ms Michelle Andrews, Department of Communities, *Transcript of Evidence*, 6 March 2020, p. 2.

467 Mr Scott Campbell, Department of the Premier and Cabinet, *Transcript of Evidence*, 16 March 2020, p. 8.

468 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 293.

469 Louise Giolitto, CEO, Western Australian Council of Social Service, Letter, received 22 July 2019, p. 5.

7.57 While recognising that the Commissioner’s existing functions would require amendment, the Committee nevertheless draws attention to the statutory responsibility of the Children’s Commissioner to monitor the wellbeing of all children and young people in Western Australia. Oversighting the National Child Safe Principles could be regarded as a clear extension of this existing function.

7.58 The Children’s Commissioner indicated support for his office to take on the independent oversight of child safe standards. According to the Commissioner:

[Child safe standards] form an important foundation for the oversight of all services for children and young people and [this] is consistent with the legislated functions of this office to promote the participation of children and young people, monitor complaints systems, and monitor laws, policies and services affecting the wellbeing of children and young people. As the sole independent oversight agency with an exclusive focus on children and young people the office already has the expertise that is required to undertake this work.⁴⁷⁰

7.59 After reviewing all the evidence received, the Committee finds that serious consideration should continue to be given to resourcing and empowering the Children’s Commissioner to perform the oversight of the National Child Safe Principles. His office is clearly well equipped in terms of demonstrated expertise and experience and existing statutory authority to perform many of the functions.

Finding 54

The Children’s Commissioner’s office is well equipped in terms of demonstrated expertise and experience and existing statutory authority to perform many of the recommended oversight functions.

Finding 55

Serious consideration should continue to be given to resourcing and empowering the Children’s Commissioner to perform the oversight of the National Child Safe Principles.

Expertise

7.60 As described in chapters 3 and 3 of this report, the body providing oversight of the National Child Safe Principles will need to provide proactive support for both the community and institutions to become child safe. It must also be able to facilitate the participation of children in devising measures to overcome the barriers they face in organisational settings, and empower them to be heard.

7.61 Information provided in this report has highlighted the expertise the Children’s Commissioner has to engage with parents, carers, the community, children, leadership and staff in organisations, and with government.

470 Submission 15, p. 9.

- 7.62 The following section summarises the Children’s Commissioner’s ongoing advocacy work which, the Committee suggests, is an essential ingredient in implementing oversight of child safe reform.

Advocacy

Speaking Out Survey

- 7.63 The Children’s Commissioner’s *Speaking Out Survey* heard directly from almost 5,000 children and young people from across the State who shared their views on ‘their health, safety, family and school life and how they see their place in our society’ and provided useful information about whether services are meeting the needs of children and young people.⁴⁷¹ The Committee considers work of this kind to be establishing important groundwork for the oversight of the National Child Safe Principles.

Wellbeing Monitoring Framework

- 7.64 The Wellbeing Monitoring Framework is an in-depth examination of the situation in which children and young people find themselves, establishing an information base for advocating for children to be heard, to be safe and healthy and to become valued members of the community. It comprises different components including an in depth yearly *Profile of Children and Young People in WA*,⁴⁷² and the *Indicators of Wellbeing* which is designed to help identify what practices are working to promote wellbeing and what needs to be changed.⁴⁷³ The Wellbeing Monitoring Framework is well placed to provide a grounding for both the operation of the National Child Safe Principles and the monitoring of the effective implementation of child safe approaches.

Improving the Odds for Western Australia’s vulnerable children and young people

- 7.65 In 2018 the Children’s Commissioner brought together service providers, practitioners, researchers, government-sector leaders and parliamentarians for a series of forums and round tables to discuss ways of addressing the ‘persistent disadvantage and poorer outcomes experienced by vulnerable children in WA’.⁴⁷⁴ These engagements culminated in a report tabled in Parliament with key recommendations for strategies to address these poor outcomes.⁴⁷⁵ The strategies aimed to ameliorate the ‘multiple risks and exposures to harm’ while building ‘protective factors that positively influence children’.⁴⁷⁶ The strategies reflect the intent of the National Child Safe Principles.

471 Commissioner for Children and Young People, *Speaking Out Survey 2019*, February 2020, accessed 5 July 2020, <https://www.cyp.wa.gov.au/media/4134/speaking-out-survey-2019-summary-report-february-2020.pdf>.

472 Commissioner for Children and Young People, *Profile of Children and Young People in WA*, January 2020, accessed 5 July 2020, <https://www.cyp.wa.gov.au/media/4143/profile-of-children-and-young-people-in-wa-2020-january-2020.pdf>.

473 Commissioner for Children and Young People, *Indicators of Wellbeing*, n.d., accessed 5 July 2020, <https://www.cyp.wa.gov.au/our-work/indicators-of-wellbeing/>.

474 Commissioner for Children and Young People, *Improving the Odds for WA’s vulnerable children and young people*, Commissioner for Children and Young People, Perth, April 2019, p. 6.

475 *ibid.*, pp. 28-29.

476 *ibid.*, p. 8.

7.66 The Children’s Commissioner received positive feedback from the Government with DPC indicating that the Government accepted a majority of the recommendations made.⁴⁷⁷ The Children’s Commissioner intends to monitor the outcomes of these strategies and the Government’s response to the recommendations, which includes the oversight of services delivered to children.⁴⁷⁸ This undertaking aligns with the oversight of the National Child Safe Principles.

Child friendly complaints and processes

7.67 The Children’s Commissioner has a statutory obligation to monitor the way government agencies deal with complaints made by children, which includes monitoring the outcome of complaints and the trends in complaints.⁴⁷⁹ The Children’s Commissioner has been advocating for the implementation of child friendly complaints mechanisms for a decade. The Children’s Commissioner’s office has developed a set of core components that has been included in its Child Safe Organisations material. This work is effectively enabling compliance with National Child Safe Principle 6, which requires that processes to respond to complaints and concerns are child focussed see table 1.1).

7.68 The Children’s Commissioner exercises this statutory obligation in part through an annual Complaints Monitoring Survey sent to government agencies, the results of which are published.⁴⁸⁰ The most recent survey included information about the National Child Safe Principles. Agencies were asked if their organisation had a child-focused complaints process. 74 per cent of agencies answered no.⁴⁸¹ Additional qualitative work undertaken by the Children’s Commissioner found improvements to complaints systems amongst ‘a small number of agencies over the last ten years’; however, ‘no government agency was found to have a child focused complaint system as defined by the Royal Commission’.⁴⁸²

7.69 In the Committee’s view, the Children’s Commissioner is already undertaking the oversight function in relation to National Child Safe Principles 6 in the government sector and has the expertise to extend this to all organisations in scope. The Children’s Commissioner could also assist organisations and government agencies improve their procedures in order to enable children to make a complaint in an organisational setting, through directly engaging with children in a child friendly manner.⁴⁸³ As the Youth Affairs Council of Western Australia noted, this type of engagement is very important, as it enables children to feel comfortable about voicing concerns before they are in crisis.⁴⁸⁴

477 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, p. 5.

478 One of these recommendations is discussed in detail below, see paragraphs 7.89-7.100.

479 *Commissioner for Children and Young People 2006*, s. 19 (d), (e).

480 Commissioner for Children and Young People, *Complaints systems*, n.d., accessed 6 July 2020, <https://www.cryp.wa.gov.au/our-work/resources/complaints-systems/>.

481 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, p. 4.

482 *ibid.*

483 The Children’s Commissioner is currently not able to investigate an individual complaint but is able to refer a child or their family to an appropriate body, and actively does so as part of his current operations. Staff at the Children’s Commissioner’s office have working knowledge of all relevant agencies to whom they might refer a child or young person. See *Commissioner for Children and Young People Act 2006*, s. 23 (1), (2).

484 Mr Stefaan Bruce-Truglio, Youth Affairs Council of Western Australia, *Transcript of Evidence*, 4 March 2020, p. 11.

Child Safe Organisations WA Project

- 7.70 The Children’s Commissioner first released resources for Child Safe Organisations developed from consultations with children and young people and relevant research in April 2016.⁴⁸⁵ In November 2019, a revised edition was published incorporating the language of the National Child Safe Principles. The Children’s Commissioner has also developed a WA Self-Assessment and Review Tool⁴⁸⁶ which is currently being used by government agencies to help them prepare and review their own implementation of the National Child Safe Principles. The Children’s Commissioner held meetings early this year with each of these agencies and is continuing to support them to implement the National Child Safe Principles.⁴⁸⁷ The Children’s Commissioner’s office has been hosting Child Safe Information Sessions since 2016, these being open to any organisation interested in becoming child safe.⁴⁸⁸
- 7.71 These activities have a clear focus on increasing the capacity of institutions to become child safe and align with the requirement for the oversight role for the National Child Safe Principles to ‘provide, promote or support education and training on the child safe standards to build the capacity of institutions to be child safe’.⁴⁸⁹

Capacity building

- 7.72 As an advocate for all children, the Children’s Commissioner already has an established network of experts, practitioners, peak bodies, associations and decision-makers within and outside of government, in alignment with Royal Commission recommendation 6.11(c). The Improving the Odds Report demonstrates a capacity to bring together thinkers and decision-makers to collaborate and develop strategies to increase the safety and wellbeing of children.⁴⁹⁰ This is a key element in building ‘communities of practice’, a concept that gained considerable support from respondents to Victoria’s review of its child safe standards.⁴⁹¹
- 7.73 The Children’s Commissioner has a close working relationship with the Telethon Kids Institute (TKI). Recently the two bodies collaborated to develop and assess the results of the Speaking Out Survey, bringing global expertise to the data analysis and assessment of this work (see paragraph 7.63). While it needs additional resources to continue, this collaboration could significantly contribute to the ability of the Children’s Commissioner to

485 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Guidelines*, Commissioner for Children and Young People, Perth, 2019, p. 3.

486 Commissioner for Children and Young People, *National Principles for Child Safe Organisations WA: Self-assessment and review tool*, Commissioner for Children and Young People, Perth, Revised November 2019.

487 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, pp. 7-8.

488 *ibid.*, p. 9.

489 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 29, Recommendation 6.11(d).

490 Commissioner for Children and Young People, *Improving the Odds for WA’s vulnerable children and young people*, Commissioner for Children and Young People, Perth, April 2019.

491 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 306; Department of Health and Human Services, *Review of Victorian Child Safe Standards*, Victorian Government, December 2019, p. 23.

collect, analyse and publish data on the child safe approaches, in accordance with recommendation 6.11(b) for oversight of the National Child Safe Principles.

7.74 The Children’s Commissioner already provides advice and information about the National Child Safe Principles to institutions and the community (in accordance with Royal Commissioner Recommendation 6.11(a)). There is a statutory obligation in the Commissioner for Children and Young People Act to:

- promote awareness and understanding of matters relating to the wellbeing of children and young people;
- monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people;
- promote the participation of children and young people in the making of decisions that affect their lives; and
- encourage government and non-government agencies to seek their participation in a manner that is appropriate to their age and maturity.⁴⁹²

7.75 The Children’s Commissioner also has the expertise to consult with and promote the best interests of all children in Western Australia. This includes experience in accounting for and accommodating diversity and equity matters in an appropriate and supportive manner. These are complex matters, identified by the Royal Commission as important to consider when implementing, and oversighting, the National Child Safe Principles (see paragraph 2.16). The Committee finds that the expertise of the Children’s Commissioner across these areas is unique amongst oversight bodies in Western Australia. Specific statutory obligations also strengthen this aspect of the Commissioner’s work.⁴⁹³

Finding 56

The expertise of the Children’s Commissioner across the areas of consulting with and promoting the best interests of all children in Western Australia is unique amongst oversight bodies in Western Australia.

Central hub for child safe resources

7.76 The Children’s Commissioner is already investing in, and is the main contributor to, advice, information, capacity building, and education materials about child safe approaches both within the state and across the country. Most recently, the National Office of Child Safety has commissioned new resources from the Children’s Commissioner to help children ‘understand their right to speak up when they feel unsafe, unhappy or unfairly treated’ together with resources to assist adults to talk to children about these matters.⁴⁹⁴

492 *Commissioner for Children and Young People*, s. 19. (h), (g), (b).

493 In performing the functions, the Children’s Commissioner must give priority to, and have special regard to, the interests and needs of Aboriginal children and Torres Strait Islander children, and children and young people who are vulnerable or disadvantaged for any reason. The Children’s Commissioner must also have regard to the United Nations Convention on the Rights of the Child and engage with and develop ways for government and non- government agencies to increase the participation of children in decisions which affect them. See *Commissioner for Children and Young People*, s. 20.

494 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 22 July 2020, n.p.

7.77 The role of producing these resources could be enhanced with targeted investment expanding the professional support the Children’s Commissioner is able to provide to organisations, through the development of the child safe work force (the potential benefits of which were discussed in chapter 3). By building on the skills and expertise already available, the Children’s Commissioner’s office could become a hub for the development of a child safe workforce.

7.78 Increasing the capacity of the Children’s Commissioner in this way would enable the development of tailored implementation resources for organisations seeking assistance to comply with the National Child Safe Principles. The Committee heard evidence that some organisations (junior sporting clubs run by volunteers for example), would like a simple set of instructions rather than being asked to comply with regulations:

The majority of feedback from our members—people who are trying to work with their clubs—is ... “Just tell us how to do it.” They understand the importance of the topic. They understand that a child needs to feel safe. But when they are being asked to comply with all of this, and it is regulation and compliance, they just want a set of simple instructions to know what is expected of them.⁴⁹⁵

7.79 This feedback is consistent with evidence heard by the Royal Commission that smaller or less-regulated organisations such as faith-based institutions, sporting clubs and dance studios would like guidance and support such as online training about how to become child safe and templates that draw on ‘expert advice and collective experience as a starting point’.⁴⁹⁶ The Royal Commission found capacity building and support resources should be simple, streamlined, readily accessible, and delivered through a centralised body. This minimises the administrative burden on institutions and reduces duplication by:

- removing the burden from institutions and peak bodies to design and deliver capacity building and support measures themselves;
- transferring the responsibility to design and deliver materials to a body that has the relevant experience, expertise and skills; and
- delivering the capacity building, support resources and guidance that institutions need and seek.⁴⁹⁷

7.80 The Committee’s view is that, if appropriately resourced, the Children’s Commissioner’s office would be well placed to develop harmonised, common approaches to implement and operate the National Child Safe Principles, including streamlined, simple and accessible resources, which take diversity, equity, and the value of children’s rights into account, to build the capacity of organisations to become child safe. The Committee finds that the link between these engagement and capacity building activities and the monitoring and ongoing assessment of whether the National Child Safe Principles are being effectively upheld should not be overlooked.

495 Ms Lorraine Donachie, SportWest, *Transcript of Evidence*, 4 March 2020, p. 3.

496 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 305, Recommendation 6.12.

497 *ibid.*

Finding 57

Much of the Children’s Commissioner’s enabling legislation and ongoing advocacy work is aligned with functions recommended for the oversight body for National Child Safe Principles including:

- promoting awareness and understanding of matters relating to the wellbeing of children and young people;
- monitoring and reviewing policies, practices and services affecting the wellbeing of children;
- providing advice and information on the National Child Safe Principles to institutions and the community in an effective and tailored way;
- collecting, analysing and publishing data;
- actively partnering with peak bodies, sector leaders and decision makers to enhance the safety of children;
- providing and promoting education and training on the National Child Safe Principles to build the capacity of institutions to be child safe from a centralised body; and
- monitoring public agencies on the outcomes and trends of complaints made by children and advocating for child friendly complaints mechanisms and practices.

Other considerations

7.81 Two final features of the work of the Children’s Commissioner need to be raised to establish the alignment between that work and the oversight function of the National Child Safe Principles.

Special Inquiries

7.82 The Children’s Commissioner can conduct special inquiries under Part 5 of the Act. This Part provides the Children’s Commissioner with a broad set of powers and enforcements to inquire into any matter affecting the wellbeing of children and young people in any manner the Commissioner considers appropriate.

7.83 Part 5 provisions include allowing the Children’s Commissioner to: conduct hearings; receive written or oral submissions; with notice, require any person to appear or document to be produced; require any person to answer any question;⁴⁹⁸ and allow an authorised person to enter and inspect any place for the purposes of a special inquiry, either with consent or under the authority of a warrant issued by the magistrate of the Children’s Court.⁴⁹⁹ Failing to comply to appear or produce a document,⁵⁰⁰ disrupting the special inquiry,⁵⁰¹ or providing false information,⁵⁰² can incur a fine of \$12,000 or imprisonment of one year.

7.84 Provisions for special inquiries under Part 5 are extensive and enable the Children’s Commissioner to inquire in depth into any issue concerning the application of child safe approaches if required. A report must be published at the conclusion of a Part 5 special

498 *Commissioner for Children and Young People Act 2006*, s. 33.

499 *ibid.*, s. 37, 38.

500 *ibid.*, s. 34

501 *ibid.*, s. 39

502 *ibid.*, s. 40.

inquiry.⁵⁰³ To date, an inquiry under this section has never been established. To do so would require considerable resources. Nonetheless, should an issue emerge, and resources be available, the facility could clearly be put to effective use.

Oversight Committee

- 7.85 The Joint Standing Committee is established pursuant to section 51 of the Act. The Committee's role is to monitor, review and report to Parliament on the exercise of the functions of the Children's Commissioner.
- 7.86 As a Parliamentary Committee, it has considerable powers to undertake inquiries, including a power to send for persons, papers and records; to commission reports; and to gather evidence. These are very broad powers with few restrictions, enabling the Committee to undertake substantial and detailed investigations.
- 7.87 If the Commissioner's responsibilities were extended to include oversight of the National Child Safe Principles, the Committee's powers could be similarly expanded, adding an additional layer of scrutiny to the oversight. It is worth noting that the Committee would be well placed to inquire into matters of, for example, emerging risk and report its findings directly to Parliament. While the recommendations of the Standing Committee are not binding, they are subject to the usual provision of requiring a Government response within three months.

Finding 58

Additional provisions of the Commissioner for Children and Young People legislation demonstrate the alignment between, and exercise of, the Children's Commissioner's powers and the oversight function of the National Child Safe Principles.

These include:

- The special inquiry function under Part 5 of the Act enabling the Children's Commissioner to inquire in depth into any issue concerning the application of child safe approaches if required.
- The Joint Standing Committee on the Commissioner for Children and Young People, which provides broad investigative powers to examine the exercise of the Children's Commissioner functions, and which could include the oversight of the National Child Safe Principles.

Additional provisions

Powers to compel a response

- 7.88 The Royal Commission made it clear in recommendations 6.10 and 6.11 that any oversight body must have the power to both monitor and enforce child safe standards; collect, analyse and publish data about child safe approaches; and coordinate the exchange of information between oversight bodies relating to how well institutions are complying with the child safe standards (see box 7.1). To effectively realise these functions, the oversight body must be provided with sufficient power to request, and if necessary compel, the provision of relevant

503 *Commissioner for Children and Young People Act 2006*, s. 43.

information from institutions about their child safe approaches and level of compliance with the child safe standards. The Royal Commission stated this should include enforcement tools for institutions who are unwilling to comply:

When enforcing the Child Safe Standards, regulators should ... be empowered with mechanisms to fulfil their role, such as the ability to make requests for information on how an institution is implementing the Child Safe Standards. Enforcement tools such as financial penalties or orders to comply should be available to regulators where institutions are consistently and intentionally unwilling to comply.⁵⁰⁴

7.89 The rationale for recommending these powers included the Royal Commission's conclusions that 'institutions are seeking strong leadership from governments on child safety' and that without mandatory and regulated child safe approaches, the risk of non-compliance with child safe standards is high.⁵⁰⁵

7.90 In response to specific questions from the Committee about how the oversight function for the National Child Safe Principles should operate (see box 7.3), the Children's Commissioner advised that the body performing the function should have sufficient power to gather evidence to demonstrate an institution's compliance with the National Child Safe Principles, which could include requiring an institution to:

- produce documentary evidence to review for child safe governance structures;
- make their premises available for site visits and inspections; and
- facilitate access to organisational partners, including children, for interviewing purposes.⁵⁰⁶

7.91 In the Committee's view it is necessary that the oversight function includes sufficient and appropriate powers to be effective in monitoring and enforcing the National Child Safe Principles and to maintain the independence of the oversight body. An Australian Research Council funded study undertaken by the Monash University Law Faculty noted that for oversight bodies to maintain effective independence it is important 'their capacity to conduct their monitoring role is not constrained.'⁵⁰⁷ The study also found the 'inability to attach consequences to the failure to implement recommendations' was the biggest limitation to oversight powers identified by oversight agencies which participated in the study.⁵⁰⁸ This view was endorsed by the Children's Commissioner's Oversight Report.⁵⁰⁹

7.92 The Committee notes, however, that the Royal Commission provisions in recommendations 6.10 and 6.11 are far-reaching. As part of any consideration about adding a power to compel a response as part of any oversight responsibility, the Committee believes that

504 Royal Commission into institutional responses to child sexual abuse, *Final Report Volume 6 – Making institutions child safe*, Commonwealth of Australia, 2017, p. 240.

505 *ibid.*, p. 258.

506 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, pp. 10-11.

507 Bronwyn Naylor et al, *Monitoring Closed Environments: The Role of Oversight Bodies*, Monash University Law Faculty, Melbourne, May 2014, p. 20.

508 *ibid.*, p. 21.

509 Commissioner for Children and Young People, *Oversight of services to children and young people in Western Australia*, Western Australia, November 2017, pp. 10-16.

extensive consultation will have to take place about what powers are acceptable and how these powers should be exercised.

7.93 Additionally, consideration would need to be given as to whether there would be a need to extend any power to compel a response from:

- any regulatory body with delegated responsibility to monitor and enforce the National Child Safe Principles; and
- other bodies responsible for receiving and handling complaints made by or on behalf of children and young people.

7.94 Similar powers to those outlined in paragraphs 7.88 to 7.90 exist under Part 5 of the Children’s Commissioner Act. At this stage of the development process for the independent oversight of the National Child Safe Principles, it is not clear if the functions provided to the Children’s Commissioner in this part would be sufficient to compel a response from relevant institutions.

Finding 59

It is not clear if the functions provided to the Children’s Commissioner within Part 5 of the *Commissioner for Children and Young People Act 2006* would be sufficient to compel a response from relevant institutions.

Finding 60

Any consideration about adding a power to compel a response as part of any oversight responsibility should include extensive consultation about what powers are acceptable and how these powers should be exercised.

Resources

7.95 The complexity attached to the role of overseeing (and implementing) the National Child Safe Principles has been acknowledged by the State Government.⁵¹⁰ The Committee’s illustration of how the oversight role might work, details of which are developed in the following section, demonstrates this complexity. Numerous functions, many of which do not currently exist, will need to be designated to ensure systems are child safe, reduce risk and improve child safety and wellbeing outcomes. As the Government has noted, this will require adequate resourcing.

7.96 Chapter 1 of this report highlighted the Royal Commission’s warning that delaying the implementation of child safe approaches will result in the continuing sexual abuse of children and in passing on the cost of this failure to the entire Australian community.⁵¹¹ The cost of child abuse to the Federal, State and Territory Governments has been conservatively

510 Mr Darren Foster, Department of the Premier and Cabinet, *Transcript of Evidence*, 15 May 2019, p. 5.

511 Royal Commission into institutional responses to child sexual abuse, *Final Report, Preface and executive summary*, Commonwealth of Australia, 2017, p. 7.

estimates at \$6.8 billion annually.⁵¹² Adequate resourcing to establish oversight for child safe approaches in Western Australia must therefore be seen as a priority.

- 7.97 While the Committee has not made any specific findings or recommendations about funding, it simply draws attention to the fact that no agency will be able to acquire the functions associated with performing the oversight role without additional funding. If the decision is taken to allocate this function to the Children’s Commissioner, consideration would need to be given to ensuring that the existing work of the Children’s Commissioner office can be maintained. As demonstrated in this report, these existing functions are extremely effective and, whether it is the Children’s Commissioner or another agency overseeing the National Child Safe Principles, will continue to be crucial for the effective operation of these Principles and for the ongoing wellbeing of all children and young people in this State.

Finding 61

Should it be determined that the Children’s Commissioner is provided with responsibility for some or all of the oversight functions recommended by the Royal Commission, the Committee would expect that the existing prescribed statutory functions of the Children’s Commissioner established under section 19 of the *Commissioner for Children and Young People Act 2006*, including advocacy and research, be maintained.

How should oversight work?

Incorporating Recommendation 3 from the Improving the Odds Report

- 7.98 It is essential children and young people are supported by a system of oversight that is independent of, and external to, the services they access. The oversight must be statutorily independent, adequately resourced, and actively facilitate the participation of children and young people in decision-making processes.
- 7.99 The Committee has already recognised the elements of good oversight highlighted in the Children’s Commissioner Oversight Report (see paragraph 7.10). Recommendation 3 (see box 7.2) sets out the oversight model recommended by the Children’s Commissioner in the *Improving the Odds* Report. DPC provided a response to the Children’s Commissioner accepting this recommendation.⁵¹³

512 Cathy Kezelmen et al, *The Cost of Unresolved Childhood Trauma and Abuse in Adults in Australia*, Adults Surviving Child Abuse (ASCA) and Pegasus Economics, Sydney, 2015, p. 12.

513 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, p. 5.

Box 7.2: *Improving the Odds* – Model of independent oversight

Recommendation 3 — Develop, implement and resource a comprehensive and rigorous model of independent oversight of services that provide support to children and young people in WA.

The **model of independent oversight** should:

- oversight all agencies that provide services to children and young people to reinforce a collaborative, holistic view of service responses;
- have the best interests of children and young people as its paramount consideration and focus;
- prioritise children and young people who are at increased risk of experiencing harm or poorer outcomes;
- include a range of mechanisms for oversight that are systematic, proactive, and engage with children, young people and their families to understand the lived experience of policy and practice;
- include resourcing for individual advocacy to assist vulnerable children or young people to access complaints mechanisms and navigate service systems;
- ensure all oversight agencies collaborate in the design and implementation of the model; and
- be adequately resourced.⁵¹⁴

7.100 The Committee agrees with DPC that this recommendation is sound. While it was not drawn up in direct response to the related Royal Commission recommendations, the Committee finds that its substance should be included in measures to implement and oversight the National Child Safe Principles.

Finding 62

Recommendation 3 of the Children’s Commissioner *Improving the Odds for WA’s vulnerable children and young people* Report is sound and its substance should be included in measures to implement and oversight the National Child Safe Principles.

Recommendation 16

That the substance of Recommendation 3 of the Children’s Commissioner *Improving the Odds for WA’s vulnerable children and young people* Report should be included in measures to implement and oversight the National Child Safe Principles.

7.101 Given his experience and expertise, the Committee asked the Children’s Commissioner to sum up how he believes independent oversight should work in Western Australia. His response is summarised in box 7.3 below.

⁵¹⁴ Commissioner for Children and Young People, *Improving the Odds for WA’s vulnerable children and young people*, Commissioner for Children and Young People, Perth, April 2019, p. 29.

Box 7.3: Functions for independent oversight of the National Child Safe Principles – the view of the Children’s Commissioner

Recommendation 6.10 from the Royal Commission makes it clear the independent oversight body is responsible for monitoring and enforcing the Child Safe Standards they describe in detail in Recommendation 6.5. Therefore, the first function is to be able to monitor the implementation across all of the Standards. This will require robust evidence gathering techniques that demonstrate implementation rather than a check box compliance approach. This will include site visits, documentation review/audit (including review of incidents relating to the standards), interviews with a variety of stakeholders (staff, parents/carers, children and young people, external stakeholders), observation of activities, inspection of premises etc.

Consistent with oversight best practice these visits may be announced or unannounced. Monitoring of other sources of intelligence such as reportable conduct allegations and complaints to other agencies will also be important and rely on information sharing protocols to be established with other relevant bodies. The independent oversight body may also receive information directly from community members. This information will be assessed and the extent to which the oversight body will become involved in addressing concerns or issues arising from the information will be decided and actioned as appropriate.

Powers to enforce compliance will need to be robust enough to achieve required outcomes and prevent unsafe practices from continuing while also allowing for due process and development of practice where required. Providing sufficient time for organisations to comply will need to be balanced against the risk of harm posed to children and young people.

The Royal Commission made it clear that the independent oversight body would be able to delegate monitoring and enforcement to another government body. In this situation the independent oversight body would need to ensure the delegated body had sufficiently rigorous processes in place and was able to demonstrate the implementation of the Standards across the organisations it covered. The independent oversight body may still undertake 'spot checks' on organisations under the delegated body to test the system’s rigour.

In applying a monitoring and enforcement regime the Royal Commission also made it clear that a 'responsive, risk-based' approach to monitoring and enforcing the Standards should be taken. In this regard the monitoring approach will be designed to be proportionate to the level of risk of harm occurring to children and young people within a specific organisation, as assessed by the independent oversight body. Again the Royal Commission has provided important guidance on assessing risk of harm according to a range of factors such as the vulnerability of the children and young people attending the organisation, and the nature of the services provided.

Source: The Commissioner for Children and Young People.⁵¹⁵

- 7.102 The Children’s Commissioner explained that these remarks were subject to the fact that further consultation is required to fully decide the nature of the activities of independent oversight and its application in particular sectors and organisations.
- 7.103 He drew attention to the lessons learnt from Victoria’s review of their child safe standards which revealed that capacity building is an essential and ongoing process to achieve cultural infiltration of the National Child Safe Principles into the everyday operations and values of organisations so that real change in protecting children from harm can occur.⁵¹⁶
- 7.104 The Committee has developed the Commissioner’s remarks into an outline of a model for the oversight of the National Child Safe Principles in Western Australia.
- 7.105 This is shown at Figure 7.1 below. While the Committee acknowledges that a final decision about which agency is to perform the role is yet to be made by Government, this model reflects the Committee’s observation that many of the agreed functions of an oversight body

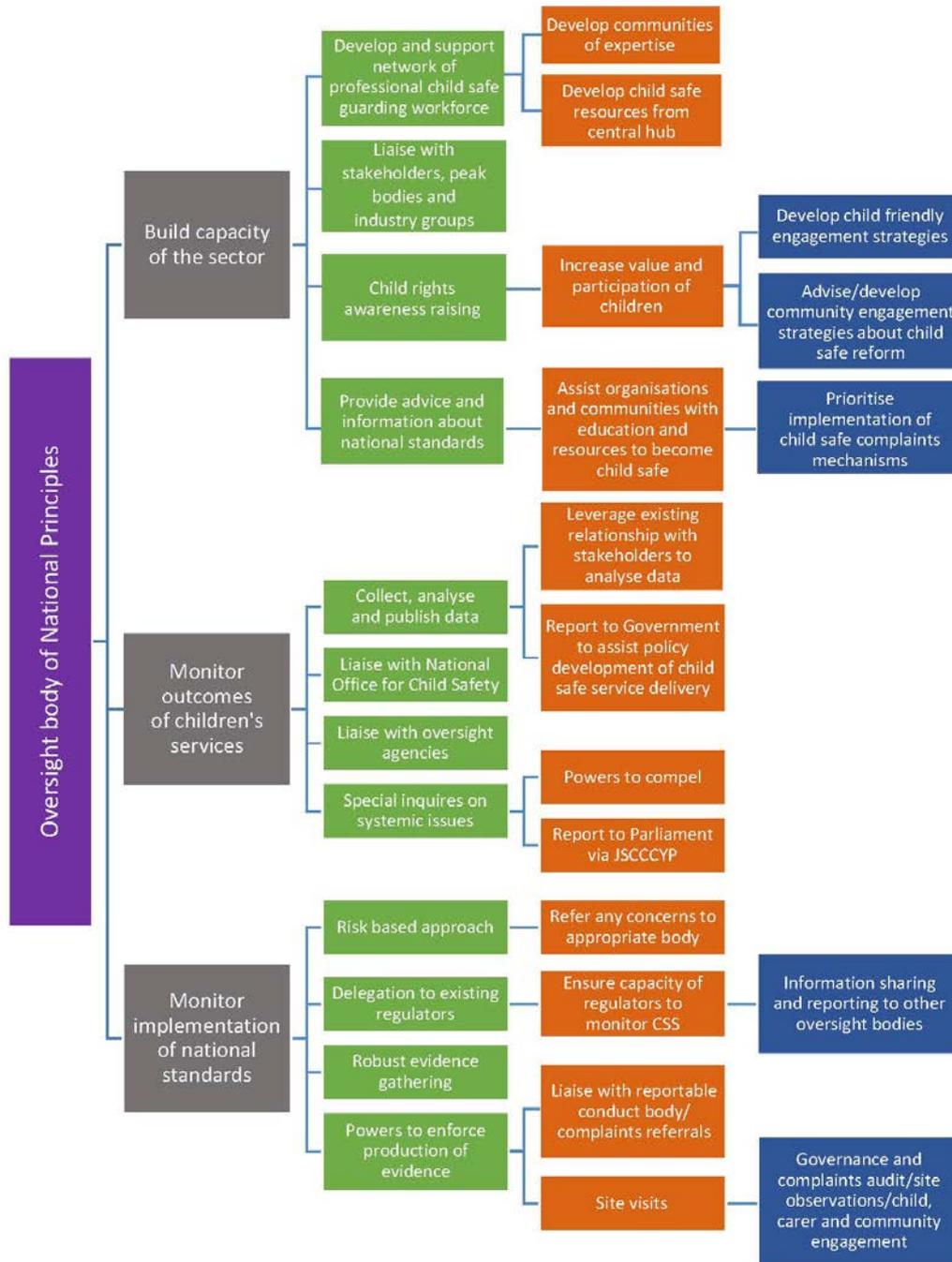
515 Mr Colin Pettit, Commissioner for Children and Young People, Letter, 16 April 2020, pp. 10-11.

516 *ibid.*, p. 10.

already pertain to the operations of the Children’s Commissioner. It also incorporates much of the evidence received during this inquiry.

7.106 The oversight of the National Child Safe Principles is illustrated here as a standalone model. There is, however, no reason why a standalone model could not be incorporated into an integrated oversight system through an overarching central body and/or connect with other oversight bodies when required.

Figure 7.1: Model for oversight of National Child Safe Principles



Key features of the oversight model

7.107 The various functions of this oversight have been grouped into three main areas:

- **Monitoring the implementation and the operation of the National Child Safe Principles**, with a focus on: assisting the development of child safe organisational and individual attitudes which will heighten the likelihood of compliance; streamlined collaboration with delegated regulatory bodies; information sharing and referrals with other oversight bodies/reporting body;
- **Monitoring the outcomes of children’s services**, to ensure children are receiving the services they need, and help redirect service provision through simple and streamlined reporting procedures; and
- **Fostering and developing sector-wide capacity building** such as training, information and advice, and facilitating cooperative and coordinated support between and for government and non-government institutions.

7.108 Across these three areas of activity, proactive and effective oversight will also reinforce to government, organisations and the community that preventing child abuse is everybody’s responsibility.

7.109 Activity is primarily focussed on increasing an awareness about the impacts of child abuse, the rights of children to be heard on matters concerning their safety and wellbeing, and the importance of appropriate and timely information sharing.

7.110 For multiple statutory agencies to operate effectively, the roles, jurisdictions and powers of each must be clearly defined and, according to evidence considered by the Committee, supported by a legislative scheme. This legislation must include sufficient powers to enforce compliance with the National Child Safe Principles when required, although it is important that this is balanced by engagement and education strategies enabling organisations to become child safe.

7.111 As noted above, it is possible to frame legislation so that it ensures senior levels of government have a focus on child safety and wellbeing outcomes. The Committee has cited as a practical example the Children First Interdepartmental Implementation Group,⁵¹⁷ to which has been attributed much of the success of Ireland’s safeguarding approaches.

7.112 A mechanism for information sharing and collaboration is also critical. This needs to include specific provisions enabling the body responsible for the oversight of the National Child Safe Principles to share information with the National Office for Child Safety, in accordance with Royal Commission recommendation 6.11.

In summary

7.113 The Committee makes the final observation that the National Child Safe Principles have the potential to make a difference to the life of every single child living in Western Australia. If this potential is to be realised, however, wholesale reform of the attitudes and beliefs of the

⁵¹⁷ *Child First Act 2015*, (Ireland), s. 20-26. Also see paragraph 4.17.

community and organisations is needed. Increased government regulation and reforms of organisational governance alone will not suffice.

- 7.114 The reforms will centre around creating child safe communities and child safe organisations and considerations about ways in which the participation of children in creating a child safe community can be valued and encouraged. Many of the specific strategies discussed in this report will fall to individual organisations or the Government to fulfil. Consideration must be given to the ways in which government supports, such as legislation and regulation, can be put in place to promote change and provide the impetus for organisations to dedicate resources, time and effort towards becoming child safe.
- 7.115 A focus of Government as it moves to implement the recommendations of the Oversight Report and the Royal Commission can usefully be turned to ways of providing the community and government and non-government organisations cooperative and coordinated support to become child safe. The establishment of an oversight body with the purpose of assisting child safe approaches and sharpening the focus on achieving better safety outcomes for children is a crucial part of this support.
- 7.116 As outlined in the introduction to this report, the Committee's intent is to assist the Government by providing advice based on the evidence it has collected. In that spirit, the Committee makes the following findings and recommendations.

Finding 63

The National Child Safe Principles have the potential to make a difference to the life of every single child living in Western Australia.

Finding 64

Wholesale reform of the attitudes and beliefs of the community and organisations about child safe organisations is needed. Increased government regulation and reforms of organisational governance alone will not suffice.

Finding 65

Information sharing provisions need to enable the body responsible for the oversight of the National Child Safe Principles to share information with the National Office for Child Safety, in accordance with Royal Commission recommendation 6.11.

Recommendation 17

That consideration is given to the ways in which legislation and regulation can be put in place to promote change and support organisations to dedicate resources, time and effort towards becoming child safe.

Recommendation 18

That an oversight body with the purpose of assisting child safe approaches and a focus on achieving better safety outcomes for children is a crucial part of child safe reform and must be established as a priority.

Recommendation 19

That the oversight body for the National Child Safe Principles should incorporate all the elements of the model described in Fig 7.1 of this report and include sufficient and appropriate enforcement powers, collaboration with other statutory oversight bodies and good faith information sharing provisions.

A handwritten signature in blue ink, appearing to read 'S.E. Talbot', with a checkmark at the end.

HON DR S.E. TALBOT, MLC
CHAIR

Appendix One

Committee's functions and powers

The following was agreed by concurrence between the Legislative Assembly and the Legislative Council on 13 June 2017, establishing the Joint Standing Committee on the Commissioner for Children and Young People:

1. Pursuant to section 51 of the Commissioner for Children and Young People Act 2006, a Joint Standing Committee on the Commissioner for Children and Young People be appointed by the Legislative Assembly and the Legislative Council.
2. The Joint Standing Committee shall comprise 2 members appointed by the Legislative Assembly and 2 members appointed by the Legislative Council.
3. It is the function of the Joint Standing Committee to—
 - i. monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;
 - ii. examine Annual and other Reports of the Commissioner; and
 - iii. consult regularly with the Commissioner.
4. A report of the Joint Standing Committee will be presented to the Legislative Assembly and the Legislative Council by members of the Joint Standing Committee nominated by it for that purpose.
5. The Standing Orders of the Legislative Assembly relating to Standing and Select Committees will be followed as far as they can be applied.

Appendix Two

Royal Commission into institutional responses to child sexual abuse – Recommendations

The following recommendations have been referenced in the report: ⁵¹⁸

Recommendation 6.1

The Australian Government should establish a mechanism to oversee the development and implementation of a national strategy to prevent child sexual abuse. This work should be undertaken by the proposed National Office for Child Safety (see Recommendations 6.16 and 6.17) and be included in the National Framework for Child Safety (see Recommendation 6.15).

Recommendation 6.2

The national strategy to prevent child sexual abuse should encompass the following complementary initiatives:

- a. social marketing campaigns to raise general community awareness and increase knowledge of child sexual abuse, to change problematic attitudes and behaviour relating to such abuse, and to promote and direct people to related prevention initiatives, information and help-seeking services;
- b. prevention education delivered through preschool, school and other community institutional settings that aims to increase children’s knowledge of child sexual abuse and build practical skills to assist in strengthening self-protective skills and strategies. The education should be integrated into existing school curricula and link with related areas such as respectful relationships education and sexuality education. It should be mandatory for all preschools and schools;
- c. prevention education for parents delivered through day care, preschool, school, sport and recreational settings, and other institutional and community settings. The education should aim to increase knowledge of child sexual abuse and its impacts, and build skills to help reduce the risks of child sexual abuse;
- d. online safety education for children, delivered via schools. Ministers for education, through the Council of Australian Governments, should establish a nationally consistent curriculum for online safety education in schools. The Office of the eSafety Commissioner should be consulted on the design of the curriculum and contribute to the development of course content and approaches to delivery (see Recommendation 6.19);
- e. online safety education for parents and other community members to better support children’s safety online. Building on their current work, the Office of the eSafety Commissioner should oversee the delivery of this education nationally (see Recommendation 6.20);
- f. prevention education for tertiary students studying university, technical and further education, and vocational education and training courses before entering child-related occupations. This should aim to increase awareness and understanding of the prevention of child sexual abuse and potentially harmful sexual behaviours in children;
- g. information and help-seeking services to support people who are concerned they may be at risk of sexually abusing children. The design of these services should be informed by the Stop It Now! model implemented in Ireland and the United Kingdom; and
- h. information and help seeking services for parents and other members of the community concerned that:
 - i. an adult they know may be at risk of perpetrating child sexual abuse;
 - ii. a child or young person they know may be at risk of sexual abuse or harm; and
 - iii. a child they know may be displaying harmful sexual behaviours.

⁵¹⁸ Royal Commission into institutional responses to child sexual abuse, *Final Report Recommendations*, Commonwealth of Australia, 2017, pp. 5, 7-11, 19, 20, 24 and 25.

Recommendation 6.3

The design and implementation of these initiatives should consider:

- a. aligning with and linking to national strategies for preventing violence against adults and children, and strategies for addressing other forms of child maltreatment;
- b. tailoring and targeting initiatives to reach, engage and provide access to all communities, including children, Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, people with disability, and regional and remote communities;
- c. involving children and young people in the strategic development, design, implementation and evaluation of initiatives; and
- d. using research and evaluation to:
 - i. build the evidence base for using best practices to prevent child sexual abuse and harmful sexual behaviours in children; and
 - ii. guide the development and refinement of interventions, including the piloting and testing of initiatives before they are implemented.

Recommendation 6.6

Institutions should be guided by the following core components when implementing the Child Safe Standards:

Standard 1: Child safety is embedded in institutional leadership, governance and culture

- a. the institution publicly commits to child safety and leaders champion a child safe culture;
- b. child safety is a shared responsibility at all levels of the institution;
- c. risk management strategies focus on preventing, identifying and mitigating risks to children;
- d. staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children; and
- e. staff and volunteers understand their obligations on information sharing and recordkeeping.

Standard 2: Children participate in decisions affecting them and are taken seriously

- a. children are able to express their views and are provided opportunities to participate in decisions that affect their lives;
- b. the importance of friendships is recognised and support from peers is encouraged, helping children feel safe and be less isolated;
- c. children can access sexual abuse prevention programs and information; and
- d. staff and volunteers are attuned to signs of harm and facilitate child-friendly ways for children to communicate and raise their concerns.

Standard 3: Families and communities are informed and involved

- a. families have the primary responsibility for the upbringing and development of their child and participate in decisions affecting their child;
- b. the institution engages in open, two-way communication with families and communities about its child safety approach and relevant information is accessible;
- c. families and communities have a say in the institution's policies and practices; and
- d. families and communities are informed about the institution's operations and governance.

Standard 4: Equity is upheld and diverse needs are taken into account

- a. the institution actively anticipates children's diverse circumstances and responds effectively to those with additional vulnerabilities;
- b. all children have access to information, support and complaints processes; and
- c. the institution pays particular attention to the needs of aboriginal and torres strait islander children, children with disability, and children from culturally and linguistically diverse backgrounds.

Standard 5: People working with children are suitable and supported

- a. recruitment, including advertising and screening, emphasises child safety;
- b. relevant staff and volunteers have working with children checks;
- c. all staff and volunteers receive an appropriate induction and are aware of their child safety responsibilities, including reporting obligations; and
- d. supervision and people management have a child safety focus.

Standard 6: Processes to respond to complaints of child sexual abuse are child focused

- a. the institution has a child-focused complaint handling system that is understood by children, staff, volunteers and families;
- b. the institution has an effective complaint handling policy and procedure which clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report; and
- c. complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.

Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training

- a. relevant staff and volunteers receive training on the nature and indicators of child maltreatment, particularly institutional child sexual abuse;
- b. staff and volunteers receive training on the institution's child safe practices and child protection; and
- c. relevant staff and volunteers are supported to develop practical skills in protecting children and responding to disclosures.

Standard 8: Physical and online environments minimise the opportunity for abuse to occur

- a. risks in the online and physical environments are identified and mitigated without compromising a child's right to privacy and healthy development; and
- b. the online environment is used in accordance with the institution's code of conduct and relevant policies.

Standard 9: Implementation of the Child Safe Standards is continuously reviewed and improved

- a. the institution regularly reviews and improves child safe practices; and
- b. the institution analyses complaints to identify causes and systemic failures to inform continuous improvement.

Standard 10: Policies and procedures document how the institution is child safe

- a. policies and procedures address all child safe standards;
- b. policies and procedures are accessible and easy to understand;
- c. best practice models and stakeholder consultation inform the development of policies and procedures;
- d. leaders champion and model compliance with policies and procedures; and
- e. staff understand and implement the policies and procedures.

Recommendation 6.8

State and territory governments should require all institutions in their jurisdictions that engage in child-related work to meet the Child Safe Standards identified by the Royal Commission at Recommendation 6.5.

Recommendation 6.9

Legislative requirements to comply with the Child Safe Standards should cover institutions that provide:

- a. accommodation and residential services for children, including overnight excursions or stays;
- b. activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children;
- c. childcare or childminding services;
- d. child protection services, including out-of-home care;
- e. activities or services where clubs and associations have a significant membership of, or involvement by, children;
- f. coaching or tuition services for children;
- g. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions;
- h. services for children with disability;
- i. education services for children;
- j. health services for children;
- k. justice and detention services for children, including immigration detention facilities; and
- l. transport services for children, including school crossing services.

Recommendation 6.10

State and territory governments should ensure that:

- a. an independent oversight body in each state and territory is responsible for monitoring and enforcing the Child Safe Standards. Where appropriate, this should be an existing body;
- b. the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory government body, such as a sector regulator; and
- c. regulators take a responsive and risk-based approach when monitoring compliance with the Child Safe Standards and, where possible, utilise existing regulatory frameworks to monitor and enforce the Child Safe Standards.

Recommendation 6.11

Each independent state and territory oversight body should have the following additional functions:

- a. provide advice and information on the Child Safe Standards to institutions and the community;
- b. collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety;
- c. partner with peak bodies, professional standards bodies and/or sector leaders to work with institutions to enhance the safety of children;
- d. provide, promote or support education and training on the Child Safe Standards to build the capacity of institutions to be child safe; and
- e. coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards.

Recommendation 7.9

State and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes), based on the approach adopted in New South Wales, which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees.

Recommendation 7.10

Reportable conduct schemes should provide for:

- a. an independent oversight body;
- b. obligatory reporting by heads of institutions;
- c. a definition of reportable conduct that covers any sexual offence, or sexual misconduct, committed against, with, or in the presence of, a child;
- d. a definition of reportable conduct that includes the historical conduct of a current employee;
- e. a definition of employee that covers paid employees, volunteers and contractors;
- f. protection for persons who make reports in good faith; and
- g. oversight body powers and functions that include:
 - i. scrutinising institutional systems for preventing reportable conduct and for handling and responding to reportable allegations, or reportable convictions;
 - ii. monitoring the progress of investigations and the handling of complaints by institutions;
 - iii. conducting, on its own motion, investigations concerning any reportable conduct of which it has been notified or otherwise becomes aware;
 - iv. power to exempt any class or kind of conduct from being reportable conduct;
 - v. capacity building and practice development, through the provision of training, education and guidance to institutions; and
 - vi. public reporting, including annual reporting on the operation of the scheme and trends in reports and investigations, and the power to make special reports to parliaments.

Recommendation 8.6

The Australian Government and state and territory governments should make nationally consistent legislative and administrative arrangements, in each jurisdiction, for a specified range of bodies (prescribed bodies) to share information related to the safety and wellbeing of children, including information relevant to child sexual abuse in institutional contexts (relevant information). These arrangements should be made to establish an information exchange scheme to operate in and across Australian jurisdictions.

Recommendation 8.7

In establishing the information exchange scheme, the Australian Government and state and territory governments should develop a minimum of nationally consistent provisions to:

- a. enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing;
- b. permit prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts;
- c. require prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to preventing, identifying and responding to child sexual abuse in institutional contexts, subject to limited exceptions;
- d. explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information to prevent, identify and respond to child sexual abuse in institutional contexts;
- e. provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme; and
- f. require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such persons, except where to do so could place another person at risk of harm.

Appendix Three

Submissions received

No.	Name	Position	Organisation
1	Mr Neil Morgan	Inspector	Office of the Inspector of Custodial Services
2	Mr Chris Field	Ombudsman	Ombudsman Western Australia
3	Ms Jane French Ms Selina Horrocks	Executive Director State Manager WA	Child Wise
4	Ms Marie Slattery Ms Basil Hanna	Child Safe Co-Ordinator Chief Executive	Parkerville Children and Youth Care Inc
5	Ms Tricia Murray	Chief Executive Officer	Wanslea
6	Mr Tony Pietropiccolo AM	Director	Centrecare Inc
7	Dr Vicky Absalom-Hornby	Development Executive	Valuing Children Initiative
8	Louise Giolitto	Chief Executive Officer	WA Council of Social Service
9	Ms Lisa Rodgers	Director General	Department of Education
10	Mr Chris Dawson	Commissioner of Police	WA Police Force
11	Mr Ross Wortham	Chief Executive Officer	The Youth Affairs Council of WA
12	Dr Aresn Anwar	Chief Executive	Child and Adolescent Health Service
13	Dr James Williamson	Assistant Director General; Clinical Excellence Division	Department of Health
14	Ms Michelle Andrews	Director General	Department of Communities
15	Mr Colin Pettit	Commissioner for Children and Young People	Commissioner for Children and Young People WA
16	Dr Adam Tomison	Director General	Department of Justice
17	Ms Rebecca Smith	Director of Brand and Stakeholder Relations	Sexual Health Quarters

Appendix Four

Hearings and briefings

Hearings

Date	Name	Position	Organisation
20 March 2019	Professor Neil Morgan	Inspector of Custodial Services	Office of the Inspector of Custodial Services
	Mr Darian Ferguson	Deputy Inspector	
	Ms Rowena Davis	Director Reviews	
	Mr Kieran Artelaris	Inspections and Research Officer	
28 March 2019	Mr Christopher Field	Ombudsman	Ombudsman Western Australia
	Ms Gwyneth White	Deputy Ombudsman	
	Ms Rebecca Poole	Assistant Ombudsman	
28 March 2019	Mrs Sandra Labuschagne	Acting Auditor General	Office of the Auditor General
	Mr Jason Beeley	Assistant Auditor General, Performance Audit	
28 March 2019	Ms Debora Colvin	Chief Mental Health Advocate	Mental Health Advocacy Service
3 April 2019	Dr Mei-Ling Koay	Executive Director; Patient Safety and Clinical Quality	Department of Health
3 April 2019	Ms Lisa Rodgers	Director General	Department of Education
	Mr Martin Clery	Acting Executive Director, Statewide Services	
	Mr Stephen Baxter	Acting Deputy Director General, Public Schools	
	Mr Lindsay Hale	Executive Director, Public Schools	
	Mr Mike Cullen	Acting Executive Director, Professional Standards and Conduct	
	Mr Gavin Agacy	Director, Non-Government School Regulation	
	Mr Richard Miles	Director, Teacher Registration	

Appendix Four

Date	Name	Position	Organisation
10 April 2019	Ms Michelle Andrews	Director General	Department of Communities
	Ms Helen Nys	Assistant Director General, Policy and Service Design	
	Mr Brad Jolly	Assistant Director General, Commission and Sector Engagement	
	Ms Marion Hailes-MacDonald	Assistant Director General, Disability	
	Mr Mark Crofts	Director, Standards and Integrity	
	Ms Reneé Gioffre	General Manager, Policy and Service Design	
	Mr Maynard Rye	Manager, Strategic Procurement	
17 April 2019	Ms Janette Allen	Acting Deputy Commissioner for Women and Young People	Department of Justice
	Mr Michael Heslington	Superintendent, Banksia Hill Detention Centre	
	Ms Kati Kraszlan	Acting Commissioner for Victims of Crime	
17 April 2019	Ms Sarah Cowie	Director	Health and Disability Services Complaints Office
17 April 2019	Dr Aresh Anwar	Chief Executive	Child and Adolescent Health Service
	Ms Patricia Sullivan	Service Co-Director	
	Dr Kavitha Lakshminarayanan	Consultant Psychiatrist and Executive Director for Medical Services	
	Ms Debra Clements	Manager	Statewide Protection of Children and Coordination Unit
17 April 2019	Mr Chris Dawson	Commissioner of Police	Western Australian Police Force
	Ms Susan Young	Acting Assistant Commissioner	
	Mr Hamish McKenzie	Detective Inspector, Sex Crime Division	
8 May 2019	Dr Nathan Gibson	Chief Psychiatrist of Western Australia	
8 May 2019	Dr Melissa O'Donnell	Senior Research Fellow, Telethon Kids Institute	University of Western Australia

Date	Name	Position	Organisation
15 May 2019	Mr Darren Foster	Director General	Department of the Premier and Cabinet
	Ms Kim Lazenby	Director, Social Policy Unit	
	Ms Janine Kingston	(Acting Director, Social Policy Unit	
	Mrs Nicole McCartney	Acting Director, Aboriginal Policy and Coordination Unit	
12 June 2019	Mr Chris Twomey	Leader, Policy Development and Research	Western Australian Council of Social Service
25 September 2019	Mr Colin Pettit	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Patricia Heath	Director, Policy and Research	
19 February 2020	Mr Colin Pettit	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Patricia Heath	Director, Policy and Research	
4 March 2020	Mr Chris Twomey	Leader, Policy Development and Research	Western Australian Council of Social Service
4 March 2020	Mr Rob Thompson	Chief Executive Officer	SportWest
	Ms Lorraine Donachie	Project Lead	
4 March 2020	Professor Helen Milroy	Previous Commissioner	Royal Commission into institutional responses to child sexual abuse
4 March 2020	Ms Katrina Lane	State Commissioner	Girl Guides Western Australia
	Mr Peter Walton	Honorary Commissioner	Scouts WA
	Miss Dana Kelly	Incident Liaison Officer	Scouts Association of Australia, Western Australia Branch
4 March 2020	Mr Ross Wortham	Chief Executive Officer	Youth Affairs Council of Western Australia
	Mr Stefaan Bruce-Truglio	Policy and Advocacy Officer	
	Mr Mason Rothwell	Senior Policy and Advocacy Officer	

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Date	Name	Position	Organisation
6 March 2020	Ms Michelle Andrews	Director General	Department of Communities
	Ms Helen Nys	Assistant Director General	
	Ms Reneé Gioffre	General Manager, Child Sexual Abuse Royal Commission Implementation Team	
	Mr Phil Payne	Executive Director, Regulation and Quality	
6 March 2020	Dr Joe Tucci	Chief Executive Officer	Australian Childhood Foundation
	Ms Janise Mitchell	Deputy CEO/Social Worker	
6 March 2020	Mrs Joanna Collins	Chair	Alliance for Children at Risk
	Ms Jennifer Hannan	Executive Officer	
16 March 2020	Mr Darren Foster	Director General	Department of the Premier and Cabinet
	Ms Kim Lazenby	Director, Social Policy Unit	
	Mr Scott Campbell	Principal Policy Officer, Social Policy Unit	
	Ms Kate Alderton	Director, Aboriginal Policy and Coordination	
	Ms Lucy Halligan	Principal Policy Officer, Social Policy Unit	
18 March 2020	Dr Joe Tucci	Chief Executive Officer	Australian Childhood Foundation
	Ms Janise Mitchell	Deputy CEO/Social Worker	

Briefings

Date	Name	Position	Organisation
30 September 2019	Éimear Fisher	Assistant Secretary General	Department of Children and Youth Affairs
	Kate Gillen	Assistant Principal, Social Work Specialist	
	Michele Clarke	Principal Officer	
	Grainne Morrissey	Principal Officer	
30 September 2019	Brian Lee	Director of Quality Assurance	Tulsa
30 September 2019	Dr Niall Muldoon	Ombudsman for Children	Irish Ombudsman for Children
	Nuala Ward	Director of Investigations	
	Karen McAuley	Head of Policy	

Date	Name	Position	Organisation
1 October 2019	Michael Chalmers	Director	Scottish Government Children and Families Directorate
	Iona Colvin	Chief Social Work Adviser	
	Rod Finan	Professional Social Work Advisor	
1 October 2019	Professor Jane Callaghan	Centre Director	Centre for Child wellbeing and Protection, University of Stirling
	Christine Gray	Research Assistant	
1 October 2019	Sarah Davidson	Chief Executive Officer	Carnegie Trust
2 October 2019	Professor Simon Hackett	Associate Provost, Professor of Child Abuse and Neglect	Durham University
3 October 2019	Nick Hobbs	Head of Advice and Investigations	Children and Young People's Commissioner – Scotland
	Maria Galli	Legal Officer	
3 October 2019	Jacqueline Cassidy	Head of External Affairs	Children in Scotland
	Laura Watt	Senior Policy Officer – National Third Sector GIRFEC Project	
	Sally Caver	Head of Inclusion	
	Chris Ross	Policy Officer	
4 October 2019	Jacob Ellis	Communications and Public Affairs Lead	Future Generations Commissioner
4 October 2019	Catriona Williams OBE	Chief Executive	Children in Wales
4 October 2019	Llinos Madely	Clerk - Children, Young People and Education Committee	National Assembly for Wales
	Tanwan Summers	Second Clerk - Children, Young People and Education Committee	
	Sian Thomas	Education and Lifelong Learning Research Team Leader	
	Megan Williams	Education and Youth Engagement Officer	
	Siwan Davies	Director of Assembly Business	
	Julian Luke	Head of Policy and Legislation Committee Services	
	Enfys Roberts	Private Office Manager	
7 October 2019	Giles Dilnot	Head of Communications and External Affairs	Children's Commissioner for England

Appendix Four

Date	Name	Position	Organisation
7 October 2019	Emily Hilton	Senior Policy and Public Affairs Officer	National Society for the Prevention of Cruelty to Children
	Pat Brannigan	Development and Impact Manager Children Services Directorate	
7 October 2019	Neil Remsbery	Child Protection and Safeguarding Unit	Department of Education
7 October 2019	Her Majesty's Chief Inspector Amanda Spielman		The Office for Standards in Education, Children's Services and Skills
	Sean Harford HMI	National Director, Education	
	Yvette Stanley	National Director, Social Care	
8 October 2019	Sarah Blakemore	Chief Executive	Keeping Children Safe
8 October 2019	Michael Sanders	Executive Director	What Works Children's Social Care
	Louise Reid	Head of Programmes	
9 October 2019	Dr Carol Homden CBE	Chief Executive Officer	Coram Organisations
	Dr John Simmonds OBE	Director of Policy, Research and Development	Coram BAAF
	Brigid Robinson	Managing Director	Coram Voice
	Awaz Raof	Legal and Programmes Manager	Coram Legal
	David Mendez	Senior Executive Officer	Coram Organisations
9 October 2019	Anna Feuchtwang	Chief Executive	National Children's Bureau
	Caroline Coady	Assistant Director for Social Care	
	Joanna Carr	Senior Participation Officer	
	Dustin Hutchinson	Senior Policy	
	Dan Martin	Principal Officer – Social Care	



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