

Tasmanian Child Safe Organisations Bill 2020

Submission to the Department of Justice Tasmania

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Introduction

CREATE Foundation appreciates the opportunity to respond to the *Draft Child Safe Organisations Bill 2020*.

As the national peak body representing children and young people with an out-of-home care experience, CREATE seeks to provide opportunities where children and young people in care feel seen and heard. CREATE welcomes the need for legislative and administrative consistency for standards relating to the safety and wellbeing of children and young people. CREATE also believes that more clarity regarding child safe processes is required to uphold consistency and accountability in practice.

CREATE supports the development of the *Child Safe Organisations Bill 2020* that stems from recommendations made by the Royal Commission within the *Making Institutions Child Safe* report (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017). Having this legislative framework adds an extra layer of protection for the safety and wellbeing of children and young people, and recognises and strengthens the safety factors that are required in both funded organisations and government agencies that work with children and young people.

Given the importance of this Bill, it is imperative to ensure the language in which this legislation is written is easy to read and understand, and meets the need of those adhering to it. CREATE Tasmania in partnership with the Tasmanian Child Advocate for Children in Care, facilitated a Youth Change Makers meeting to ensure that the Bill was closely scrutinised before drafting our submission. This meeting gathered the views of six young people with a care experience in relation to the proposed Bill and consultation questions. CREATE has provided responses to each of the consultation questions below based on the views of the young people who participated in the discussion and is supported by additional research.

Consultation Question Responses

1. Do you agree with the Principles 5a – 5c?

CREATE agrees with the idea that that organisations engaged in services that interact with children should embed the Principles and Child Safe Standards in policies, practices, and procedures. However, it would be ideal if the Principles currently written in the Bill were nationally consistent to avoid any misinterpretation.

Principles 5a-5c regarding the safety and wellbeing of children noted in the Bill require a different interpretation of the Council of Australian Government endorsed *National Principles for Child Safe Organisations* as the foundation for a nationally consistent approach to implementation. To ensure these principles are not misconstrued and remain nationally consistent, the Tasmanian Government should in the proposed Bill adopt the *National Principles* as their own so that their intent is not lost.


Feedback from the young people indicated that the draft Bill was confusing and unclear which could have implications in ensuring consistency in practice. Young people believed that the principles for the safety and wellbeing of children should not differ from that of the *National Child Safe Principles* (Australian Human Rights Commission, 2019) and should be interchangeable with the *Child Safe Standards*. The majority of young people were also confused as to why the five standards listed in the Bill did not align with that of the ten *National Child Safe Principles*.

“It’s good to have our own (legislation), but if it’s different (to the national principles) then there’s wiggle room, and there shouldn’t be when it’s the rights of a child.”

“Why is it different? (The principles in the Bill, to that of the National principles).”

“The fact that the standards don’t match the National principles. It’s really stupid.”

“If this is a law it needs to be clear so it’s not misinterpreted and skirted around.”



Varying the language used in the Tasmanian context from that at a national level is likely to generate complications around understanding and misinterpretation. It is essential for legislation to be clear and easily understood by community members. This is noted by the Office of the Queensland Parliamentary Counsel who have stated “*It is an essential feature of the rule of law that legislation be clear and be able to be understood by those who are bound by it*” (Office of the Queensland Parliamentary Counsel, 2014).

CREATE Foundation is among many national organisations funded to work with children in a Tasmanian context. CREATE has observed the impacts which develop for children and young people with a care experience when jurisdictions do not consistently align important frameworks, laws, and policies. Our recent national survey into the experiences of 1275 children and young people in care showcases areas where more improvements to systems that serve those in care are needed to better improve their experiences and life outcomes (McDowall, 2018). The *National Principles* were created to protect Australia’s children and ensure consistency across Australia due to the complicating factors which result when jurisdictions create differing principles and standards. One negative impact for having differing language in jurisdictions is the inability to measure how states are performing to uphold the safety of children at a national level. This in turn then limits the accountability of the state’s actions and puts children more at risk.

2. Is there anything missing from the Principles?

Young people expressed that the *Principles* need to have clear alignment and identical language with the same ten principles of the *National Principles for Child Safe Organisations*. Currently, as it stands, the draft Bill only acknowledges some elements of the *National Principles*. Notably, Principle Three: “*Families and communities are informed, and involved in promoting child safety and wellbeing*” and Principle Five: “*People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.*” To ensure that the Tasmanian government and organisations working with children and young people are doing their best to safeguard the wellbeing of children and young people, greater consideration must be made in adopting other areas of the *National Child Safe Principles* within the Bill.

In New South Wales, all ten Child Safe Standards underpinned by the *National Principles* have been adopted (Office of the Children's Guardian, 2020). In Victoria, seven Child Safe Standards underpinned by the *National Principles* have been implemented since 2017. They are also guided by three overarching principles that require organisations to promote the safety needs of children who identify as Aboriginal or Torres Strait Islander, children from culturally and linguistically diverse backgrounds, and children living with a disability (Victorian Government, 2020).

3. Do you agree with the Standards? (Schedule 1)

CREATE Foundation agrees that organisations and services that interact with children and young people should embed the *National Principles and Child Safe Standards* in policies, practices, and procedures. These *Standards* should be aligned and interchangeable with the *National Principles* as they both outline elements for child safe practice. This is recognised in the *Making organisations safer for children: Regulation of child safe standards in NSW – Consultation report* by the NSW Office of the Children’s Guardian (2019). The report also suggests a principle-based approach to regulation and monitoring of the child safe standards in practice (Office of the Children's Guardian, 2019).

4. Is there anything missing from the Standards?

Young people did not note anything specifically missing from the *Standards* at the Youth Change Makers meeting. However, the alignment and interchangeability of the standards to the ten *National Principles for Child Safe Organisations* continued to be raised. Young people wondered why the five standards and sub-sections listed in the Bill did not align with that of the ten *National Child Safe Principles*. The Bill has created a total combined 12 standards and subsections, in contrast to ten *National Principles* which the young people believed would automatically create difficulty in national reporting.

“The Tasmanian standards should be in the same order as the Principles and in the same or similar language so there isn’t the chance it implies the wrong thing.”

“It’s too complex to understand each point in the Bill because it has the subsections.”

Reference to equity and diverse needs as a stand-alone principle (*National Principle*: number 4) are also dissected into Standard 1, 3, and partially into Standard 5b, 5c and 5g. This principle is extremely important for holding organisations accountable, and having the Principle dispersed between subsections of the standards will risk it being lost and misinterpreted.

“National Principle number four: Equity is upheld and diverse needs respected in policy and practice, is not referred to on its own (as a standard). Why has it been put in as a sub point, it’s so important.”

5. What would you consider the priority actions for implementation to be?


When asked this question, the six young people who had attended the Youth Change Makers meeting to discuss the Bill were concerned that the *National Principles and Child Safe Standards* were not already being implemented within organisations and government Department bodies who work with children, resulting in the belief that there was a lack of accountability for these policies already. In terms of prioritising actions for implementation, the majority believed all of the *Child Safe* standards should be implemented straight away, and that there should be a time limit of up to a year to implement all of the standards. A few young people stated that if the Government had to start somewhere with implementation, it should be with the principle: *“Child safety and wellbeing is embedded in organisational leadership, governance and culture.”*

“The boss or leader has no idea what’s really happening on the ground; it’s important that the organisation is saying it (national principles) in all aspects of the organisation or department.”

6. What might be the challenges in implementation?

CREATE foresees a few potential challenges with implementation. This includes resourcing and a lack of organisational funds to cover an increase in oversight, training, and implementation in practice. As the young people have mentioned above, their view is that all of the *Standards* should be implemented at once. However, they also acknowledged that *National Principle Number One: Child safety and wellbeing is embedded in organisational leadership, governance, and culture*, should be considered for implementation first. This would require a large amount of resourcing to ensure that organisations and government departments are accountable.

CREATE believes that if the implementation of oversight falls with the funding body to review how organisations are operationally meeting the *Standards*, this may interfere with the robust nature of the review which is needed to uphold the standards. There needs to be clarity as to who may exercise the power. CREATE recommends there is independent oversight, in the form of an independent body



such as Tasmania's Child Advocate or Commissioner for Children and Young People, that has the capacity to review both organisations and government agencies delivering services to children and young people (CREATE, 2015). This independent body should be child and young people specific, so they are able to assess the standards while keeping children and young people at the centre of the work (CREATE, 2015).

7. What would you consider an “Annual Report on Compliance” to consist of?

When discussing aspects of what an annual report on compliance would consist of, young people believed it was important to have opportunities to participate and be involved in the annual reviews for compliance by organisations and departments. This right to participate is enshrined in Article 12.1 in the United Nation's *Convention on the Rights of the Child* (United Nations, 1989). CREATE advocates that children and young people be given opportunities to participate and have their say (CREATE, 2019) given that children and young people are the ones who engage with organisations and services. Such opportunities could include using an annual survey to check that the standards are working and are being upheld. Allowing young people to have their say, particularly those who have a care experience, further enhances their safety and wellbeing.

The young people at the Youth Change Makers meeting also spoke about the importance for people working within organisations and departments to learn how to talk to young people and be implementing *National Standard Two: “Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously”* in practice.

“There is a mindset that young people don't have thoughts, but our thoughts will be helpful. Young people can make decisions and have good points.”

Accountability should be upheld, by incorporating young people in the annual review process, so they have a say about whether organisations and government are upholding the standards. Young people also expressed the importance that all people within the organisation and Department who work with young people directly or indirectly should be made to report on how they adhere to the standards. The young people also advised that the annual reports should be youth friendly, written in simple language that everyone can understand, and those people using the service should be able to access the reports.

“The big boss, the manager, the sub regions, everyone needs to report about how they are going (reporting on the standards).”

“There should be youth friendly reports that haven't got long lengthy lawyer type language, and they should be made available to young people.”

“How are you going to know what the young people's needs are, if you don't ask them.”

Conclusion

Whilst CREATE supports the initial steps towards developing the Bill to better protect children and young people in Tasmania, CREATE recommends the following actions for consideration before finalising:

- Incorporate the *National Principles and Child Safe Standards* so that they remain nationally consistent within the *Child Safe Organisations Bill*;
- Provide child-and-young-person-friendly versions of the Bill that are in simple language and easy to understand;
- Provide annual surveys for children and young people to participate in to provide their views on how well organisations and services are upholding the standards and principles in practice;

- Ensure independent oversight of the *National Principles and Standards* through an independent body such as Tasmania's Child Advocate or Commissioner for Children and Young People, that has the capacity to review both organisations and government agencies delivering services to children and young people.

Thank you again for the opportunity to provide comment on the proposed draft Bill. Please contact Danni Ashton, TAS State Coordinator on 03 6281 9243 if you require any additional information.

Yours sincerely

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About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care up to the age of 25. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by providing a variety of activities and programs for children and young people in care, and conducting research and developing policy to help us advocate for a better care system.