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The Royal Commission: Recommendations for Child Safe Institutions

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Introduction

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➤ Our focus areas

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➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

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1. The Royal Commission

- Royal Commission established by the Governor General by Letters Patent – 13 November 2014.
- Six Commissioners:
The Honourable Justice Peter David McClellan AM, Mr Robert Atkinson, The Honourable Justice Jennifer Ann Coate, Mr Robert William Fitzgerald AM, Dr Helen Mary Milroy, and Mr Andrew James Marshall Murray
- Terms of Reference:
 - What institutions and government should do to better protect children against child sexual abuse
 - What institutions and governments should do to achieve best practice in reporting and responding to incidents of child sexual abuse
 - What should be done to eliminate or reduce impediments that exists for responding appropriately to child sexual abuse
 - What should be done to address the impact of past and future child sexual abuse (justice, investigation, prosecution and victim support).
- Informed by individual cases.
- Interim Reports (Case Study and Systemic Issue specific)
- Final Report issued, Christmas 2017
- Fast Facts – 42041 calls, 25964 letters/emails, 8013 private sessions, 2575 referrals to police
- Why learn these lessons?
 - Evidence of victims - the way in which their lives have been irreparably damaged by sexual abuse.
 - Christian Ministry and Service demands that we protect the vulnerable.
 - Royal Commission made many recommendations for change



2. Retrospective lifting of the limitation periods

- Queensland – limitation period for bringing personal injury claim – 3 years after turning 18
- Evidence of Victims – can take up to 20 years for a survivor to speak openly about their abuse
- Limitation Period = Unfairness to the survivor
- All jurisdictions in Australia have abolished the limitation periods for child sexual abuse (retrospective application)
- Query: Has the pendulum swung too far – unfairness to the institution?
 - Historical claims can be hard to defend – evidence lost, memories diluted, witnesses deceased
 - Insurance cover may be ineffective
- Court has retained inherent power to strike out applications - if the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.



2. Retrospective lifting of the limitation periods

Connellan v Murphy [2017] VSCA 116

- Plaintiff initiated proceedings against the Defendant, alleging that he, his brother and another male named “Eugene” sexually assaulted her in approximately 1967/1968.
- She was approximately 13 years old at the time. The alleged perpetrators were approximately the same age.
- She claimed that she stayed with the Defendant’s family for a short period (approximately a week) after her father died and the assaults occurred during this time.
- While the alleged perpetrators are still living and available to give evidence, the only potential witnesses who were adults at the time are deceased and the locations involved are significantly altered. The claims made by the Plaintiff were vague and occasionally inconsistent and unable to be tested due to the 50 year lapse in time.
- Court of Appeal - that because the only available witnesses were children at the time and that there was a quantitative and qualitative lack of evidence surrounding both the events and the quantum arising from the claim, the proceedings were unjustifiably prejudicial to the Defendant and should be permanently stayed.



3. The Royal Commission – Vol. 6

- In Volume 6 of its final report, the Royal Commission examines the role that community prevention can play in making institutions child safe.
- It discusses the Royal Commission's proposed Child Safe Standards which aim to make institutions safer for children, and the way that regulatory oversight and practice should be improved to facilitate the implementation of the Child Safe Standards in institutions.
- It addresses the emerging issue for institutions of creating online environments that are child safe.
- Through their case studies and in private sessions, they heard many stories where institutions failed to protect children in their care from sexual abuse. What they heard showed that child sexual abuse in institutions continues today and is not just a problem from the past.
- The Commission learned that institutional cultures and practices that allowed abuse to occur and inhibited detection and response continue to exist in contemporary institutions.



3. The Royal Commission – Vol. 6

- The initiatives recommended in Volume 6 aim to achieve cultural change in the community and institutions to ensure that children are valued, their rights are respected and their best interests are paramount.
- This involves creating an environment where institutional child sexual abuse could be better prevented, identified, reported and responded to.
- The 10 Child Safe Standards identified by the Royal Commission are designed to contribute most effectively to improving the safety of children in institutions.



4. Child Safe Institutions

What is a 'child safe institution'?

- one that consciously and systematically creates conditions that reduce the likelihood of harm to children, creates conditions that increase the likelihood of identifying and reporting harm, and responds appropriately to disclosures, allegations or suspicious of harm.
- all churches should aim to become a 'child safe institution' by adopting the 10 Child Safe Standards identified by the Royal Commission.



5. Child Safe Standards

What are these 'Child Safe Standards'?

- The Royal Commission has developed ten Child Safe Standards that articulate the essential standards of a child safe institution.
- The Child Safe Standards can guide what institutions need to do to be child safe by setting best practice to drive and guide performance.
- The standards are designed to be principle-based and focused on outcomes rather than a set of rules.
- This is to enable the standards to be applied to, and implemented by, institutions in a flexible way, informed by each institution's nature and characteristics.
- Every institution would need to consider each standard and take time to identify risks that could arise in their context, and find ways to mitigate or manage those risks.



5. Child Safe Standards

Royal Commission's Recommendations

- The Royal Commission's work on child safe institutions is underpinned by the United Nations Convention on the Rights of the Child, which was ratified by Australia in 1990.
- Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions that directly engage with or provide services to children should uphold the rights of the child and act with the best interests of the child as a primary consideration (recommendation 6.4).
- In order to achieve this, institutions are advised to implement the Child Safe Standards identified by the Royal Commission in recommendation 6.5.



5. Child Safe Standards

1. Child safety is embedded in institutional leadership, governance and culture.

- This commitment is supported at all levels and is embedded in an institution's leadership, governance and culture
- Institutional culture consists of the collective values and practices that guide the attitudes and behaviour of staff and volunteers in 'the way things are done'
- Leaders play a critical role in creating and maintaining an institutional culture where children's best interests are at the heart of the institution's operation and the responsibility of all staff at all levels.
- Leaders should also maintain a culture where concerns are treated seriously and acted on and the reporting of instances of abuse is not obstructed or prevented.
- Leaders should espouse a positive child safe culture
- Institutional cultures are shared by all members of the institution. They are built from the bottom up as well as from the top down.
- Leadership that prioritises children's safety is also needed to drive prevention and response initiatives.
- Integrity, transparency and accountability, risk management, culture and ethics are important elements of good governance



5. Child Safe Standards

1. Child safety is embedded in institutional leadership, governance and culture.

- The institution publically commits to child safety and leaders champion a child safe culture
- Child safety is a shared responsibility at all levels of the institution
- Governance arrangements facilitate the implementation of the child safe elements and accountabilities are set by institutional leaders, at all levels of the institution's governance structures
- Risk management strategies focus on preventing, identifying and mitigating risks to children
- Staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children
- Staff and volunteers understand their obligations on information sharing and record keeping
- Churches should announce their commitment on online websites and advertisements
- Churches should then make a conscious effort to ensure that this commitment is a reality – it should be implemented through all levels of their staff and volunteers



5. Child Safe Standards

2. Children participate in decisions affecting them and are taken seriously.

- Children are safer when institutions acknowledge and teach them about their right to be heard, listened to, and taken seriously.
- Article 12 of the UNCRC details the right of a child to and young people to understand, identify and raise their safety concerns with a trusted adult and to feel safe within the institution is important.
- A child safe institution is one that seeks the views of children and takes into account their age, development, maturity, understanding and abilities, and the different formats and means of communication they may use.
- Children can access sexual abuse prevention programs and information, and feel confident to complain, by using child helplines, for example.
 - Children should know who to talk to if they are ,or become a victim of assault
- Staff are aware of signs of harm in children and routinely check children's wellbeing.
- Consider facilitation training of staff by hosting training sessions using Church facilities or funding an out-sourced training session for all staff and volunteers to attend



5. Child Safe Standards

3. Families and communities are informed and involved.

- A child safe institution observes Article 18 of the UNCRC, which states that parents, carers or significant others with caring responsibilities have the primary responsibility for the upbringing and development of their child.
- Families and caregivers should be recognised as playing an important role in monitoring children's wellbeing and helping children to disclose any complaints.
- A child safe institution also engages with the broader community to better protect children in its care.
- Institutions are more likely to foster a child safe culture if the surrounding community values children, respects their rights, and ensures that children's rights are fulfilled.



5. Child Safe Standards

3. Families and communities are informed and involved.

- Families have the primary responsibility for the upbringing and development of their child
- The institution engages in open, two- way communication with families and communities about its child safety approach and relevant information is accessible
- Families and communities have a say in the institution's policies and practices
- Families and communities are informed about the institution's operations and governance.
- Churches should make an effort to host events where they inform parents about the services offered by the church, any upcoming child-related events and other changes made that may affect their child
- At these events, parents should be given the opportunity to present their opinion on any issues, and meet the church's staff and volunteers that are involved with their children



5. Child Safe Standards

4. Equity is promoted and diversity respected.

- Article 2 of the UNCRC emphasises non- discrimination and a commitment to fulfil children’s rights ‘irrespective of ... [their] race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’.
- Some children are more vulnerable to sexual abuse than others
- A child safe institution will also be aware and actively inform itself of necessary skills and strategies to ensure all children are included in child safe policies and practices
- Child safe institutions should pay attention to the cultural safety for Aboriginal and Torres Strait Islander children, the needs of children with disability and responses to disability, the needs of children from diverse religious and cultural communities, the needs of very young children, the impact of prior trauma, gender differences and the challenges for children living in remote locations.
- All children have access to information, support and complaints processes



5. Child Safe Standards

5. People working with children are suitable and supported.

- Human resource management, through screening, recruitment and ongoing performance review, can play an important role in protecting children from harm.
- Child-focused human resource practices help screen out people who are unsuitable for working with children, or discourage their application for work.
- During induction processes, all staff and volunteers should be given clear conduct and behavioural guidelines, such as a code of conduct.
- Smaller and volunteer institutions also require policies and procedures because they also recruit, induct and supervise people.



5. Child Safe Standards

5. People working with children are suitable and supported.

- Job advertisements posted by churches should highlight the importance of, and the church's commitment, to child safety.
- Staff and volunteers hold a valid blue care card and have previous experience in working with children.
- Once hired, staff and volunteers should undergo extensive training on child safety programs and measures.
- As a general guide, churches should attempt to provide child safety training sessions to their staff and volunteers at least once a year.



5. Child Safe Standards

6. Processes to respond to complaints of child sexual abuse are child focused.

- Child safe institutions respond to complaints by immediately protecting children at risk and addressing complaints promptly, thoroughly and fairly.
- Maintain clear and detailed policies and procedures about how to respond to complaints.
- Staff and volunteers understand their responsibility for making a complaint promptly if they become aware of concerning behaviours, as well as their reporting obligations to external authorities.
- Complaint processes ensure procedural fairness for those whose interests are likely to be affected, have review mechanisms, and ensure any disciplinary action that is taken withstands external scrutiny in accordance with relevant employment law and other employer responsibilities.



5. Child Safe Standards

6. Processes to respond to complaints of child sexual abuse are child focused.

- The institution has a child focused complaint handling policy which clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report
- Effective complaint handling processes are understood by children, staff, families and volunteers
- Complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.
- Churches should establish mechanisms for children and adults in the institution to make a complain – for children, families and staff
- Churches should also have clear, accessible and child-focused complaint handling policies and procedures that set out how they should respond to complaints of child sexual abuse.
- Training programs of staff and volunteers must stress the importance of these complaints, and ensure that they are not ‘brushed off’, but are investigated according to the complaint handling policy adopted by the church.



5. Child Safe Standards

7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.

- A child safe institution promotes and provides regular ongoing development opportunities for its staff and volunteers through education and training, beginning with induction.
- Child safe institutions are ‘learning institutions’ where staff and volunteers are continually building their ability and capacity to protect children from harm.
- This standard is premised on all staff and volunteers receiving comprehensive and regular training, including induction on the institution’s child safe strategies and practices, as well as broader training on child protection.
- Relevant staff and volunteers receive training on the nature and indicators of child maltreatment, particularly institutional child sexual abuse and the institution’s child safe practices and child protection



5. Child Safe Standards

8. Physical and online environments minimise the opportunity for abuse to occur.

- Institutions seeking to be child safe can improve safety by analysing and addressing these risks, reducing opportunities for harm and increasing the likelihood that perpetrators will be caught.
- A child safe institution designs and adapts its physical environment to minimise opportunities for abuse to occur.
- The institution finds a balance between visibility and children's privacy and their capacity to engage in creative play and other activities.
- Child safe institutions address the potential risks posed in an online environment, educating children and adults about how to avoid harm and how to detect signs of online grooming.
- The institution articulates clear boundaries for online conduct, and monitors and responds to any breaches of these policies.



5. Child Safe Standards

8. Physical and online environments minimise the opportunity for abuse to occur.

- Risks in the online and physical environment are identified and mitigated without compromising a child's right to privacy and healthy child development
- The online environment is used in accordance with the institution's code of conduct and relevant policies.
- Churches staff and volunteers are encouraged to refrain from contacting children on online forums. By refraining from this online communication, the risk for abuse to occur is minimised.
- Churches should ensure that physical environments at the church allow children to feel safe. This safe environment can be created by adopting simple rules and regulations, such as ensuring only female youth pastors and leaders are with female children during physical games, toilet breaks or any other activities where opportunities for harm may be high.



5. Child Safe Standards

9. Implementation of child safe standards is continuously reviewed and improved.

- Leadership should maintain vigilance by putting in place systems to frequently monitor and improve performance against the Child Safe Standards.
- An open culture encourages people to discuss difficult decisions and identify and learn from mistakes.
- When appropriate, the institution should seek advice from independent specialist agencies to investigate failures and recommend improvements.



5. Child Safe Standards

9. Implementation of child safe standards is continuously reviewed and improved.

- The institution regularly reviews and improves child safe practices
- Complaints and concerns are analysed to identify causes and systemic failures to inform continuous improvement.
- Churches must make a conscious effort to continually review and improve their implementations.
- This review should be informed by the staff and volunteers of the church, as well as any parents and children involved in the church.
- Church must work actively towards fixing this flaw to ultimately regain its position as a child safe institution. It must remain a common practice engrained in the short-term and long-term plans of the church.



5. Child Safe Standards

10. Policies and procedures document how the institution is child safe.

- A child safe institution has localised policies and procedures that set out how it maintains a safe environment for children which address all aspects of the Child Safe Standards.
- Implementation is critical
 - Policies and procedures address all child safe organisation elements
 - Policies and procedures are accessible and easy to understand



5. Child Safe Standards

10. Policies and procedures document how the institution is child safe.

- Stakeholder consultation informs the development of policies and procedures
- Leaders champion and model compliance with policies and procedures
- Staff and volunteers understand and implement the policies and procedures.
- Churches should produce their own policies and procedures outlining their commitment to ensuring child safety, and what measures they have taken to uphold this commitment.
- These policies must be adapted to each individual church and be drafted according to the church's particular structure, services and staff members.
- These policies and procedures should be implemented in the training and education of the church's staff and volunteers, and should also be regularly reviewed



6. Implementing these standards

- Each of these proposed child safe elements are intended to be of equal importance and are inter-related. They should be read holistically, not in isolation, as there are necessary overlaps. Standards can cut across, or be relevant to, other standards.
- The standards are outcome focused manner
- The ten elements are intended to be dynamic and responsive rather than static and definitive.
- Institutions need to ensure that these principles are widely known and understood and are consistently applied across the entire institution.
- The Child Safe Standards are a benchmark against which institutions can assess their child safe capacity and set performance targets.
- Implementing these standards in all institutions will move towards a safer future for all children.

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