Office of the Children's Guardian

Regulatory Impact Statement

Children's Guardian Regulation 2021

March 2021

Contents

Submissions

How to make a submission

You are invited to make a submission on the proposed Children's Guardian Regulation 2021 (**proposed Regulation**). The closing date for submissions is **Monday 3 May 2021**.

You are welcome to make a submission on any matter relevant to the proposed Regulation, even if it is not addressed in this Regulatory Impact Statement. Please also note that there is no set format for submissions, however short comments that refer to the part or clause of the proposed Regulation are encouraged.

Confidentiality of submissions

All submissions will be treated as public and may be published on the Office of the Children's Guardian (**OCG**) website, unless the submission indicates that it is to be treated as confidential. If you do not want your personal details, or any part of your submission published, please indicate this clearly in your submission.

Please note that there may be circumstances in which the NSW Government is required by law to release a submission, even where you have clearly indicated that it is to be treated as confidential. For example, submissions marked as confidential may be required to be released in accordance with the *Government Information (Public Access) Act 2009*. It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Where to send your submission

Due to current remote working arrangements, our preference is that submissions be sent by email. However, if email is unavailable, please post your submission and we will arrange for collection and review. Submissions about the proposed Regulation can be sent:

By email: RCWRFeedback@kidsguardian.nsw.gov.au

By post:

Office of the Children's Guardian
Locked Bag 5100
Strawberry Hills NSW 2012

A copy of this Regulatory Impact Statement and proposed Regulation is available from the OCG website at www.kidsguardian.nsw.gov.au. The *Children's Guardian Act 2019* is also accessible online at www.legislation.nsw.gov.au.

If you would like to provide comments in an alternative format or make an enquiry, please call (02) 8219 3600.

Closing date for submissions

The closing date for submissions is **Monday 3 May 2021**. Please ensure to send your submission no later than Monday 3 May 2021. Late submissions will not be reviewed.

Responses to submissions

If further information or consultation is required, the OCG may undertake targeted consultation. All submissions will be carefully considered, and the proposed Regulation may be amended if the OCG considers amendment is necessary to address comments or suggestions received. The OCG will acknowledge receipt of all submissions but will not directly respond to each submission received. If the proposed Regulation is made, the OCG will send a copy of all written comments and submissions to the Legislation Review Committee within 14 days after the Regulation is published.

NSW GOVERNMENT | Office of the Children's Guardian

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Original concept by the Office of the Children's Guardian Written by the Office of the Children's Guardian Set up and produced in Sydney, New South Wales.

1. Introduction

1.1 What is a Regulatory Impact Statement?

A Regulatory Impact Statement (**RIS**) is an important way of ensuring regulatory proposals are fully considered, and consulted upon, before they become law. To ensure regulation is required, reasonable and responsive, the *Subordinate Legislation Act 1989* (**Subordinate Legislation Act**) specifies that a RIS must be prepared to facilitate consultation, before a principal statutory rule can be made.[1] As the Children's Guardian Regulation 2021 is the first regulation to be made under the *Children's Guardian Act 2019* (**Act**), it is a principal statutory rule and requires consultation through a RIS.

1.2 Purpose of this Regulatory Impact Statement

In this RIS, the OCG meets the requirements of the Subordinate Legislation Act and the NSW Government Guide to Better Regulation, including the Better Regulation Principles, by evaluating the impact of the proposed Regulation and the social and economic costs and benefits of alternative options. It is important that this RIS demonstrates that the proposed Regulation is, on balance, the option which will provide the greatest overall benefit to the public.

To facilitate consultation, this RIS provides:

- a statement of objectives to be achieved by the regulation;
- an identification of alternative options by which those objectives can be achieved;
- an assessment of the costs and benefits of the proposed regulation;
- an assessment of costs and benefits of each alternative option;
- an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community;
- an outline of the consultation program to be undertaken.

A RIS is released along with the proposed Regulation (at **Attachment A**) so that stakeholders and interested community members can consider the proposed requirements and submit comments and suggestions. All feedback will be reviewed, and the proposed Regulation may then be amended, if the Children's Guardian considers the changes necessary or appropriate.

The proposed Regulation will then be finalised, and come into effect, in Spring 2021.

[1] Section 5 of the *Subordinate Legislation Act 1989* applies to principal statutory rules [defined in section 3(1) of the Act as a statutory rule that contains provisions apart from direct amendments or repeals, or provisions that deal with its citation and commencement].

2. Consultation process

2.1 Preliminary consultation

On 15 December 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) presented its final report to the Governor-General. In its examination of record keeping within, and information sharing between, institutions responsible for children's safety, the Royal Commission recommended at recommendation 8.17, that each jurisdiction establish a register of residential care workers.[2] In reflecting upon institutional responses to child sexual abuse in contemporary out-of-home care settings, the Royal Commission identified the need for strengthened checking of residential care staff and recommended the introduction of mandatory probity checking requirements at recommendation 12.6.[3]

In May 2018, the OCG began consultation, through open forums and targeted consultations, to scope implementation of recommendations 8.17 and 12.6. Targeted consultation was undertaken with key stakeholders, and invitations to participate in these consultations was extended to designated agencies, the NSW Child, Family and Community Peak Aboriginal Corporation (**AbSec**), the Association of Children's Welfare Agencies (**ACWA**), Australian Services Union (**ASU**), the NSW Information and Privacy Commission, the (formerly named) Department of Family and Community Services (now Department of Communities and Justice) and the NSW Ombudsman's Office. As part of this process, the Office of the Children's Guardian issued an open invitation to all members of the sector to participate in a working group.

2.2 Working Group consultation

Following release of the NSW Government's response to the Royal Commission's recommendations (**Attachment 2**), which included the Government's endorsement of both recommendations 8.17[4] and 12.6[5], the OCG established the Residential Care Workers Register Working Group (**RCWR WG**) to inform the policy, and operational requirements, of the register and proposed Regulation.

The RCWR WG is comprised of self-nominated representatives from designated agencies (**Appendix 1)**, the Department of Communities and Justice (**DCJ**), the (former) Reportable Conduct Directorate of the NSW Ombudsman (now within the OCG) and the Australian Services Union. The RCWR WG has played an instrumental role in informing the key requirements of the proposed Regulation.

Since its establishment, the OCG has held four formal meetings with the RCWR WG, which generated ongoing informal consultations with members. Initially, some members of the RCWR WG raised concern that the register could be misused as a Human Resources tool, rather than a tool to promote the safety, welfare and wellbeing of children and young people in statutory out-of-home care. This issue was ventilated in Parliamentary debate on the Children's Guardian Bill 2019, and the Bill was amended to introduce privacy safeguards to protect against misuse.

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[2] Royal Commission into Institutional Responses to Child Sexual Abuse, *Record keeping and information sharing* (Final report, December 2017) vol 8, 334.
[3] Royal Commission into Institutional Responses to Child Sexual Abuse, *Contemporary Out-of-Home Care* (Final report, December 2017) vol 12, 269.
[4] NSW Government, NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse (June 2018) 22.
[5] NSW Government, NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse, (June 2018) 29.

Additionally, significant care has been taken throughout the policy development and drafting process to ensure the proposed Regulation does not displace agency discretion in recruitment decision-making. Therefore, the proposed Regulation prescribes the minimum probity checking and information entry requirements necessary to facilitate the exchange of information relevant to safety, welfare and wellbeing of children and young people in residential care and implement the Royal Commission's recommendations. More information about these protections is set out in the discussion of the proposed Regulation at section 6 of this RIS.

The OCG met with the RCWR recently to demonstrate the register's key functionality and to provide a brief overview, and to seek feedback, on crucial aspects of the proposed Regulation. The RCWR WG is largely supportive of the register.

2.3 Identified stakeholders

In addition to publishing the proposed Regulation and RIS on the OCG's website, the OCG has distributed copies to a targeted group of stakeholders. A list of these stakeholders is at Appendix 2 and includes, but is not limited to, all designated agencies, peak bodies and agencies who have previously requested to be notified of consultation.

2.4 Evaluation of submissions

Public scrutiny of the proposed Regulation is a critical aspect of consultation through the RIS and ensures that every practical and viable policy alternative has been considered and assessed.

Therefore, all feedback will be thoroughly reviewed, and the proposed Regulation may then be amended if the Children's Guardian considers amendment necessary in view of the suggestions and comments made in submissions received. If further information is required, targeted consultation may be undertaken before the proposed Regulation is finalised. The process for making a submission is set out on pages 4-5 of this RIS.

A report will then be prepared for the Minister, detailing the issues raised and whether the proposed Regulation should be made. The Subordinate Legislation Act also requires that, if the proposed Regulation is made, a copy of this RIS and all written comments and submissions received must be forwarded to the Legislation Review Committee within 14 days of the Regulation being published on the NSW Legislation website.

2.5 Commencement of the Regulation

After the Minister has finalised the proposed Regulation, it will be submitted to the Governor for approval. Once approved by the Governor, the new Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and the NSW Government Gazette.[6]

It is currently proposed that the Residential Care Workers Register (**RCWR**) and Children's Guardian Regulation 2021 will commence in Spring 2021. We note that the commencement clause in Part 1, clause 2 of the proposed Regulation notes a 1 April 2021 commencement date. This is no longer accurate, and the proposed Regulation will commence later, in Spring 2021.

[6] Information on how to access the NSW Government Gazette is available on the NSW Parliamentary Counsel's website at www.pco.nsw.gov.au

This will ensure that the sector has enough time to prepare for the changes before the register comes into effect. If this date changes, the OCG will notify the sector of the change in date, as soon as it can.

3. About the Act and proposed Regulation

3.1 The Act and proposed Regulation

The Act commenced on 1 March 2020 and reinforces the Children's Guardian's independence as a regulator by consolidating the Children's Guardian's functions, powers and responsibilities into one discrete piece of legislation. The Act's main objective is to protect children and young people by promoting, and regulating, child safe practice in the organisations that serve children and young people. To achieve this objective, the Act strengthens the Children's Guardian's ability to protect children and young people by implementing several Royal Commission recommendations.

The legislative lever to implement Royal Commission recommendation 8.17 is set out at section 85 of the Act. Under section 85, the Children's Guardian is empowered to keep a register of residential care workers, and to make regulations setting out:

- what information is to be kept,
- how that information will be recorded and used,
- when information must be retained, updated or amended,
- the probity checks an applicant / residential care worker will be subject to,
- the ways to record the outcomes of those checks and
- how information on the register may be accessed by a person whose information is recorded on the register and other approved bodies.

The proposed Regulation provides the detail to support the effective functioning of the register, but does not transfer regulations made under the *Adoption Act 2000, Children and Young Persons (Care and Protection) Act 1998* (**Care Act**), *Community Services (Complaints, Reviews and Monitoring) Act 1993* and *Ombudsman Act 1974*. Those regulations will be transferred to the Children's Guardian Regulation 2021, which will consolidate the Children's Guardian's key regulatory functions, and will commence later in 2021.[7]

Except for two miscellaneous regulations prescribing the head of relevant entity for adult household members of authorised carers, and two health entities, this RIS is confined to provisions setting out the operation of the residential care worker register.[8]

3.2 The need for the proposed Regulation

In its examination of contemporary out-of-home care, the Royal Commission identified systemic risk factors unique to residential care settings which could increase children's vulnerability to sexual abuse in residential care. It heard that residential care settings were frequently staffed by casual workers lacking suitable experience, training, supervision and support and that children in

[7] See item 3 of Schedule 1.9 of Statute Law (Miscellaneous Provisions) Act 2020 No 30, which amends schedule 4, clause 2(3) of the *Children's Guardian Act 2019* to provide that these regulations continue in force until 1 September 2021.
[8] See clause 16 of Part 3 and Schedule 2 of the proposed Regulation which prescribes the head of relevant entity for the purposes of section 17(1)(b) of Part 4 of the *Children's Guardian Act 2019*.

residential care were often regarded as “a problem to be ‘managed’ rather than children ‘needing and deserving protection’”.[9]

Combined with poor record keeping and barriers to information sharing, the Royal Commission observed that these systemic risk factors frequently operated to facilitate child sexual abuse. In particular, the Royal Commission heard that unsuitable workers were exploiting the transient nature of employment arrangements in residential care, citing agency concerns about the ease with which unsuitable staff could conceal prior workplace misconduct by moving, unchecked, from one residential care provider to another.

While a clear legislative framework provides the structural support to safeguard against the risk of unsuitable authorisation of foster carers and relative/kinship carers (via the Carers Register), there is no comparable framework for residential care workers in NSW. To address this gap and ensure that agencies have the tools to prevent, identify and respond to the risks posed by particular identified workers, the Royal Commission recommended that each jurisdiction establish a register of residential care workers mandating consistent probity checking, and information entry, requirements to facilitate exchange of information relevant to risk to the safety of children in residential care.[10]

The proposed Regulation seeks to implement Royal Commission recommendation 8.17. The key object of the proposed Regulation is to promote the safety, welfare and wellbeing of children and young people in residential care by ensuring residential settings are safe and supportive environments staffed by suitable workers.

The proposed Regulation seeks to achieve this objective by establishing a restricted access database – the RCWR. The RCWR is broadly modelled on the NSW Carers Register (which has been in operation since June 2015), with appropriate modifications to accommodate the differences between care delivered by a foster, or relative/kinship, carer in their own home, and care and supports provided by a worker in a group-style home. The proposed Regulation will mandate:

- the probity checks that must be undertaken for applicants who are being considered for employment as a residential care worker, and
- the information that must be recorded for applicants who are being considered for employment, and individuals who are currently engaged, as a residential care worker.

The proposed Regulation sets out the process for updating information recorded on the register. Access, and restrictions on access, to information held on the RCWR, is provided for by section 86 and section 87 of the Act. More information about these provisions, and their intent, is set out in the discussion on the proposed Regulation at section 6 of this RIS.

4. Objective of the proposed Regulation

The objective of the proposed Regulation is to implement Royal Commission recommendations 8.17 and 12.6, by prescribing the information entry, and probity checking, requirements for the register of residential care workers, established under section 85(1)(b) of the Act.

[9] Royal Commission into Institutional Responses to Child Sexual Abuse, *Contemporary Out-of-Home Care* (2017) vol 12, 207.
[10] Royal Commission into Institutional Responses to Child Sexual Abuse, *Record keeping and information sharing* (2017) vol 8, 27

The proposed Regulation will facilitate information exchange by enabling residential care providers to:

- obtain basic identification and probity check information for all individuals who apply to be engaged as a residential care worker.
- prescribe circumstances in which information must be requested from current employing residential care providers and former employing residential care providers.
- record identification information about individuals who are being considered for employment and those who have been engaged as residential care workers.
- record basic reportable allegation information for workers during their employment as a residential care worker.

4.1 Options for achieving objectives

To ensure the proposed Regulation is the most appropriate option to achieve its objective as a mechanism to facilitate exchange of information relevant to risk to the safety of children in residential care, the OCG has identified the following three alternative options for achieving its objectives below:

1. Take no action: Maintain the status quo and allow residential care providers to self-regulate. Agencies can determine their own internal recruitment policies and procedures and share relevant information about risk presented by an applicant, or current worker, if known, under Chapter 16A of the Care Act.
2. Co-regulation: The OCG could establish a co-regulatory model to support the sector to engage suitable residential care workers through a non-regulatory register and voluntary Codes of Practice monitored by the Children's Guardian.
3. Make the proposed Regulation: Make the proposed Regulation to provide greater legislative support and administrative detail for the operation of section 85 of the Act.

5. Impact assessment

The Office of the Children's Guardian has considered the social and economic costs and benefits of each proposal identified in section 4 of this RIS to assist in its assessment of the impact of the proposed Regulation.

5.1 Take no action

Under this option, there would be no accompanying regulation made under the Act. Instead, residential care providers would be free to continue current practice by determining their own suitability requirements and meeting only those probity checking and record keeping processes as prescribed by their accreditation[11] and manage risk by relying upon existing information exchange provisions in Chapter 16A of the **Care Act**.[12]

[11] Ensuring staff are suitably qualified and appropriate pre-employment checks are undertaken is within the current parameters of accreditation, see for example Standard 18 of the NSW Child Safe Standards for Permanent Care (November 2015).
[12] For example, section 245D of the *Children and Young Persons (Care and Protection) Act 1998* enables a designated agency to request information that relates to safety, welfare or well-being of a child or young person (or class) from another designated agency and the agency receiving the request to comply if it reasonably believes based on information provided by the requesting agency, that it has information that would assist the other designated agency to manage any risk to the child or young person (or class) that may arise in that designated agencies capacity as an employer, or designated agency.

The information exchange scheme established under Chapter 16A of the Care Act was assessed by the Royal Commission as a model legislative scheme. However, the Royal Commission noted that individual, institutional and cultural resistance to the use of Chapter 16A affects its intended operation. Additionally, the Royal Commission observed that reliance on Chapter 16A alone would be insufficient to overcome these barriers, without centralised administrative mechanisms supporting agencies and workers to identify and act on child protection concerns.[13]

In the absence of the information exchange platform provided by the RCWR and proposed Regulation, the OCG could raise awareness in the sector about the obligations of residential care providers when selecting suitable workers and provide education on how to keep appropriate records and identify and share appropriate information using Chapter 16A. Ultimately, however, residential care providers would be responsible for implementing learnings gained through awareness raising activities, overcoming cultural barriers in circumstances that may be impenetrable for an agency to achieve by itself, and ensuring all relevant information is identified and exchanged about prospective residential care workers, and current residential care workers. This approach would retain the status quo of sector information exchange practice, which as noted above, the Royal Commission, and sector found to be ineffective in mitigating the risk of unsuitable workers moving from agency to agency, undetected.

Without the platform for information exchange provided by the RCWR and proposed Regulation, residential care providers may not have accurate and up-to-date information about an applicant's previous employment history, or information from a current worker disclosing their engagement with multiple agencies. Therefore, awareness raising would have limited success, as residential care providers could have all the knowledge required to overcome barriers to information exchange, but without up-to-date information about an applicant or worker's, associations, residential care providers would have no way of knowing which agencies could benefit from the information they hold, nor who they should or could seek relevant information from.

While there is a place for non-regulatory approaches in relation to employment processes, this approach would neither meet the objectives of the proposed Regulation, nor operate to implement Royal Commission recommendation 8.17. Given the evidence submitted to the Royal Commission on the prevalence of sexual abuse in contemporary out-of-home care settings, and the unique risk factors present in residential settings, requiring residential care providers to self-regulate would not be appropriate. It would impose too great an administrative burden on an already overstretched sector, which could come at the risk of protections to children and young people.

Further, allowing self-regulation in circumstances where self-regulation may be unachievable or ineffective, would be inconsistent with the Children's Guardian's paramount responsibility to protect the safety, welfare and wellbeing of children and young people, when exercising her functions under the Act.

Costs

Without a platform to facilitate information exchange, residential care providers would have to rely on potentially inaccurate or incomplete information when assessing an applicant's suitability. This would expose children and young people in residential care to risk, as critical information relevant to a prospective, or current residential care provider's, assessment of risk to the safety of children and young people will be unavailable.

[13] Above n 3, p. 172 - Royal Commission into Institutional Responses to Child Sexual Abuse, *Record keeping and information sharing* (2017) vol 8, 27.

Residential care worker Joe Bloggs is currently employed by residential care provider A (provider A) and seeks employment with residential care provider B (provider B). When Joe applies to work with provider B, he does not list provider A on his resume and does not otherwise disclose that he is currently employed by provider A as a residential care worker. Provider A recently completed an investigation into allegations that Joe engaged in reportable conduct, and reasonably believes that it holds information that would assist another residential care provider to manage risk to the safety, welfare or wellbeing of children and young people in residential care.

Without the assistance of a central register that records key information to link the relationship between Joe and provider A and B, residential care provider A would not know to provide relevant risk information to residential care provider B, nor would provider B know to request this. This would result in a lost opportunity for providers A and B to exchange relevant information, which could ultimately mitigate risk to children and young people in a residential care home managed by provider B.

Exposing children and young people to the risk of psychological, physical or sexual abuse by relying on existing legislative provisions and the vigilance of an already strained sector will incur significant costs – financial, social and costs to the community's confidence in the OCG's ability to protect children and young people. The social and financial costs of such risk eventuating are difficult to quantify; however, an indication of the potential impact can be gleaned from the wealth of existing, and emerging, research into the impact of childhood abuse. Costs could include (but are not limited to) those associated with:

- psychological, medical treatment or hospitalisations associated with abuse or neglect involving children.
- investigation and prosecution of potential acts amounting to criminal conduct.
- psychological care associated with emotional harm and abuse.
- pursuing civil redress for abuse in statutory out-of-home care (both financial and psychological).
- providing health, rehabilitation, housing supports to adults who have suffered childhood abuse.
- the longer-term impacts of child abuse, including intergenerational impacts.

Additionally, the lack of clarity regarding residential care worker rights and obligations, and the rights and obligations of residential care providers, would cause significant uncertainty for industry and consumers and result in inconsistent outcomes which constrain the sector.

Benefits

Employers

By relying on self-regulation, the onus is on employing residential care providers to establish the conditions under which a worker is engaged, and the information required as part of this process. As such, self-regulation would accommodate more flexibility, as compliance with the additional probity checking, and information entry requirements, would be optional, rather than mandatory. However, flexible arrangements could also operate to enable unsuitable workers to move between agencies without restriction or the administrative support of the RCWR to support information exchange around potential risks.

Employers may also be encouraged to capacity build by identifying cultural and organisational barriers to information exchange and develop strategies to remove those barriers. However,

employers will not be able to overcome barriers presented by inaccurate and incomplete information from applicants or workers, which could ultimately prevent relevant information, necessary to manage risk, from being identified.

Government

There would be financial cost savings to the OCG in relation to the Information Technology (**IT**) required for the ongoing maintenance and upgrade costs to the register build. There may also be short-term cost savings associated with the OCG's associated responsibility for monitoring the register and ensuring agency compliance with information entry, and probity checking, requirements. However, these short-term costs would need to be balanced against the cost of building capability in the sector to overcome the current inconsistencies in agency information exchange practice and developing systems to monitor agency compliance with Chapter 16A, without the assistance of a centralised data repository. This would be a significant project, and the associated financial and child protection costs would likely outweigh the short-term financial output required to build an electronic register.

Conclusion

While the benefits of self-regulation may be measured in terms of lower financial costs and greater flexibility for employers, lower short-term costs to Government and the sector are likely to come at the risk of greater long-term costs. Most importantly, the potential costs to the protection of children, and to community confidence that children in residential care will be safe and protected from harm, are significant. Additionally, as self-regulatory models are characterised by a lack of transparency and oversight, this option could perpetuate child abuse by enabling cultures of secrecy and resistance to proactive responses to risk.

The costs of this option outweigh its benefits and it has been assessed as having a low overall benefit.

5.2 Co-regulation

As with self-regulation above, a more flexible and adaptable approach to regulation between the OCG and residential care providers would replace the imposition of requirements by the proposed Regulation and supplement the OCG's existing accreditation and monitoring functions.

Under this option, the OCG would provide support to residential care providers through non-legislative means such as administrative procedures and voluntary codes of practice. Administrative procedures could include the establishment of a non-regulatory registration-based scheme, whereby employers of residential care workers would be required to register the names of their residential care workers on the RCWR, with some oversight by the OCG and the OCG could require residential care providers to develop and maintain their own administrative policies and practices in relation to this information entry. These would be in addition to the requirements under the *NSW Child Safe Standards for Permanent Care* which govern certain requirements of all designated agencies. This could be supplemented by best practice guidance materials for information entry published by the OCG, and training to build record-keeping and information exchange capability.

These child safe policies and procedures could include a mandatory requirement for residential care providers to develop Codes of Practice. The OCG could review and accredit these policies and Codes of Practice, and monitor agency compliance, as part of the Guardian's accreditation and monitoring functions under section 128(1)(e) of the Act.

A co-regulatory approach may be more flexible and adaptable than straightforward regulation and legislation. However, without regulation setting out clear obligations, consistent information entry requirements and providing a platform to facilitate information exchange, the barriers and risks to information exchange identified above at option 5.1 would persist.

The risk of inaccurate information holdings would be augmented by inconsistent practice around information entry requirements, and the differences in agency policies, procedures and Codes of Practice, which may enhance, rather than address the risk of unsuitable workers moving from agency to agency undetected. Further, agencies may be constrained by provisions of the *Privacy and Personal Information Protection Act 1998* (**PPIPA**) in using or disclosing personal information, which could affect the integrity and consistency of information recorded on the register.

Costs

Without a centralised database that facilitates information exchange by holding the information necessary to support an agency's determination about suitability and risk, unsuitable workers will continue to move between agencies, undetected. Accordingly, this option would likely incur the same financial, social and child protection costs as identified in the self-regulatory model.

Employers

Employers would incur administrative costs associated with developing and implementing policies, procedures and Codes of Practice. Although this will be a requirement with the introduction of the proposed Regulation, this option would not impose any additional mandatory changes to agency recruitment practice. However, the inconsistency, and variability, of agency information holdings could be exploited by unsuitable workers. This may result in additional costs to employers associated with providing responses and redress to children who have been subjected to physical, psychological or sexual abuse in residential care.

Government

The administrative costs would be high due to increases in workload, without an accompanying benefit to children in statutory out-of-home care. Increases in workload would arise from the initial registration of employees, the requirement to process registrations and the need to monitor worker identification information to check for trends. If the OCG were to identify names across multiple agencies, it would need to make enquiries with residential care providers to identify probity checks undertaken and assess whether the worker presented a risk. In a sector where staff are frequently engaged by multiple agencies, this would require significant additional resourcing. Further, it could put the OCG in a position of conflict, as it would be involved in assessing worker risk, rather than regulating agency identification of risk.

As the co-regulatory approach would lack the procedural safeguards provided for in legislation, compliance may become ad-hoc, which would result in the need for the OCG to rely on legislative mechanisms in the accreditation and monitoring space to enforce compliance. These mechanisms are not tailored to solely assess agency compliance with registration and information entry requirements for residential care workers and could result in loss of community confidence in the OCG's ability to effectively promote child safe practice and regulate residential care providers.

Importantly, failure to effectively impose and enforce requirements on residential care providers to register residential care workers could result in diminished child protection benefits. This could place children and young people at risk of harm, at costs which cannot be quantified and must be avoided if the OCG is to abide by its paramount obligation to protect children and young people from abuse.

Benefits

Employers

The major benefit to employers is that they would be empowered with the autonomy to continue to develop policies, procedures and Codes of Practice and establish probity checking schemes that satisfy their organisational needs, in accordance with their existing accreditation and without the need to comply with the additional requirements set out in the proposed Regulation. This would be supplemented by the support of the register maintained by the OCG, and although agencies would have more flexibility around its use, it could ease the administrative burden on employers.

Government

By building capacity in the sector, and providing support through this co-regulatory model, the Government could benefit from responsive regulation that is adaptable to the needs of a constantly evolving sector. However, a co-regulatory model could conflate the Children's Guardian's role as an independent regulator and create conflict in the exercise of its regulatory functions.

Conclusion

Co-regulation models have been used successfully in a wide range of regulatory contexts and have the benefit of balancing autonomy with some regulatory oversight. However, on balance, a co-regulatory model would not provide the necessary foundations for effective implementation of the Royal Commission's recommendations, as any co-regulatory response would be limited by the lack of tailored legislative supports and identified roles and responsibilities.

While the benefits of this option result in continued flexibility for agencies under the existing regulation, these would be offset by the increased administrative costs to agencies and Government and potentially poorer safeguards for children.

The costs of this option outweigh the benefits, and its overall benefit has been assessed as medium.

5.3 Make the proposed Regulation

The proposed Regulation would be made under section 85 of the Act, incorporating any necessary amendments arising during consultation. In pursuing this option, the NSW Government would deliver on its commitment to implement Royal Commission recommendations 8.17 and 12.6, and prioritise the safety, welfare and wellbeing of children in residential care.

This option will provide a centralised, electronic, database for all designated agencies to use as part of their decision making around suitability of individuals to provide residential care. Training and support will be provided to prepare agencies for the changes and ongoing monitoring of this electronic register will support agency use of the register to supplement, and contribute to, the agency's broader suite of child safe practices.

The issues raised above in relation to a lack of accurate information being provided when relying upon the disclosure of applicant workers, the proposed Regulation and RCWR will assist in having this information readily available as part of the later stages of recruitment. The flexibility to conduct recruitment processes will remain with each agency and will be supplemented by additional probity checking which supports the exchange of information relevant to safety, welfare and wellbeing. This will provide agencies with the authority they need to conduct such checks, rather than relying upon honest disclosure and consent.

Costs

Employers

Employers will incur costs associated with familiarising themselves with the requirements of the Regulation and ensuring their systems and processes support compliance. The proposed Regulation requires employers to undertake two additional probity checks, however the efficiencies created by the register outweigh any regulatory burden associated with undertaking these additional checks.

Government

The NSW Government will incur costs in developing the information technology to support the register, and resourcing costs during implementation and throughout the life of the register, to ensure residential care providers are supported to understand, and comply with, their registration obligations.

Benefits

The primary benefits of making the proposed Regulation are the benefits to children. Making the proposed Regulation will cure current systemic impediments to information sharing and record keeping and ensure that children in residential care are prioritised and provided with safe and supportive environments staffed by suitable workers. As the Children's Guardian owes its primary duty to child protection, it is persuasive that child protection is a critical focus of the proposed Regulation.

By ensuring workers employed to provide care and support to children and young people in residential care are suitably checked and that critical information relevant to risk is requested and provided, agencies will be supported to proactively identify and respond to risk before that risk materialises into harm.

The social and financial benefits associated with safeguarding and prioritising the protection of children in residential care are difficult to quantify. However, an inference can be drawn from the costs associated with child sexual abuse, that significant benefit flows from avoiding these costs, and providing children and young people with safe and supportive placements.[14]

Employers

The proposed Regulation will support employers to keep accurate, up-to-date records of information relating to suitability and risk of applicants and residential care workers. Clear records and information sharing pathways will support employers to embed child safe practice into all aspects of organisational practice, including recruitment decisions.

Government

Making the proposed Regulation will ensure the Children's Guardian meets its overarching duty to protect children and facilitate the effective performance of the Children's Guardian's functions in administering the reportable conduct scheme and accrediting and monitoring designated agencies.

Additionally, making the proposed Regulation will enhance community, and sector, confidence in the Children's Guardian's regulatory role. By implementing Royal Commission recommendations 8.17 and 12.6, the Children's Guardian will deliver responsive regulation that addresses identified

[14] T Blakemore, JL Herbert, F Arney & S Parkinson, *Impacts of institutional child sexual abuse on victims/survivors: A rapid review of research findings*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 65.

deficiencies and supports the sector to obtain sufficient information to assess and manage child safety risks in residential care.

Conclusion

After assessing the costs and benefits of each of the options above, making the proposed Regulation will achieve the greatest overall benefits for children and young people, employers, stakeholders, the broader community and Government. The proposed Regulation does not impose onerous obligations on employers and preserves employer autonomy over recruitment processes and decision-making, with the added benefit of supporting employers to consistently make child safe recruitment decisions. Making the proposed Regulation will also retain confidence in the Government's ability to deliver on its commitments and invest in children by prioritising the needs of the most vulnerable children in our community.

5.4 Summary of impact assessment

A summary of the costs and benefits of each option has been tabled below:

Table 1: Summary of costs and benefits

Number	Option	Costs	Benefits	Overall Benefit
1	Take no action	High	Low	Low
2	Co-regulation	High	Medium	Medium
4	Make proposed Regulation	Medium	High	High

6. Discussion of proposed Regulation

6.1 Whose information will be recorded?

The proposed Regulation will require information to be recorded, and checks to be conducted, for an individual who is being considered for employment as a residential care worker, where they have reached the stage of the recruitment process in which referee checks are to be conducted. The proposed Regulation will also require additional, limited, information to be recorded on the register during a residential care worker's employment with a residential care provider.

The definition of residential care worker must clearly describe whose information is to be recorded on the register but should not be so prescriptive that it is unable to accommodate the range, and interchangeability of roles, in the ever-evolving residential care sector. To achieve a balance between clarity and flexibility, the dictionary at Schedule 3 of the proposed Regulation defines ***residential care worker*** by listing the typical duties performed by individuals who come within scope of the RCWR, rather than their role titles.

Therefore, the proposed Regulation captures individuals who do *one or more* of the following in a residential setting:

- provide residential care – for example: direct care workers, like youth workers;
- provide security services – for example: security workers in a secure care home;
- develop case management plans for children in residential care – for example: caseworkers;
- implement case management plans for children in residential care – for example, caseworkers, house managers and Therapeutic Specialists in a residential setting;
- undertake administrative duties – for example: an individual who types up case management plans, incidents reports and undertakes other similar tasks in a residential setting.[15]

Workers who provide residential care and security services will **always** be captured by the definition of residential care worker, irrespective of the amount of time they spend in the residential setting.

Workers who develop or implement case management plans for children in residential care, or undertake administrative duties in a residential setting, will only be captured if they are ***primarily based in the residential setting***. This ***primarily based in the home*** qualification is discussed in more detail below Table 2.

Table 2: Comparison of when workers will be captured by the definition of ***residential care worker***

Worker	Always captured	Captured if primarily based in a residential setting
Youth Worker	✓	✗
Security Worker	✓	✗
Caseworker	✗	✓
Administrative worker	✗	✓

The proposed Regulation seeks to achieve the policy intent to link the amount of time spent in the residential setting by those other than direct care and security workers (who provide supervision or care throughout their time on shift), with the requirement to be recorded on the register. The proposed Regulation has codified the *primarily based in the home* concept by requiring certain workers to spend 60% or more of the time they are employed by the residential care provider, in any residential setting.

The ***primarily based in the residential setting*** requirement was developed, during RCWR WG consultations, to achieve this link. To be captured by this requirement, a worker would need to spend more time performing their role *in* a residential setting, than the time spent performing their role *outside* of a residential setting. As the proposed Regulation needs to be clear on the cohort captured, the ***primarily based in the home*** requirement was translated into an objective measure to communicate the 'more time than not' link, thereby settling on the '60% or more' temporal link.

Accordingly, the definition of ***residential care worker*** in the proposed Regulation captures workers who develop, and/or, implement case management plans for children in residential care,

[15] See the definition of ***residential care worker*** at Schedule 3 of the proposed Regulation at Attachment 1.

or workers who undertake administrative duties in a residential setting, if those individuals spend 60% or more of the time they are employed by the residential care provider in *any* residential setting managed by that provider. Examples of when, and why, a worker will come within the definition of ***residential care worker*** are set out below.

A caseworker is employed to implement case management plans for children in residential care, and foster care, placements. Most of the caseworker's time is spent in the head office as the caseworker supports several children, attending the residential setting, as needed, to implement a child's case management plan.

Q Is the caseworker a ***residential care worker*** for the purposes of the proposed Regulation?

A No. The caseworker is not a ***residential care worker*** for the purposes of the proposed Regulation. The caseworker only occasionally spends time in the residential setting to support one of the children on the caseworker's caseload, but spends most of the time, and is primarily based in, the agency's head office.

A caseworker spends time on and off at the residential setting but performs most of the time in the agency's main office. From time-to-time, the caseworker is called upon to provide overnight care in the agency's residential setting, when no other youth workers are available.

Q Is this worker a ***residential care worker*** for the purposes of the proposed Regulation?

A Yes. While working in the casework role, this worker is not primarily based in the residential setting. However, when the caseworker steps into the youth worker's role, the caseworker becomes a ***residential care worker*** for the purposes of the proposed Regulation. This is because direct care workers are always captured by the definition of ***residential care worker***, irrespective of the amount of time spent in the residential setting. Therefore, even if the caseworker only completed one shift for the youth worker, the caseworker would need to be entered onto the register.

6.2 Whose information will NOT be recorded?

Child protection caseworkers employed by the Department of Communities and Justice (**DCJ**)

Child protection caseworkers employed by the DCJ are not ***residential care workers*** for the purposes of the proposed Regulation, if the caseworker provides residential care in emergency accommodation. The rationale for this exclusion, at clause 6(3) of the proposed Regulation, is based on several factors, including:

- the DCJ recruitment process for child protection caseworkers includes three of the four probity checking requirements prescribed by the RCWR (more information about the probity checking requirements is provided below at section 6.5 of this RIS).
- the potential for a significant number of child protection caseworkers engaged by the DCJ to provide direct care in emergency accommodation.
- if a child protection caseworker engaged by the DCJ seeks employment with a non-government organisation, the fourth probity check required by the register will be covered off by the probity checks undertaken by the DCJ (more information about the probity checking requirements is provided below at section 6.5 of this RIS).

The exclusion does not capture a worker who has been specifically engaged by the DCJ to provide residential care, including in emergency accommodation. It is limited to workers engaged by the DCJ as child protection caseworkers who provide residential care in emergency accommodation.

Workers authorised to provide special, or respite, care

The proposed Regulation will not expressly capture workers authorised under clauses 32, or 33, of the *Children and Young Persons (Care and Protection) Regulation 2012* (**Care Regulation**) to provide special, or respite, out-of-home care.

While it is acknowledged that this is a gap, and that children and young people placed in special, or respite, care are particularly vulnerable, the OCG intends to revisit application of the proposed Regulation to this group of workers. The OCG's aim is to reconsider extension of scope to this group of workers following implementation, to incorporate learnings gained through both implementation of the proposed Regulation and any changes to clauses 32 and 33 that may be made as part of the DCJ's review, and remake, of the Care Regulation in September 2021.

Children in statutory out-of-home care

Children do not come within the definition of ***residential care worker*** in the proposed Regulation. As the proposed Regulation is established for the protection of children, the information recorded on the register is confined to information relating to individuals who are being considered for employment as residential care workers, and individuals who are currently engaged as residential care workers.

6.3 Authorisation of workers providing direct care

The note at page 14 of the proposed Regulation, under the definition of ***residential care worker*** in the dictionary at Schedule 3 refers to the requirement for residential care workers who provide direct care to be authorised under a new provision of the Care Regulation, which is currently being drafted by the DCJ.

The need for authorisation arose during the drafting of the proposed Regulation, when current placement arrangements were examined to ensure the proposed Regulation was supported by,

and consistent with, relevant legislation. To ensure the description of workers who provide statutory out-of-home care in the proposed Regulation is consistent with the Care Act, the legislative drafters at the Parliamentary Counsel's Office advised that direct care workers must be authorised as authorised carers.[16]

The DCJ will be amending the Care Regulation to prescribe residential care workers who provide statutory out-of-home care as a category of authorised carer.[17] This authorisation requirement will only apply to direct care workers, not all workers who come within the definition of ***residential care worker*** in the proposed Regulation, and the OCG understands that the probity checks required for authorisation will mirror the probity checks in the proposed Regulation.

As the OCG does not administer the Care Regulation, this requirement is not subject to consultation as part of this RIS, nor can the OCG comment on, or make any changes to, the authorisation requirement. As such, any feedback provided in relation to the new authorisation requirement, will be extracted and forwarded to the DCJ.

6.4 Workers authorised to provide emergency care

The definition of residential care worker captures all workers who provide residential care in a residential setting, including workers who provide direct care in emergency accommodation, such as hotels or motels. This means that all residential care providers must comply with the information entry, and probity checking, requirements of the proposed Regulation before engaging any worker to provide direct care to a child or young person in statutory out-of-home care in a residential setting.

However, clause 6(1) and (2) of the proposed Regulation accommodates flexibility in emergency situations, where a residential care provider cannot deploy a residential care worker who has been fully probity checked, and recorded, on the register. The proposed Regulation seeks to achieve this flexibility by exempting residential care providers from recording certain individuals on the register, in limited circumstances, subject to compliance with prescribed requirements.

Specifically, the proposed Regulation provides that a residential care provider is not required to undertake all four prescribed probity checks, and record an individual on the register, if the provider has authorised the individual under Clause 31B of the Care Regulation, and the care is provided to a child for up to 72 hours.

This 72-hour exemption aims to distinguish between true emergencies, where a residential care provider has no time to undertake all prescribed probity checks and record the individual on the register, and circumstances where a residential care provider could undertake all checks and record the individual on the register. Where a provider relies on this exemption, it has a requirement to report to the OCG, within the 72 hours, the details of the individual for whom the exemption has been applied. The OCG will use this information to monitor residential care provider compliance with the proposed Regulation and to prevent scope creep. An example of the application of this exemption is set out below:

[16] *Children and Young Persons (Care and Protection) Act 1998*, section 136.
[17] *Children and Young Persons (Care and Protection) Act 1998*, section 137.

It is 2 a.m. and a ***residential care worker*** falls ill during an overnight shift in a residential setting. The residential care provider attempts to deploy a residential care worker who has been checked, and recorded, on the register, but is operating on a skeleton staff after two workers developed symptoms of COVID-19, obtained tests, and left work to self-isolate while awaiting their COVID-19 test results.

The provider has no other option but to contact an employment agency and utilise an agency contractor who can be authorised by the designated agency under clause 31B of the Care Regulation to provide emergency residential care. The provider reports the worker's identification information to the OCG and the OCG records that the agency has authorised the worker to provide residential care for up to 72 hours.

To ensure residential care providers do not use this exemption to subvert their registration obligations, and to ensure the exemption meets the child protection objectives of the proposed Regulation, once the 72 hours is up, the individual can no longer provide residential care to a child. Instead, if the individual is to be engaged again at any future time, the residential care provider must record the worker on the register and undertake all prescribed probity checks. That is, a residential care provider can only rely on this exemption once in relation to the same individual. The aim here is to support providers in the delivery of appropriate services to children during emergencies, where all other options have been exhausted.

The example below follows on from the use of this exemption in the same COVID-19 emergency scenario:

48 hours later, the two workers who were self-isolating, receive test results clearing them of COVID-19, and return to work in the residential setting. The residential care provider replaces the agency contractor on shift with a residential care worker who has been suitably checked, and recorded, on the register. If the residential care provider seeks to utilise the agency contractor in the future, the provider will need to ensure the contractor has been recorded on the register.

There are several benefits associated with the emergency exemption in the proposed Regulation. For example, the exemption:

- implements recommendation 12.6 by ensuring all residential care workers are subject to all four prescribed probity checks, while acknowledging the operational reality that emergencies will arise and compliance with the full registration requirements may come at the risk of removing a child from a safe environment;
- provides a soft introduction to registration requirements in emergencies which will encourage practice change, as agencies anticipate the need to prepare for emergencies by ensuring all workers are suitably checked, and recorded, on the register.

- addresses the scope-creep of emergency authorisations by requiring agencies to turn their minds to the 72-hour restriction. This could result in realignment of the use of emergency authorisations with the original intention underpinning this authorisation category.

Despite these benefits, the OCG appreciates that this is a complex area that cannot be wholly addressed through the proposed Regulation. The OCG explored several alternative options before arriving at the compromised policy position reflected in clause 6(1) and 6(2) of the proposed Regulation.

One of the alternatives explored, was to record all ***residential care workers*** authorised under clause 31B on the register but only require these workers to undergo two of the four prescribed probity checks. This would ensure visibility of all ***residential care workers*** on the register, without requiring Second Provider Checks and Community Services Checks to be undertaken in a short timeframe. However, this approach would be inconsistent with the policy intent of the register, to establish *consistent* probity checking requirements for all workers. On that basis, the OCG preferred the option of a one-off, 72-hour exemption, supplemented by a reporting requirement that will be carefully monitored by the OCG.

Additionally, emergency authorisations under clause 31B come within the provisions of the Care Regulation, which is administered by the DCJ. Therefore, discussions about proposed changes to emergency authorisations properly rest with the DCJ. However, the OCG notes that the Care Regulation is due to be reviewed, repealed, and remade by 1 September 2021 and data obtained from implementation of the 72-hour exemption will be evaluated by the OCG within 12 months of commencement of the Regulation to inform best practice going forward.

6.5 What information will be held on the register?

The proposed Regulation requires a residential care provider to record information about individuals who have reached the referee checking stage of a recruitment process, and individuals who have been engaged as residential care workers.

To ensure the proposed Regulation meets its purpose as an information exchange mechanism, the register will contain only the necessary information to link a worker to those agencies who have engaged their services and to support information sharing between those agencies that are engaging the same individual.

Agency obligations prior to recruitment

Clause 7 of the proposed Regulation prescribes the basic identification information that must be included in an application for employment as a residential care worker. The proposed Regulation also requires providers to inform individuals that their personal information will be entered onto the register if their application progresses to the stage of the recruitment process in which referee checks are conducted.

As the introduction of the register will not replace an agency's formal recruitment processes, the proposed Regulation does not prescribe the residential care provider's obligations at the job advertisement stage of the recruitment. However, agencies will be expected to inform prospective applicants of the existence of the register and its purpose and explain that an applicant's personal information will be recorded on the register if the applicant reaches the referee check stage of the recruitment process. To ensure all prospective applicants are informed of residential care worker registration requirements *prior* to applying, agencies should include information about the register

in job advertisements. Whilst this is not a requirement of the proposed Regulation, the OCG considers it best practice.

Once a provider receives an application, clause 7(2) of the proposed Regulation requires the provider to notify the applicant that their personal information will be recorded on the register if they reach the referee checking stage of the recruitment. Under clause 7(3), once an applicant reaches the referee checking stage, if they have not provided their gender or whether they identify as an Aboriginal person or Torres Strait Islander person, the residential care provider must ask for this information.

Clause 7(4) of the proposed Regulation clarifies that the applicant is under no obligation to disclose that information, and that there are no consequences if an applicant declines to provide the information. However, it should be noted that if an applicant declines to provide the information at clause 7(3), the provider must record an entry on the register to signify that the information was not provided. The OCG will prepare Fact Sheets to support agencies to navigate, and meet, best practice requirements as well as the requirements of the proposed Regulation.

Agency obligations when an applicant reaches the referee check stage

Clause 8 of the proposed Regulation clarifies that the requirement to record applicant identification, and probity check, information only applies if an applicant has reached the stage of the recruitment process at which referee checks are conducted.

Importantly, residential care providers are not required to record information, or conduct probity checks, for all individuals who apply for a position as a residential care worker. Instead, once applicants reach the referee checking stage of the recruitment process, residential care providers will be required to enter each applicant's identification information and complete all four of the mandatory probity checks. This information will be retained on the register but can only be viewed by the residential care provider who recorded the applicant on the register.

For applicants who reach the referee check stage, the residential care provider will be required to record their basic identification information, and conduct four prescribed probity checks and record the date and outcome for each check (further information about these probity checks is set out in **Appendix 3**). The four probity checks that must be conducted are:

- Verification of an applicant's Working With Children Check (**WWCC**);
- National Criminal Record Check (**NCRC**);
- Community Services Check (**CS Check**);
- Other Agency Check (**Second Provider Check**).[18]

Residential care staff must hold a WWCC clearance or have a current application on foot for a WWCC clearance that is not subject to an interim bar, to work in residential care. However, the Royal Commission found that over-reliance on the WWCC as the sole arbiter of child safety can lead to complacency.[19]

Based on its extensive research into the risk profiles of contemporary out-of-home care settings, the Royal Commission highlighted that child safety is dependent on organisations embedding a suite of child safe practices. These child safe practices include appropriate, and targeted, probity checking of workers, including verification of the applicant's WWCC, NCRC, Second Provider

[18] See definition of a ***second provider check*** in the dictionary at Schedule 3 of the proposed Regulation.
[19] Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks* (2015).

Check and the Community Services Check. As noted above, more information about these probity checks is set out in **Appendix 3**.

The register will not hold details of each probity check other than the date on which it was completed and the outcome (satisfactory or unsatisfactory), see clause 10 of the proposed Regulation. However, agencies are required to maintain more detailed records within their agency personnel files so that relevant information may be shared with other agencies during a Second Provider Check.

To support agencies to consistently request relevant information through the Second Provider Check, the proposed Regulation requires this check to be completed:

- using a form approved by the Children's Guardian;
- for all applicants who are currently employed as residential care providers with another agency;
- for applicants who have ceased employment with another residential care provider if the other residential care provider has indicated on the register that it has information relevant to the safety, welfare or wellbeing of a child, or children.

This Second Provider Check requirement addresses deficiencies in agency information sharing by facilitating requests for relevant information in accordance with the requirements of section 245D of the Care Act. Notably, the requirement at clause 8(1)(d) does not displace an agency's ability to proactively request, or provide, information to another agency, it simply provides the mandatory minimum requirement to request information prior to engaging an applicant as a ***residential care worker***.

A residential care provider will not be required to undertake all four checks if the provider is satisfied that the outcome of one, or more, of the probity checks is enough evidence that a person cannot be engaged as a residential care worker, or if the applicant withdraws their application midway through the probity checking process.[20] However, a residential care provider will not be permitted to engage an individual as a residential care worker until the residential care provider confirms that all required probity checks have been satisfactorily completed.

Residential care workers – reportable allegations

During a residential care worker's employment, the residential care provider will be required to record all reportable allegations made against that worker.

It is important to note that the proposed Regulation only mandates the recording of reportable allegation information, and not all complaints arising in the workplace. This is consistent with the Royal Commission's observation that recording all workplace complaints would be excessive and would conflate the register's child protection objectives with broader recruitment objectives.

As only limited reportable allegation information is enough to trigger exchange of information relevant to risk, the proposed Regulation does not require detailed or contextual information to be recorded. Accordingly, the proposed Regulation requires the following information to be recorded within 7 days of the head of the designated agency becoming aware of the reportable allegation:

- that a reportable allegation has been made, and
- the date the head of the designated agency became aware of the reportable allegation.

[20] See clause 8(3) of the proposed Regulation.

Within 14 days of completing the investigation, the residential care provider must record:

- the outcome of the investigation (i.e. a record of 'Finalised - Contact Agency' or 'Finalised - No Record'), and
- the date the investigation was completed.

If a residential care provider fails to record reportable allegation information in accordance with this clause, the Children's Guardian may direct the provider to record the information.

The requirement to record this information extends to agencies who may be exempt from reporting certain allegations to the Children's Guardian under a Class or Kind agreement. The rationale for capturing this conduct is to ensure information relevant to risk is consistently, and appropriately, recorded on the register.

6.6 What if a decision is made to 'not engage' an individual?

The proposed Regulation seeks to facilitate sector compliance, and reduce administrative burden, by supporting residential care providers to reconsider applicants who reached the referee check stage of a recruitment but were not ultimately employed by the provider.

Under clause 11 of the proposed Regulation, a residential care provider can draw upon a referee checked applicant's record on the register within 12 months of recording its decision not to employ the applicant. If a residential care provider reconsiders a referee checked applicant within 12 months of recording its decision not to employ the applicant, the provider does not need to start a fresh registration for the applicant and can rely on previously collected and recorded information. Importantly, the referee checked applicant's record will only be visible to the recording residential care provider.

To ensure all residential care workers who are engaged using this process are suitable to work with children in residential care, the proposed Regulation requires the residential care provider to:

- Verify the applicant's WWCC
- Conduct a Second Provider Check where the applicant has secured employment in the time between the residential care provider deciding not to engage the applicant, and reconsidering the applicant for employment, if:
    - the applicant is currently engaged by the other provider, or
    - the applicant has ceased employment with the other provider and the other provider has updated the register to record that they have relevant information to disclose.

The proposed Regulation leaves it to the residential care provider's discretion to redo remaining, completed, probity checks for the applicant, subject to limitations on this discretion in certain circumstances set out at clause 11(4) and 11(5). An example of a provider drawing upon a referee checked applicant's record is set out below:

> A residential care provider recruits for a youth worker, and applicant A reaches the referee check stage of that recruitment. In accordance with the proposed Regulation, the provider probity checks the applicant and records the date and outcome of the applicant's completed probity checks. Although the provider considers the individual is suitable to be engaged as a residential care worker, there is only one position available and this position was offered to another applicant.

Three months later, a youth worker position comes up with the same residential care provider and the provider contacts the previous applicant to ask if they are interested in the job. The applicant informs the provider that they are interested. Consistent with the proposed Regulation, the provider draws upon that applicant's record, verifies the applicant's WWCC and completes a Second Provider Check as the individual is also now undertaking casual work with another provider. The residential care provider is satisfied that the applicant is suitable to be engaged as a residential care worker and decides that it is not necessary to conduct a fresh NCRC or CS Check.

Similarly, clause 9 of the proposed Regulation seeks to reduce administrative burden, by facilitating re-employment of a ***residential care worker***. A residential care provider can re-employ a worker, within 12 months of that worker ceasing employment as a residential care worker, without the need to collect and re-enter all prescribed information.

To re-engage a worker within 12 months of that worker ceasing employment, a residential care provider:

- **Must** verify the worker's WWCC, and
- **May** redo the worker's NCRC, CS Check or a Second Provider Check.

Clause 9 of the proposed Regulation allows a provider to choose to redo a previously checked worker's NCRC, CS Check or Second Provider Check/s, rather than mandating that these checks must be redone. This is slightly different from the requirement at clause 11, which requires the provider to undertake a Second Provider Check for a reconsidered applicant, in certain circumstances (see discussion on clause 11, above).

The rationale for empowering residential care providers to decide whether to redo an NCRC, CS Check or a Second Provider Check, for a previously engaged and checked worker, rather than making these checks mandatory in all cases, is to support the sector with flexible, responsive regulation.

However, the OCG welcomes community, and sector, submissions on proposed clauses 9 and 11. In particular, the OCG invites feedback on whether any, or all, remaining checks under clause 9 or clause 11 (the NCRC, CS Check or a Second Provider Check) should be made mandatory in all cases, rather than discretionary.

6.7 Who will have access to information on the register?

As discussed previously in this RIS, the proposed Regulation prescribes the mandatory minimum information entry requirements necessary to facilitate information exchange. The overarching aim of the proposed Regulation is to ensure that children in statutory out-of-home care are placed in safe residential settings, staffed by suitable workers.

While it is acknowledged that the proposed Regulation interacts with recruitment processes, it is not intended to replace agency recruitment practices and employment decision-making. Agencies are responsible for making recruitment decisions in accordance with their usual administrative policies and procedures and must ensure recruitment processes conform with the OCG's Child Safe Standards for Permanent Care. Use of the register for a purpose outside of its intended purpose, would constitute misuse.

To protect against misuse of information held on the register, access is restricted under the provisions of Part 5 of Division 5 of the Act, which sets limitations on disclosure of, and access to, information held on the register. The Act introduces an offence provision as an additional

safeguard, by providing that a person who contravenes the access and amendment provisions of the Act, or proposed Regulation, commits an offence punishable by a maximum penalty of 100 penalty units ($11,000).[21]

Additionally, the Act and proposed Regulation import relevant privacy protections from the *Privacy and Personal Information Protection Act 1998* (**PPIPA**). A recent amendment to the Act also clarifies that the Children's Guardian, the Secretary of the DCJ and residential care providers are only permitted to collect, use and disclose personal information in accordance with the Act or proposed Regulation.[22]

Safeguards in the Act

Concerns about misuse of the register and the need for legislative protections were ventilated during Parliamentary consideration of the Children's Guardian Bill 2019 (**Bill**) and the Bill was amended to insert safeguards.[23] These safeguards appear at sections 86 and 87 of the Act.

Section 86 sets limitations on disclosure of information held on the register and entitlement to access information held on the register and empowers the Children's Guardian to give access to the Secretary of the DCJ, the Minister for Families, Communities and Disability Services and the Ombudsman. Section 87 imports section 14 of PPIPA and entitles a person whose personal information is held on the register to access that information in certain circumstances.

Parliamentary oversight is provided by the requirement at section 138(2)(h), which is focussed upon compliance with the reportable conduct requirements in Part 4 of the Act but also operates to provide strengthened oversight and accountability of information recorded on the register.

Safeguards in the proposed Regulation

By importing, and complementing, the requirements of section 15 of PPIPA, clause 14 of the proposed Regulation enables former residential care workers, current residential care workers and applicants who reach the referee check stage of a recruitment process to request that their record be amended to ensure it is accurate, up-to-date, complete and not misleading.

The proposed Regulation provides added protection by requiring a residential care provider to amend an individual's record if the provider otherwise becomes aware that information held about the individual on the register is incorrect.

6.8 Arrangements on commencement

Existing applications

The information entry, and probity checking, requirements in the proposed Regulation will apply to any individual who has applied to work as a residential care worker and has reached the referee check stage of the recruitment process.[24] This includes any individual who has applied prior to commencement of the proposed Regulation, where the recruitment for that position has not yet been finalised at the time the register commences. An example of the process for an existing application, that has not been finalised as at the proposed Regulation's commencement in Spring 2021, is set out below:

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[21] Section 87(5) *Children's Guardian Act 2019*.
[22] See section 85(1A) of the *Children's Guardian Act 2019*.
[23] New South Wales, *Parliamentary Debates*, Legislative Council, 20 November 2019 at https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-81149
[24] See Part 2 of Schedule 1, clause 2 of the proposed Regulation.

Jordan Bloggs applies for a youth worker role. Jordan's application is being processed, but when the proposed Regulation commences in, for example, 1 September 2021, the recruitment process has not yet been completed. The recruiting residential care provider must comply with the requirements of the proposed Regulation for Jordan's recruitment as if Jordan were a new applicant applying to work as a residential care worker on, or after, 1 September 2021.

As Jordan was being considered for employment when the proposed Regulation commenced, the residential care provider is required to collect all prescribed identification information, undertake and record the outcomes of all four probity checks, and comply with all other relevant requirements of the proposed Regulation in respect of Jordan's application.

The proposed Regulation applies to existing residential care workers and refers to these workers as ***existing employees***.[25] An existing employee is any individual who is employed by a residential care provider prior to commencement of the proposed Regulation and remains working in that role once the proposed Regulation has commenced. These individuals will fall within the definition of ***residential care worker***. An example of an existing employee is set out below:

Jordan Bloggs' recruitment was finalised in January 2021 and Jordan has been employed by a residential care provider as a youth worker since that date. Jordan remains employed in this position when the proposed Regulation commences in Spring 2021.

Jordan is an existing worker for the purposes of the proposed Regulation.

Timeframes for information entry and probity checking requirements

A residential care provider will have 90 days from commencement of the proposed Regulation on a date in Spring 2021 to enter existing residential care workers on the register. To enter an existing residential care worker on the register, the residential care provider must:

- record all prescribed identification information for the worker;
- verify that the worker holds a current WWCC clearance, or has a current application for a WWCC on foot that is not subject to an interim bar;
- record the outcome of the worker's NCRC;
- record the date of commencement in the role with the agency (which will be a date prior to the commencement date in Spring 2021).

As a significant number of CS Checks will need to be undertaken when the proposed Regulation commences, the proposed Regulation allows a residential care provider **up to two years** to record the date and outcome of the existing worker's CS Check on the register.

In relation to the Second Provider Check, the proposed Regulation empowers agencies with discretion as to whether, or not, to conduct this check. However, to ensure all checks conducted are accompanied by complete records, a residential care provider who chooses to exercise its

[25] See Part 1, clause 1 of Schedule 1, and Part 2, clauses 3-5 of Schedule 1 of the proposed Regulation.

discretion to conduct the Second Provider Check must record the date and outcome of the check on the register.

As with the discussion above at section 6.6, the OCG welcomes feedback on whether the proposed Regulation should be amended to make the Second Provider Check mandatory, rather than discretionary, for existing employees on commencement.

Timeframes for entry of reportable allegation information

On commencement of the proposed Regulation, a residential care provider must record reportable allegation information for existing workers[26], if:

- there is a current reportable allegation investigation on foot for an existing worker and the investigation has not been completed at the time of commencement of the proposed Regulation.

In the circumstances described above, the residential care provider must record the following information on the register:

- the fact that a reportable allegation has been made;
- the date the head of the designated agency became aware of the reportable allegation;

The proposed Regulation requires this information to be recorded on the register within 14 days of the provider entering the existing worker's identification information, WWCC details, date and outcome of the worker's NCRC and date of commencement as a residential are worker.

Where the head of the designated agency becomes aware of a reportable allegation on, or after, commencement of the proposed Regulation, or when the investigation into a current matter is completed, the same recording requirements apply. That is:

- new allegations must be entered within 7 days of the head of the agency becoming aware of the allegation, and
- finalised matters must be entered within 14 days of finalisation, including the outcome and date the investigation was completed.

Summary of probity checking requirements on commencement

New applicant on commencement

Probity check	Required	Timeframe
Working with Children Check	✓	Prior to engaging the residential care worker
National Criminal Record Check	✓	Prior to engaging the residential care worker
Other Designated Agency Check	✓	Prior to engaging the residential care worker
Community Services Check	✓	Prior to engaging the residential care worker

[26] See Part 3 of Schedule 1, clause 6.

Existing worker on commencement

Probity check	Required	Timeframe
Working with Children Check	✓	Within 90 days of commencement
National Criminal Record Check	✓	Within 90 days of commencement
Other Designated Agency Check		Optional (subject to sector views on whether this should be made mandatory)
Community Services Check	✓	Within two years of commencement

7. Review and evaluation

The proposed Regulation, and the register, are intended to commence together in Spring 2021 and the OCG is responsible for concurrently implementing both.

To ensure successful implementation, the OCG has developed a plan to prepare the sector for the changes. As part of this plan, the OCG has provided a package of guidance material to support sector understanding of the upcoming changes and will provide further guidance materials and training on the use of the register and corresponding changes to practice. This will also support agency compliance with the proposed Regulation.

Following commencement, the OCG will review the effectiveness of the new Regulation by 2026, enabling the data obtained through monitoring compliance and other key learnings to inform the review.

Appendix 1: Designated agency representation on Residential Care Workers Register Working Group

- Allambi Care;
- Anglicare NSW South, NSW West and ACT;
- Barnardos;
- CASPA;
- Catholic Care Broken Bay;
- Creating Links;
- Department of Communities and Justice;
- Family Spirit (Catholic Care Sydney);
- Impact Youth Services;
- Interactive Community Care;
- Life Without Barriers;
- Marist 180;
- Premier Youth Works;
- Southern Youth and Family Services;
- Uniting Care;
- YP Space;
- Youth Care UPA.

Appendix 2: List of identified stakeholders

- Aboriginal Legal Service
- Allambi Care Limited
- Anglican Community Services
- Anglicare NSW South, NSW West & ACT
- Armajun Health Service Aboriginal Corporation
- Australian Red Cross Society
- Australian Services Union
- Barnardos Australia
- Biripi Aboriginal Corporation Medical Centre
- Burrun Dalai Aboriginal Corporation Inc
- CareSouth
- Caretakers Cottage Inc
- CASPA Services Ltd
- CatholicCare Social Services Hunter-Manning
- CatholicCare Wollongong
- Challenge Community Services
- Children Australia Inc (OzChild)
- Coffs Harbour Aboriginal Family Community Care Centre
- Creating Links (NSW) Ltd
- Department of Communities and Justice
- Family Spirit Ltd
- Illawarra Aboriginal Corporation - Myimbarr
- Impact Youth Services Pty Ltd
- Information and Privacy Commission NSW
- Interactive Community Care Pty Ltd
- KARI Ltd
- Key Assets - the Children's Services Provider (Australia) Ltd
- Legal Aid NSW
- Lifestyle Solutions (Aust) Ltd
- Life Without Barriers
- LiveBetter Services Limited
- Mackillop Family Services Ltd
- Mallee Family Care Inc
- Marist Youth Care Ltd
- Marymead Child & Family Centre
- Mirrimppilyi Muurpa-nara Aboriginal Corporation
- Muloobinba Aboriginal Corporation
- Narang Bir-rong Aboriginal Corporation
- Ngunya Jarjum Aboriginal Corporation

- NSW Association of Children's Welfare Agencies
- NSW Child, Family and Community Peak Aboriginal Corporation
- NSW Ombudsman
- Pathfinders Ltd
- Phoenix Rising For Children Pty Ltd
- Premier Youthworks Pty Ltd
- Professional Individualised Care Ltd
- Public Service Association
- Riverina Medical & Dental Aboriginal Corp (Wanggaay)
- Safe Places Community Services Ltd
- Samaritans Foundation Diocese of Newcastle
- Settlement Services International Ltd
- South Coast Medical Service Aboriginal Corporation
- Southern Youth & Family Services Limited
- Stretch-A-Family Inc
- Sydney Stepping Stone Inc
- The Benevolent Society
- The Burdekin Association Inc
- The Disability Trust
- Treehouse Innovative Families Pty Ltd
- Trustees of the Roman Catholic Church for the Diocese of Broken Bay
- United Protestant Association of NSW Ltd
- Uniting NSW.ACT
- Veritas House
- Wandiyali
- Wesley Community Services Ltd
- Westhaven Ltd
- William Campbell Foundation
- Winanga-Li Aboriginal Child and Family Centre Inc
- Woomera Aboriginal Corporation
- Yerin Aboriginal Health Services Ltd
- YP SPACE MNC Inc

Appendix 3: Information about probity checks

Further details of each probity check required under clause 8 of the proposed Regulation are outlined below.

Working with Children Check

A WWCC is a legal prerequisite for any person aged 18 or over in paid or unpaid, child-related work. It involves a national criminal history check, a review of relevant findings of misconduct and notifications in relation to reportable conduct.

The result of a finalised WWCC application is either a clearance to work with children for five years, or a bar against working with children. Cleared individuals are subject to ongoing monitoring, and relevant new records may lead to the clearance being revoked before the five-year expiry date. Factsheets are available at www.kidsguardian.nsw.gov.au.

PLEASE NOTE: Individuals engaged to work in residential care settings are required by law to obtain a WWCC clearance. Agencies are required to verify all clearances online.

Nationwide Criminal Record Check

Agencies are required to undertake an NCRC for all employees, contractors and volunteers, as a condition of their accreditation as designated agencies. For more for information, go to www.police.nsw.gov.au.

Community Services Check

A CS Check is a review of relevant information about an individual held by the Department of Communities and Justice. Information reviewed during a CS check can include information on the KiDS and Child Story databases, Risk of Significant Harm reports, allegations of reportable conduct and outcomes of investigations.

A CS Check will be required for new and existing workers. Agencies will be required to enter existing workers onto the register within 90 days of commencement of the proposed Regulation even if a CS Check has not yet been completed. For existing workers, agencies will be able to enter the outcome of the CS Check (if not already done) within 2 years of commencement of the proposed Regulation.

Second Provider Check

When an agency conducts a recruitment for a ***residential care worker***, the applicant's current or past associations with another agency will be visible to the recruiting agency (referred to commonly as the Other Agency Check). The recruiting agency will be required to contact these other agencies to request relevant information relating to any risk the individual may pose to the safety, welfare or wellbeing of a child or class of children. Provision of information in response to an agency's request is permitted, if the requirements of section 245D of the Care Act have been met.

The purpose of this check is to ensure information relevant to the assessment of an individual to be engaged as a residential care worker is shared between agencies. This will assist the agency to decide whether the individual is suitable to be engaged as a ***residential care worker***.

Address Level 1, 219 Cleveland Street, Strawberry Hills NSW 2012
Phone (02) 8219 3600
Email RCWRFeedback@kidsguardian.nsw.gov.au
Website www.kidsguardian.nsw.gov.au

Original concept by the Office of the Children's Guardian Written by the Office of the Children's Guardian Set up and produced in Sydney, New South Wales

Attachment 1: Proposed Children's Guardian Regulation

Attachment 2: NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse – June 2018

New South Wales

Children's Guardian Regulation 2021

under the

Children's Guardian Act 2019

[*The following enacting formula will be included if this Regulation is made*—]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children's Guardian Act 2019*.

Minister for Families, Communities and Disability Services

Explanatory note

The objects of this Regulation are as follows—

(a) to provide for the Children's Guardian to keep a register of residential care workers (the ***register***),

(b) to require residential care providers to—

(i) record information on the register about certain applicants for employment as residential care workers, and

(ii) conduct checks of the applicants, and

(iii) update the register to note reportable allegations in relation to residential care workers and allegations that residential care workers have engaged in a class or kind of conduct exempt from being reportable conduct under the *Children's Guardian Act 2019*,

(c) to extend the requirement to record information on the register to include information about—

(i) certain persons currently employed by a residential care provider in a residential setting, and

(ii) pending applicants,

(d) to prescribe the persons who may deal with information for the purposes of keeping the register,

(e) to prescribe the head of certain relevant entities for the purposes of the reportable conduct scheme administered by the Children's Guardian.

This Regulation is made under the *Children's Guardian Act 2019*, including sections 17(1)(b) (definition of ***head*** of a relevant entity), 85 and 184 (the general regulation-making power).

Contents

Children's Guardian Regulation 2021

under the

Children's Guardian Act 2019

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children's Guardian Regulation 2021*.

2 Commencement

This Regulation commences on 1 April 2021 and is required to be published on the NSW legislation website.

3 Definitions

The Dictionary defines certain terms used in this Regulation.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

Part 2 Residential care workers register

Division 1 Preliminary

4 Residential care workers register

(1) For the purposes of section 85(1)(b) of the Act, the Children's Guardian may keep a register of residential care workers and applicants for employment as residential care workers for the purposes of promoting the safety, welfare and wellbeing of children in residential care.

(2) Information may be recorded on the register, or amended or updated, under this Part by—

(a) a residential care provider, or

(b) the Children's Guardian.

5 Dealing with information for the purposes of keeping register

For the purposes of section 85(1A) of the Act, the following persons are prescribed—

(a) a residential care provider,

(b) the Secretary.

6 Certain residential care workers not subject to Divisions 2 and 3

(1) Divisions 2 and 3 do not apply if—

(a) a residential care worker is employed by a residential care provider to provide residential care, and

(b) the residential care worker is authorised under clause 31B of the *Children and Young Persons (Care and Protection) Regulation 2012*, and

(c) the residential care is provided for 72 hours or less after the authorisation of the residential care worker, and

(d) the residential care provider notifies the Children's Guardian, within 72 hours of the authorisation—

(i) that the residential care provider has employed the residential care worker under this clause, and

(ii) of the information about the residential care worker specified in clause 7(1).

(2) However, subclause (1) only applies if, from the commencement, a residential care provider has not previously authorised the residential care worker under clause 31B of the *Children and Young Persons (Care and Protection) Regulation 2012* to provide residential care for 72 hours or less.

(3) Also, Divisions 2 and 3 do not apply if a residential care worker—

(a) is employed by the Department to develop or implement case management plans for children, and

(b) provides residential care in emergency accommodation.

Division 2 Application for employment as residential care worker

7 Application to residential care provider

(1) An application to a residential care provider for employment as a residential care worker must contain the following information—

(a) the applicant's full name and any other name the applicant is, or has been, known by,

(b) the applicant's date of birth,

(c) if the applicant holds a working with children check clearance—

(i) the working with children number for the clearance, and

(ii) the date on which the clearance ceases to have effect,

(d) if the applicant has a current application for a working with children check clearance that has not been finally determined, withdrawn or terminated—the applicant's application number.

(2) A residential care provider must, immediately after receiving the application for employment, notify the applicant that, if the applicant reaches the referee check stage, the information specified in clause 10(2) will be recorded on the register.

(3) A residential care provider must ask an applicant who reaches the referee check stage for the following information, unless the information has already been provided by the applicant—

(a) the applicant's gender,

(b) whether the applicant identifies as an Aboriginal person or a Torres Strait Islander person.

(4) A residential care provider who asks for information under subclause (3) must inform the applicant that—

(a) the applicant is not required to provide the information, and

(b) there are no consequences for declining to provide the information, and

(c) if the information is provided, it will be entered on the register.

8 Residential care provider must conduct certain checks—section 85(2)(d) of Act

(1) For a person who is applying to a residential care provider for employment as a residential care worker and who reaches the referee check stage, the provider must undertake each of the following—

(a) a check to verify the applicant's relevant details,

(b) a nationwide criminal record check,

(c) a Community Services check,

(d) if the register indicates that the applicant is a relevant applicant, 1 or more second provider checks.

(2) When conducting a second provider check, the residential care provider must include in the request to the second residential care provider information about the nature of the position applied for to assist the second residential care provider to identify relevant information.

Note. See also Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* relating to the exchange of information between agencies that have responsibilities relating to the safety, welfare or wellbeing of children and young persons.

(3) Despite subclause (1), a residential care provider is not required to do all of the checks if—

(a) the provider is satisfied that the outcome of 1 or more of the checks demonstrated that the applicant is not suitable to be a residential care worker, or

(b) the applicant withdraws the application during the referee check stage.

(4) In this clause—

relevant applicant means—

(a) a person who is currently employed by a second residential care provider as a residential care worker, or

(b) a person who has previously been employed by a second residential care provider as a residential care worker and that second provider has recorded on the register that the second provider has relevant information about the applicant to disclose.

9 Employment of residential care worker within 12 months of ceasing employment

(1) This clause applies to a residential care provider if—

(a) the provider intends to employ a person as a residential care worker, and

(b) the person has previously been employed as a residential care worker by the provider, and

(c) the person will be re-employed by the provider within 12 months of having ceased their previous employment with the provider.

(2) The residential care provider must verify the person's relevant details before employing the person.

(3) Despite clause 8, the residential care provider may undertake one or more of the following before employing the person—

(a) a nationwide criminal record check,

(b) a Community Services check,

(c) if the register indicates that the person is a relevant individual, a second provider check.

(4) In this clause—

relevant individual means—

(a) a person who is currently employed by a second residential care provider as a residential care worker, or

(b) a person who, after ceasing employment with the residential care provider, was employed by a second residential care provider as a residential care worker and the second provider updated the register to indicate that the second provider has relevant information about the person to disclose.

Division 3 Recording and updating information on register

10 Information to be recorded on register—section 85(2)(a) of Act

(1) This clause applies to an applicant who reaches the referee check stage of an application for employment.

(2) A residential care provider must record the following information about the applicant on the register—

(a) the information specified in clause 7(1),

(b) the information specified in clause 7(3), if provided,

(c) for the checks required under clause 8(1)(b)–(d)—

(i) the date the check was completed, and

(ii) the outcome of the check,

(d) if a check specified in clause 9(3) was conducted,

(i) the date the check was conducted, and

(ii) that outcome of the check.

(3) The recording of information under subclause (2) must be completed before making a decision about whether or not to employ the applicant.

(4) When a decision is made about whether or not to employ the applicant the residential care provider must record the following information on the register—

(a) the decision,

(b) if the decision is to not employ the applicant, the date the decision was made.

(5) If the applicant accepts an offer of employment, the residential care provider must record on the register the date the applicant commences employment.

(6) If the applicant is employed by a second residential care provider as a residential care worker, the Children's Guardian must notify the second provider that the applicant has been employed by the provider.

11 Reconsideration of application for employment within 12 months

(1) This clause applies to information held by a residential care provider about an applicant who—

(a) reaches the referee check stage, but

(b) does not commence employment as a residential care worker.

Examples for paragraph (b)—
The residential care provider decides not to offer the applicant a job as a residential care worker or the applicant withdraws the application during the referee check stage.

(2) If the residential care provider decides to reconsider the applicant for employment as a residential care worker within 12 months of the provider recording the information under clause 10(4), the provider—

(a) is not required to collect or enter the information already recorded on the register, and

(b) must verify the applicant's relevant details, and

(c) may conduct a nationwide criminal record check, and

(d) may conduct a Community Services check, and

(e) must, if the applicant is a relevant applicant, undertake a second provider check.

(3) If the residential care provider conducted a check specified in subclause (2)(c)–(e), the provider must update the register to record—

(a) the date the check was conducted, and

(b) the outcome of the check.

(4) Despite subclause (2), if the residential care provider did not complete the checks required under clause 8(1) because the applicant withdrew the application during the referee check stage, the provider is not required to collect or enter the information already recorded on the register, and must—

(a) complete the incomplete checks, and

(b) verify the applicant's relevant details, and

(c) update the register to record the date the checks were completed and the outcome of the checks.

(5) Despite subclause (2), if the residential care provider did not complete the checks required under clause 8(1) because the provider was satisfied that the outcome of 1 or more of the checks demonstrated that the applicant was not suitable to be a residential care worker, the provider must—

(a) complete a new check of each check that had demonstrated that the applicant was not suitable to be a residential care worker, and

(b) complete the incomplete checks, and

(c) verify the applicant's relevant details, and

(d) update the register to record the date the checks were completed and the outcome of the checks.

(6) In this clause—

relevant applicant means an applicant who commenced employment with a second residential care provider on or after the date the residential care provider recorded the information under clause 10(4) and who—

(a) is currently employed by the second residential care provider, or

(b) has ceased employment with the second residential care provider and the second provider has updated the register to advise that the second provider has relevant information about the applicant to disclose.

12 Residential care provider must record reportable allegations on register—section 85(2)(a) of Act

(1) A residential care provider must, within 7 business days of the head of the provider becoming aware of a reportable allegation about a residential care worker employed by the provider, record the following information on the register—

(a) that a reportable allegation has been made,

(b) the date the residential care provider became aware of the reportable allegation.

(2) Within 14 business days of completing, or becoming aware of the completion of, an investigation into a reportable allegation, a residential care provider must record on the register—

(a) the outcome of the investigation, and

(b) the date the investigation was completed.

(3) The Children's Guardian may direct a residential care provider to enter the information specified in subclauses (1) and (2) on the register if the provider has failed to enter the information.

13 Residential care provider must record certain information on register—section 85(2)(a) of Act

(1) This clause applies if the head of a residential care provider becomes aware that an allegation has been made that a residential care worker, employed by the provider, has engaged in a class or kind of conduct exempt from being reportable conduct under the Act.

(2) The residential care provider must, within 7 business days of the head of the provider becoming aware of the allegation, record the following information on the register—

(a) that the allegation has been made,

(b) the date the residential care provider became aware of the allegation.

(3) Within 14 business days of completing, or becoming aware of the completion of, an investigation into the allegation, a residential care provider must record on the register—

(a) the outcome of the investigation, and

(b) the date the investigation was completed.

(4) The Children's Guardian may direct a residential care provider to enter the information specified in subclauses (2) and (3) on the register if the provider has failed to enter the information.

14 Updating the register—section 85(2)(b) and (c) of Act

(1) A residential care provider may update information kept on the register about a residential care worker, a previously employed residential care worker or an applicant for employment who has reached the referee check stage of the application process if the provider—

(a) receives a request from the person the information relates to, or

(b) receives a request from the Children's Guardian, or

(c) otherwise becomes aware that the information is incorrect.

(2) A residential care provider that receives a request under subclause (1)(a) to update information on the register—

(a) may decide to update the information as requested and, if so, must as soon as practicable give the person who made the request written notice of having done so, or

(b) may decide to not update the information as requested and, if so, must as soon as practicable give the person who made the request written notice of the decision and reasons for the decision.

(3) A residential care provider that receives a request under subclause (1)(b) to update information on the register or otherwise becomes aware that information on the register is incorrect must as soon as practicable—

(a) update the information on the register, and

(b) give written notice of the change to the person to whom the information relates.

(4) If, for any reason, the residential care provider is incapable of updating information on the register as required by this clause, the Children's Guardian may update the information on the register and notify the person the information relates to of the changes.

(5) This clause applies in addition to section 15 of the *Privacy and Personal Information Protection Act 1998*.

15 Residential care provider must update register when employment ceases—section 85(2)(c) of Act

(1) A residential care provider must, within 14 business days of a residential care worker ceasing employment as a residential care worker with the provider, update the register to record the date the employment ceased.

(2) If the provider has relevant information to disclose about a residential care worker, the provider must update the register to indicate that they have relevant information to disclose.

Part 3 Miscellaneous

16 Head of relevant entity

For the purposes of section 17(1)(b) of the Act, the person described in Column 2 of Schedule 2 to this Regulation is prescribed as the head of the relevant entity described in the corresponding entry in Column 1.

Schedule 1 Savings and transitional provisions

Part 1 Preliminary

1 Meaning of "existing employee"

(1) In this Schedule, ***existing employee*** means a person employed by a residential care provider immediately before the commencement to do 1 or more of the following in a residential setting—

(a) provide statutory out-of-home care,

(b) provide security services,

(c) if the person spends 60% or more of the time the person is employed by the provider in a residential setting—

(i) developing case management plans for children in statutory out-of-home care, or

(ii) implementing case management plans for children in statutory out-of-home care, or

(iii) providing administrative support.

(2) Despite subclause (1), this Schedule does not apply to an existing employee of the Department if the person—

(a) is employed to undertake functions set out in subclause (1)(c)(i) and (ii), and

(b) provides statutory out-of-home care in emergency accommodation.

(3) To avoid doubt, this Schedule does apply to a person who—

(a) is employed by the Department, and

(b) whose ordinary duties include providing statutory out-of-home care, whether or not in emergency accommodation.

Part 2 Residential care workers register

2 Existing applications to residential care provider

(1) This clause applies to an application for employment, in a role providing the duties in clause 1(1) of this Schedule, that was made to a residential care provider, but not finally dealt with, before the commencement.

(2) Part 2, Divisions 2 and 3 of this Regulation extend to the application.

3 Existing employees

(1) Within 90 days of the commencement a residential care provider must, for an existing employee—

(a) verify the employee's relevant details on the register, and

(b) record the following information about the employee on the register—

(i) the information specified in clause 7(1) of this Regulation,

(ii) the information specified in clause 7(3) of this Regulation, if the employee provides that information,

(iii) the date a nationwide criminal record check was conducted,

(iv) the outcome of the nationwide criminal record check,

(v) the date the employee commenced employment with the provider.

(2) Within 2 years and 3 months of the commencement a residential care provider must record the following information on the register for an existing employee—

(a) the date a Community Services check was conducted,

(b) the outcome of the Community Services check.

4 Existing employees also employed by another provider

(1) This clause applies to an existing employee if the register shows that the employee—

(a) is an existing employee of another residential care provider, or

(b) is employed as a residential care worker by another residential care provider, or

(c) ceased employment with another residential care provider between the commencement and the date on which the information required by clause 3(1) of this Schedule is recorded on the register.

(2) The Children's Guardian must give each residential care provider of an existing employee to whom this clause applies—

(a) notice that the employee is an existing employee of another provider or is employed by another provider as a residential care worker, and

(b) the name of the other provider.

(3) A residential care provider who employs an existing employee to whom this clause applies may conduct a second provider check of the employee.

(4) If a residential care provider conducts a second provider check under subclause (3), the provider must record on the register—

(a) the date the check was conducted, and

(b) the outcome of the check.

5 Updating register

Clauses 12–15 of this Regulation extend to an existing employee as if the existing employee were a residential care worker.

Part 3 Investigations

6 Allegations—current investigations

(1) This clause applies to an allegation if—

(a) the allegation was made before the commencement, and

(b) the investigation of the allegation is not complete at the commencement.

(2) Within 14 business days of recording the information required by clause 3(1) of this Schedule on the register, a residential care provider must enter the following information on the register—

(a) for a reportable allegation—the information required by clause 12(1) of this Regulation, and

(b) for any other allegation—the information required by clause 13(2) of this Regulation.

(3) In this clause—

allegation means—

(a) a reportable allegation, and

(b) an allegation to which clause 13 of this Regulation applies.

Schedule 2 Head of relevant entity

clause 16

Column 1	Column 2
Relevant entity	**Prescribed head of relevant entity**
An adult who, under section 10 of the *Child Protection (Working with Children) Act 2012*, is required to hold a working with children check clearance because the adult resides on the same property as an authorised carer for 3 weeks or more	Head of the relevant entity that employs the authorised carer with whom the adult resides
Cancer Institute (NSW) constituted by the *Cancer Institute (NSW) Act 2003*	Secretary of the Ministry of Health
NSW Health Service, as referred to in section 115 of the *Health Services Act 1997*	Secretary of the Ministry of Health

Schedule 3 Dictionary

clause 3

application number has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

approved form means a form approved by the Children's Guardian.

commencement means the commencement of the *Children's Guardian Regulation 2021*.

Community Services check means a check of information held by the Department.

employ includes engage an person as a volunteer or contractor.

existing employee—see Schedule 1, clause 1.

head, of a residential care provider, means—

(a) for a residential care provider that is part of a Department—the Secretary of the Department or the Secretary's delegate, or

(b) if a person or a class of persons is prescribed as the head of a relevant entity for the purposes of section 17 of the Act—the person prescribed by the regulations for the relevant entity, if the relevant entity is a residential care provider, or

(c) otherwise—

(i) the chief executive officer of the residential care provider, however described, or

(ii) if there is no chief executive officer—the principal officer of the residential care provider, however described, or

(iii) if there is no chief executive officer or principal officer—a person approved by the Children's Guardian under section 66 of the Act.

referee check stage means the stage in assessing an application for employment as a residential care worker at which the residential care provider conducts reference checks with the person's referees.

register means the residential care workers register kept by the Children's Guardian under clause 4(1).

relevant details has the same meaning as in section 9A(2) of the *Child Protection (Working with Children) Act 2012*.

relevant information, about an applicant or residential care worker, means information relating to the safety, welfare or wellbeing of children.

residential care means statutory out-of-home care provided in a residential setting.

residential care provider means a designated agency that arranges residential care.

residential care worker means an person employed by a residential care provider to work in a residential setting to do 1 or more of the following—

(a) provide residential care,

(b) provide security services,

(c) if the person spends 60% or more of the time the person is employed by the provider in a residential setting—

(i) developing case management plans for children in residential care, or

(ii) implementing case management plans for children in residential care, or

(iii) providing administrative support.

Note. An person who is employed to provide residential care, for the purposes of paragraph (a) of the definition of ***residential care worker***, must be authorised as an authorised carer by a designated agency under either—

(a) clause 31B of the *Children and Young Persons (Care and Protection) Regulation 2012*, or

(b) clause [to be completed when a regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*] of the *Children and Young Persons (Care and Protection) Regulation 2012*.

residential setting means—

(a) emergency accommodation, or

(b) a home, managed by a designated agency, where a child in statutory out-of-home care is placed.

Example for paragraph (a)—

a hotel or motel used to provide residential care to a child.

second provider check means a request, using the approved form, for relevant information about a person from a second residential care provider that employs, or has employed, the person as a residential care worker.

the Act means the *Children's Guardian Act 2019*.

working with children number has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse

JUNE 2018

NSW GOVERNMENT

Contents

Publication date
June 2018

Author
NSW Government

Overview

01

The Royal Commission into Institutional Responses to Child Sexual Abuse heard evidence of the shocking and appalling abuse of children by the very people who were supposed to care for and value them. Many trusted institutions failed to protect children in their care. This included NSW Government institutions, as well as many non-government institutions in NSW.

The NSW Government acknowledges the survivors of institutional abuse, their hurt, and the impact of past failures of governments to protect them

We are deeply sorry for the hurt and suffering this abuse has caused and continues to cause.

Over five years, the Royal Commission exposed the failures of governments and non-government institutions and the hurt endured by survivors. The Royal Commission found that child sexual abuse has occurred across a wide range of institutions and has affected tens, if not hundreds, of thousands of people over many years.

We are grateful to all those who participated in the Royal Commission. The Royal Commission heard from more than 8000 people who shared their stories in a private session with a Commissioner, as well as with their family members, carers and supporters, and other people who were in the same institutions as children.

Many of those who came forward were Aboriginal and Torres Strait Islander people. We acknowledge the particular trauma of child sexual abuse in institutional settings on Aboriginal people. The Royal Commission acknowledged that this trauma was often bound up with the trauma of being separated from family and culture.

The final report is testament to the courage of those who shared their accounts. It is now everyone's responsibility to act on the Royal Commission's recommendations and prevent abuse of this scale from ever being repeated. This is the responsibility of governments, non-government organisations, religious institutions, parents and individuals.

NSW has already made a number of changes over the past five years in response to the Royal Commission

NSW acknowledges and supports victims and survivors of past abuse. We will continue to strive to make sure conditions are in place for every child in our state to be listened to and supported.

- NSW was one of the first states to opt into the National Redress Scheme.
- NSW is the only jurisdiction with independent oversight of the out-of-home care system.
- NSW has the most robust Working With Children Check Scheme in the country.
- NSW has the most extensive reportable conduct scheme, which the Royal Commission recommended for national adoption.
- NSW has led significant reform for children in out-of-home care to improve permanency and stability. **Their Futures Matter** takes a whole-of-government approach to ensure that effort and investment across government is focused on improving the long-term outcomes for children and families at the earliest opportunity.
- NSW has a leading service model for specialist therapeutic interventions for children with harmful sexual behaviour (NSW Health New Street).
- NSW has introduced extensive criminal law reforms to ensure survivors can find justice and perpetrators of abuse are held to account. This includes sentences that better reflect community understanding of child sexual abuse and the harm it causes.

National action is important

The NSW Government is committed to working with the Australian Government and other states and territories to keep children safe.

In February, Council of Australian Governments (COAG) leaders met and committed to respond to the Royal Commission in June 2018. They agreed to sharing lessons learnt and best practice to improve outcomes for those who interact with the child protection system.

Since the February COAG meeting, we are pleased to have agreed national priorities with all jurisdictions as recommended by the Royal Commission.

These national priorities are:

- making institutions child safe
- improving cross-border information sharing about children's welfare
- preventing and responding to children with harmful sexual behaviours
- reporting annually on progress.

NSW will continue to play a leadership role in promoting these national priorities. We will also continue to progress the wide range of recommendations the Royal Commission made for national consistency and collaboration.

NSW has learnt from the past

NSW recognises the importance of prevention, accountability for institutions, and support for survivors and those currently in our systems.

In response to the Royal Commission's recommendations, the NSW Government will make changes over time. Some of these changes can be made straight away, while some will require more work to consult and collaborate with members of the public, affected sectors and other governments. The NSW Government has prepared a response to every recommendation of the Royal Commission (see sections 2 to 5 of this document). This response sets out which recommendations we accept now, and the ones where we need to do some further work. The NSW Government is committed to providing an update in December 2018, and yearly progress updates for five years. It is the responsibility of all of us to keep the Royal Commission's legacy alive. We will hold ourselves accountable for the commitments we make.

The changes the NSW Government is committed to are designed to better prevent child sexual abuse, improve responses to reports of abuse, and ensure survivors receive appropriate support and the justice they deserve. We hope these changes will help survivors and better protect generations to come.

NSW will act to prevent abuse

The NSW Government is committed to action to prevent abuse occurring in the first place. We are committed to making institutions child safe and accept the Royal Commission's Child Safe Standards. The Office of the Children's Guardian will consult with child-related organisations, including sporting clubs, community groups and schools, to identify the best way to make organisations child safe in NSW. To make organisations child safe and minimise the risk of abuse, it is vital to create organisational cultures that place the safety and wellbeing of children at the centre of all that they do.

The NSW Government is proud of the work of the Office of the Children's Guardian in promoting child safety, and is committed to continuing the capacity building of a range of non-government providers that work with children. We want to work with schools, after-school care services, early childhood care providers, sport and recreation groups, and other organisations where children live, work and play.

The NSW Government will work with all states and territories to prevent abuse occurring. This will include better support for parents and professionals who work with children to detect and respond to child sexual abuse.

NSW has a strong system of oversight in out-of-home care

NSW already has strong, independent oversight of the out-of-home care system. A particular strength of the NSW out-of-home care system is the requirement that both the government and non-government providers meet the same standards of care. NSW is the only jurisdiction with independent oversight of government and non-government out-of-home care services.

The Royal Commission recognised the leadership NSW has shown in setting a common standard in out-of-home care for government and non-government organisations, and to continually improve the quality of services for children.

The NSW Government is improving how out-of-home care is provided, with an even greater focus on the needs and long-term wellbeing of children and young people in care. A number of important reforms have been delivered or are well underway.

- The Permanency Support Program aims to give every child and young person a loving home for life, whether that be with parents, extended family or kin, or through open adoption or guardianship. It focuses on achieving safety, wellbeing and positive life outcomes for children and young people in the child protection and out-of-home care system. It also aims to improve support for those who care for children, by providing them with better guidance and training.
- Their Futures Matter takes a whole-of-government approach to ensure that effort and investment is focused on improving long-term outcomes for children and families at the earliest opportunity. This includes moving towards supporting children in out-of-home care based on their individual needs.
- The NSW Therapeutic Care Framework guides workers and carers in providing the best possible individualised therapeutic care to vulnerable children. The framework underpins a new system of Intensive Therapeutic Care, which focuses on young people's recovery from trauma. The new system will enable clear pathways to permanency so that young people spend less time in out-of-home care.

Redress for institutional child sexual abuse survivors

NSW was one of the first two states to opt into the National Redress Scheme and the first state to pass legislation referring powers to the Australian Government to establish the National Redress Scheme. The NSW Government believes a single national scheme is the best way to ensure consistent, accessible justice for survivors regardless of where the abuse occurred.

The National Redress Scheme will acknowledge the hurt and harm suffered, and ensure that institutions take responsibility for the abuse that occurred on their watch.

Redress is an important part of recognising the lifelong impact of child abuse. The process is about healing and moving forward while accepting the system failed every single person who suffered sexual abuse in an institution that was meant to protect them.

Support and treatment for people who have experienced sexual abuse

It is important that survivors of abuse have access to additional support beyond the National Redress Scheme.

The NSW Government delivers and funds support and treatment for children and adults who have experienced sexual abuse. A range of work is also underway to improve support and treatment responses, including:

- identifying opportunities to improve NSW Health violence, abuse and neglect service delivery and community-based support services
- continuing a dialogue with Aboriginal people and communities to deepen understanding on how agencies can operate, engage and deliver services in a way that supports healing under the NSW Government Aboriginal Affairs policy, OCHRE.

The NSW Government acknowledges that Aboriginal and Torres Strait Islander healing approaches provide an important foundation for working with Aboriginal people and communities to build trust and respect. In addition, Aboriginal and Torres Strait Islander people who have experienced sexual abuse should be able to access culturally safe support and treatment services.

The Australian Government also has a role in funding support and treatment, including Aboriginal healing approaches and support services for people with disability. We are working with the Australian Government to support this as an opportunity to improve its own services.

The NSW Government will also expand therapeutic services for children and young people who display problematic or harmful sexual behaviour, by opening an additional New Street service. New Street is a leading therapeutic service model for children with harmful sexual behaviours.

Tough new child sex abuse laws in NSW

The NSW Government was the first jurisdiction to respond to the Royal Commission's *Criminal justice report*. The NSW Government is introducing:

- a maximum life sentence for the offence of persistent child sexual abuse, which has also been strengthened
- new offences for failure to report and failure to protect against child abuse
- a new offence of grooming an adult to access a child, and a strengthened grooming offence to include providing a child with gifts or money
- a new rule that courts sentencing a person for child sexual abuse (including in historical matters) must take into account modern sentencing standards and our current understanding of the lifelong impacts and trauma of abuse
- procedural changes to remove an old limitation period that was preventing some survivors from accessing justice today.

We are also making changes to our criminal justice system so the law works better to deter and punish perpetrators of child sexual abuse and helps survivors find justice.

Better access to justice for child abuse survivors in NSW

The NSW Government will introduce legislation to make it easier for survivors to sue institutions responsible for child abuse by enacting:

- a retrospective proper defendant law, so that survivors can access a proper defendant with sufficient assets to satisfy a child abuse claim. This is to overcome the previous obstacle for survivors where many churches and the trusts that hold their assets did not have 'legal personality' and could not be sued
- two new forms of institutional liability for child abuse, to codify and extend vicarious liability of institutions for child abuse and to impose a new statutory duty on institutions to prevent child abuse.

The NSW Government has already responded to a number of recommendations in the Royal Commission's *Redress and civil litigation report*. The NSW Government has introduced:

- guiding principles for civil child abuse claims made against NSW Government agencies, to make litigation a less traumatic experience for victims and ensure a compassionate and consistent approach. In June 2016, the government issued a Premier's Memorandum on the Model Litigant Policy for Civil Litigation, which had the effect of incorporating the Guiding Principles into the Model Litigant Policy
- amendments to the *Limitation Act 1969* to remove limitation periods in civil claims so that survivors of child abuse can claim for damages, regardless of the date of the alleged abuse.

Every child should be heard and feel safe

Every child deserves to be heard, listened to and believed. Every child deserves to go to school, a sports club or a community group and feel safe.

There is a lot government can do to make organisations safer for children, but it is a shared responsibility.

Organisations need to be accountable for the environments, people and systems that support children, to enable children to feel safe as they learn and play. Organisations of all sizes need to give children and the community confidence that if they raise concerns, they will be taken seriously.

Parents play an important role in choosing the activities, places and people involved in their kids' lives. To do this, parents need the right information to make those choices and to ask questions if something doesn't seem right.

We have already made significant progress in NSW, but there is more work to do. The NSW Government will use this opportunity to provide a better future for generations to come.

NSW GOVERNMENT RESPONSE

Final report
NSW Government response

The *Final report* was released in December 2017.

It includes 189 recommendations.

The recommendations cover:

- understanding child sexual abuse in institutional contexts
- child safe institutions
- support and treatment
- beyond the Royal Commission.

02

#	Royal Commission recommendation	NSW Government response	Comment
Volume 2, Nature and cause			
Measuring extent in the future			
2.1	The Australian Government should conduct and publish a nationally representative prevalence study on a regular basis to establish the extent of child maltreatment in institutional and non-institutional contexts in Australia.	**Accepted in principle. This is a matter for the Australian Government**	NSW welcomes the Australian Government conducting a nationally representative prevalence study of this nature.
Volume 6, Making institutions child safe			
Creating child safe communities through prevention			
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).	**Accepted. This is a matter for the Australian Government (National priority)**	The NSW Government agrees to prioritise collaboration with other jurisdictions to progress a new National Framework for Child Safety. The new framework will focus on prevention, education, evaluation and cultural change. A national strategy will reinforce the commitment of the Australian Government to prioritising prevention and ensuring that the experiences of victims and survivors are honoured. A national mechanism to support the oversight of a national strategy to prevent child sexual abuse will be important for a coordinated approach to developing child safe organisations. Consideration should be given to using the existing arrangements under the *National Framework for Protecting Australia's Children 2009–2020* to progress a national strategy to prevent child sexual abuse.
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	**Accepted. This is a matter for the Australian Government**	The NSW Government welcomes the opportunity to work with the Australian Government and other jurisdictions on the development of the initiatives. The NSW Government has a range of initiatives to prevent abuse and raise awareness: • Education about sexual abuse, assault, respectful relationships and protective behaviours is delivered through the school curriculum, and support materials and resources are available to assist teachers in this area. • The NSW Government awarded $4 million over four years to YWCA NSW to deliver programs that strengthen existing child protection education measures in schools for students from Kindergarten to Year 10. • The NSW Office of the Children's Guardian has developed the SAFE book series on protective behaviour messages for children aged 2 to 6 years. The books are designed for services providing early childhood education and are accompanied by SAFE series training for workers to assist them to implement the protective behaviours program. • The YWCA Y-PEP Child Protection Education Program is available to both government and non-government schools around NSW. Child protection education content delivered by YWCA NSW directly aligns with NSW syllabus requirements and complements work already undertaken in classrooms. An external evaluation of the program is currently underway. • The Department of Education is developing communication and awareness information for NSW school communities to address high risk-taking behaviour. The focus is on risks young people face, behaviour indicators to be aware of, and support services available internal and external to the department. This will include information on child sexual abuse. This includes information for students primarily planned for transition years and all secondary students on all high risk-taking behaviour. • The Department of Education is updating its Digital Citizenship Resource (available at www.digitalcitizenship.nsw.edu.au) to provide contemporary information for parents, curriculum-linked support materials for teachers and online safety activities for students. Phase 1 of the project will be released by 1 July 2018. • The Advocate for Children and Young People is an independent statutory office reporting to the NSW Parliament. A key function of the Advocate for Children and Young People is to undertake activities to promote the participation of children and young people in the decisions that affect them. This function is carried out through a range of activities to support the participation of children and young people in decision-making.

#	Royal Commission recommendation	NSW Government response	Comment
	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 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 iii. a child they know may be displaying harmful sexual behaviours.		NSW would welcome the opportunity to engage with the eSafety Commissioner.
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 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 ii. guide the development and refinement of interventions, including the piloting and testing of initiatives before they are implemented.	**Accepted. This is a matter for the Australian Government**	The initiatives should be linked to existing NSW initiatives and national strategies. This will reinforce links between child abuse and violence more generally, and the need to raise the status of women and children in the Australian community. The Department of Education represents the public, catholic and independent sectors on the Australian Safe and Supportive School Communities Working Group of the Council of Australian Government Education Council. The group provides a national forum for states and territories to work together to support schools to implement workable solutions to bullying, harassment and violence. Actions to achieve this include creating the 'Bullying. No Way!' website (available at www.bullyingnoway.gov.au) and developing and promoting quality resources to support schools to counter bullying and violence. This group also supports the Education Council's work in the areas of student wellbeing and parental engagement in learning. The NSW Anti-bullying Strategy includes many of the child safe principles. It also includes: • a website that brings together evidence-based resources and information for schools, parents and carers, and students • a range of professional development initiatives including professional learning to build the capacity of teachers and other school staff to prevent and respond to bullying behaviours • an expansion of the Youth Aware of Mental Health Program – an evidence-based wellbeing, mental health and suicide prevention program for young people aged 14 to 16. The Advocate for Children and Young People is responsible for the whole-of-government Strategic Plan for Children and Young People. The advocate's functions include promoting children and young people's participation in activities and decision-making about issues that affect their lives. The strategic plan includes a commitment to embedding the participation of children and young people in NSW.
6.4	All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.	**Accepted**	Australia ratified the Convention on the Rights of the Child in 1990. The NSW Government is committed to upholding the rights of the child. All institutions which deliver services to children should uphold children's rights and implement the child safe standards. The Office of the Children's Guardian (OCG) was established under the *Children and Young Persons (Care and Protection) Act 1998* to promote the interests and rights of children and young people living in out-of-home care. The functions of the Children's Guardian include promoting the best interests of all children and young persons in out-of-home care; and ensuring that the rights of all children and young persons in out-of-home care are safeguarded and promoted. In 2013, legislative changes expanded the role of the OCG to be an independent government agency that works to protect children by promoting and regulating quality, child safe organisations and services. Child safe principles are currently implemented in NSW by the OCG through: • accreditation and monitoring of statutory out-of-home care and adoption service providers • regulation of children's employment in the entertainment industry • the OCG's Child Safe Organisations program, which is aligned with child-related work sectors relevant to the scope of the Working with Children Check scheme.

#	Royal Commission recommendation	NSW Government response	Comment
			The Advocate for Children and Young People (ACYP) is an independent statutory office reporting to the NSW Parliament. The ACYP is developing resources for front-line workers about the United Nations Convention on the Rights of the Child, and working with the Children's Guardian on Child Safe Standards. This includes training materials in child rights and child rights programming, and participation resources to assist government and non-government organisations to conduct meaningful participation with children and young people within their own organisations The following principles govern the work of the NSW ACYP: • The safety, welfare and wellbeing of children and young people are the paramount considerations. • The views of children and young people are to be given serious consideration and taken into account. • A cooperative relationship between children and young people, and their families and communities is important for the safety, welfare and wellbeing of children and young people. The NSW Government accepts the Royal Commission's Child Safe Standards at 6.5. The Child Safe Standards are consistent with the approach to child safe organisations operating in NSW.
6.5	The Child Safe Standards are: 1. Child safety is embedded in institutional leadership, governance and culture 2. Children participate in decisions affecting them and are taken seriously 3. Families and communities are informed and involved 4. Equity is upheld and diverse needs are taken into account 5. People working with children are suitable and supported 6. Processes to respond to complaints of child sexual abuse are child focused 7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training 8. Physical and online environments minimise the opportunity for abuse to occur 9. Implementation of the Child Safe Standards is continuously reviewed and improved 10. Policies and procedures document how the institution is child safe.	**Accepted** **(National priority)**	The NSW Government accepts the Royal Commission's Child Safe Standards. Jurisdictions have agreed to continue to work together to provide leadership on Child Safe Standards. NSW has an established program that requires organisations providing out-of-home care and domestic adoption services to be accredited against the NSW Child Safe Standards for Permanent Care. These standards are aligned with the Royal Commission's Child Safe Standards and regulated by the Children's Guardian. The Child Safe Standards are consistent with the approach to child safe organisations operating in NSW. The Office of the Children's Guardian (OCG) works with organisations across NSW to encourage the adoption of child-safe practices and help organisations to develop their capacity to be safe for children. The OCG delivers face-to-face and online training across NSW, and produces relevant resources. Through its work, it assists organisations to develop effective and practical child-safe policies. The Child Safe Organisations program provides free, high-quality training and resources for organisations to help them make sure that the people they engage to work or volunteer are safe and suitable to work with children and young people. The child-safe training includes: • managing risk and preventing unsafe situations • creating a child-centred organisational culture • staff recruitment and professional development • managing complaints and allegations • understanding the Working with Children Check • encouraging children to speak up if they feel unsafe, worried or scared. In 2016–17 the Child Safe Organisations team conducted 167 training sessions for 4564 people, representing 1387 organisations. To improve access to child safe training, a Child Safe eLearning package was developed and released in April 2017. Response to the eLearning was significant, with 268 participants completing all eight modules by the end of the financial year – only 10 weeks after the release of the eLearning package. The Child Safe Organisations training resources can be found at: www.kidsguardian.nsw.gov.au/child-safe-organisations.
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. 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.	**Accepted** **(National priority)**	

#	Royal Commission recommendation	NSW Government response	Comment
	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. 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 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. 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. 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. 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. 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. 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**		

#	Royal Commission recommendation	NSW Government response	Comment
	a. Risks in the online and physical environments are identified and mitigated without compromising a child's right to privacy and healthy development. 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. 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. e. Staff understand and implement the policies and procedures.		
Improving child safe approaches			
Council of Australian Governments			
6.7	The national Child Safe Standards developed by the Royal Commission and listed at Recommendation 6.5 should be adopted as part of the new National Statement of Principles for Child Safe Organisations described by the Community Services Ministers' Meeting in November 2016. The National Statement of Principles for Child Safe Organisations should be endorsed by the Council of Australian Governments.	**Accepted (National priority)**	The NSW Government accepts the Royal Commission's Child Safe Standards. All jurisdictions will be asked to endorse the National Statement of Principles for Child Safe Organisations, which incorporates the Royal Commission's Child Safe Standards. The NSW Government supports these aspirational principles as the architecture for the National Framework for Child Safety. The NSW Government has worked with the Australian Government and other states and territories on the development of the National Statement of Principles for Child Safe Organisations. The Child Safe Standards developed by the Royal Commission and listed at Recommendation 6.5 (*Final report*) should be adopted as part of the new National Statement of Principles for Child Safe Organisations described by the Community Services Ministers' Meeting in November 2016. The National Statement of Principles for Child Safe Organisations should be endorsed by the Council of Australian Governments.
State and territory governments			
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.	**Accepted in principle**	The Child Safe Standards are consistent with the approach to child safe organisations currently operating in NSW. NSW has amended legislation to create penalties for employers in child-related sectors for non-verification of Working with Children Checks. Employers who fail to verify could be fined, and will be subject to compliance activity including an expectation to participate in child safe education and training. All organisations subject to the requirements of the *Child Protection (Working with Children) Act 2012* will be encouraged to adopt child safe standards and practices. The Children's Guardian's Child Safe Organisations program will continue to build the capacity of organisations in NSW to be safe for children. NSW will undertake further work and consultation to consider the best way to ensure child-related organisations meet the Child Safe Standards identified by the Royal Commission.

#	Royal Commission recommendation	NSW Government response	Comment
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 l. transport services for children, including school crossing services.	**Accepted in principle**	All organisations subject to the requirements of the *Child Protection (Working with Children) Act 2012* will be encouraged to adopt child safe standards and practices. The Children's Guardian's Child Safe Organisations program will continue to build the capacity of organisations in NSW to be safe for children. NSW will undertake further work and consultation to consider how best to comply with this 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.	**Accepted in principle**	The Royal Commission has recognised the strengths of oversight in NSW including in: • out-of-home care • NSW Working with Children Check (WWCC) • NSW's comprehensive Child Safe Organisations program. In NSW, the Child Safe Organisations program has been an integral part of the response to protecting children since 2003. It is a function of the Children's Guardian in building public awareness and capacity in regard to child safety and wellbeing. Through this function, and the WWCC, the Office of the Children's Guardian (OCG) has established significant knowledge and relationships with the child-related sectors. A particular focus has been on sector-based education and training, and the delivery of a risk-based approach for each sector. The OCG is an experienced regulator of child-related services, and the mandatory accreditation scheme in relation to out-of-home care providers is well-established in NSW. NSW is committed to implementing Child Safe Standards with independent oversight by the OCG. The Children's Guardian will consult with child-related organisations, including sporting clubs, community groups and schools, to identify the best way to make organisations child safe in NSW. Creating organisational cultures that place the safety and wellbeing of children at the centre of all that they do is vital to creating child safe organisations and minimising the risk of abuse. An update on progress will be provided in December 2018.
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 e. coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards.	**Accepted in principle**	The Office of the Children's Guardian (OCG) is an experienced regulator of child-related services. The functions of the Children's Guardian include encouraging organisations to be safe for children. The NSW Child Safe Organisations program has been operating since 2003 and is delivered by the OCG. The Child Safe Organisations training program includes a comprehensive suite of face-to-face workshops, eLearning modules, a resilience-building program for young children and a disability-specific child safe training program. The program has been well-utilised by child-related organisations. NSW will undertake further work and consultation to consider how best to comply with this recommendation, based on the preferred approach to implementing child safe standards. An update on progress will be provided in December 2018.

#	Royal Commission recommendation	NSW Government response	Comment
Local government			
6.12	With support from governments at the national, state and territory levels, local governments should designate child safety officer positions from existing staff profiles to carry out the following functions: a. developing child safe messages in local government venues, grounds and facilities b. assisting local institutions to access online child safe resources c. providing child safety information and support to local institutions on a needs basis d. supporting local institutions to work collaboratively with key services to ensure child safe approaches are culturally safe, disability aware and appropriate for children from diverse backgrounds.	**Accepted in principle**	Local councils provide environments and facilities for local groups that provide services for children. Increasing engagement with local government in its role as service provider and steward of community facilities will form part of the NSW response to making institutions child safe. The Office of the Children's Guardian (OCG) is well placed to engage with local child safety officers as part of the enhanced Child Safe Organisations program. The Office of Local Government will support the OCG in undertaking this work. It is noted that the needs of and capacity for individual councils to implement this recommendation will vary across NSW.
Australian Government			
6.13	The Australian Government should require all institutions that engage in child-related work for the Australian Government, including Commonwealth agencies, to meet the Child Safe Standards identified by the Royal Commission at Recommendation 6.5.	**Accepted. This is a matter for the Australian Government**	The NSW Government welcomes national leadership on the implementation of the Royal Commission's Child Safe Standards. Jurisdictions have agreed to continue to work together to ensure national consistency on Child Safe Standards.
6.14	The Australian Government should be responsible for the following functions: a. evaluate, publicly report on, and drive the continuous improvement of the implementation of the Child Safe Standards and their outcomes b. coordinate the direct input of children and young people into the evaluation and continuous improvement of the Child Safe Standards c. coordinate national capacity building and support initiatives and opportunities for collaboration between jurisdictions and institutions d. develop and promote national strategies to raise awareness and drive cultural change in institutions and the community to support child safety.	**Accepted. This is a matter for the Australian Government**	The NSW Government welcomes national leadership on the implementation of the Royal Commission's Child Safe Standards. National leadership will support consistency and state approaches.
National Framework for Child Safety			
6.15	The Australian Government should develop a new National Framework for Child Safety in collaboration with state and territory governments. The Framework should: a. commit governments to improving the safety of all children by implementing long-term child safety initiatives, with appropriate resources, and holding them to account b. be endorsed by the Council of Australian Governments and overseen by a joint ministerial body c. commence after the expiration of the current National Framework for Protecting Australia's Children, no later than 2020 d. cover broader child safety issues, as well as specific initiatives to better prevent and respond to institutional child sexual abuse including initiatives recommended by the Royal Commission e. include links to other related policy frameworks.	**Accepted. This is a matter for the Australian Government (National priority)**	The NSW Government agrees to prioritise collaboration with other jurisdictions to progress a new National Framework on Child Safety. The new framework will focus on prevention, education, evaluation and cultural change. There are existing national frameworks that will have some intersection with a new National Framework for Child Safety. It is important to identify these frameworks and potential overlaps. For example, the National Safe Schools Framework also addresses cyber safety and online safety. It is currently in the final stages of review.
National Office for Child Safety			
6.16	The Australian Government should establish a National Office for Child Safety in the Department of the Prime Minister and Cabinet, to provide a response to the implementation of the Child Safe Standards nationally, and to develop and lead the proposed National Framework for Child Safety. The Australian Government should transition the National Office for Child Safety into an Australian Government statutory body within 18	**Accepted**	The NSW Government welcomes the involvement of the Australian Government in improving prevention responses and capacity building initiatives for Child Safe Standards. Implementing Child Safe Standards is a shared responsibility for governments. The NSW Government has supported in principle the Royal Commission recommendations that state and territory

#	Royal Commission recommendation	NSW Government response	Comment
	months of this Royal Commission's Final Report being tabled in the Australian Parliament.		governments lead the implementation of Child Safe Standards in jurisdictions (recommendations 6.8–6.11 – *Final report*). The recommendation to establish a National Office for Child Safety is welcomed, and NSW will work with the Australian Government, and state and territory governments to support this initiative. Any national framework should orient child safety within a broader frame of child wellbeing, and the evidence-based factors that contribute to the wellbeing of children overall.
6.17	The National Office for Child Safety should report to Parliament and have the following functions: a. develop and lead the coordination of the proposed National Framework for Child Safety, including national coordination of the Child Safe Standards b. collaborate with state and territory governments to lead capacity building and continuous improvement of child safe initiatives through resource development, best practice material and evaluation c. promote the participation and empowerment of children and young people in the National Framework and child safe initiatives d. perform the Australian Government's Child Safe Standards functions as set out at Recommendation 6.15 e. lead the community prevention initiatives as set out in Recommendation 6.2.	**Accepted**	
6.18	The Australian Government should create a ministerial portfolio with responsibility for children's policy issues, including the National Framework for Child Safety.	**Accepted. This is a matter for the Australian Government**	The NSW Government supports national leadership on children's policy issues, including child safety.
Preventing and responding to online child sexual abuse in institutions			
6.19	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. The curriculum should: a. be appropriately staged from Foundation year to Year 12 and be linked with related content areas to build behavioural skills as well as technical knowledge to support a positive and safe online culture b. involve children and young people in the design, delivery and piloting of new online safety education, and update content annually to reflect evolving technologies, online behaviours and evidence of international best practice approaches c. be tailored and delivered in ways that allow all Australian children and young people to reach, access and engage with online safety education, including vulnerable groups that may not access or engage with the school system.	**Accepted in principle**	The Council of Australian Governments (COAG) Education Council has created a special-purpose working party to develop shared responses to education-related recommendations arising from the Royal Commission's *Final report*, to provide advice to the Education Council and COAG over the next 12 months. The NSW Government is committed to online safety education in schools. Some key initiatives in NSW are: • The NSW Personal Development, Health and Physical Education syllabuses take a staged approach to online safety issues. • Schools are responsible for developing and delivering teaching and learning activities in accordance with the NSW Education Standards Authority syllabuses. The Australian Curriculum: Health and Physical Education already has content relating to online safety.
6.20	Building on its current work, the Office of the eSafety Commissioner should oversee the delivery of national online safety education aimed at parents and other community members to better support children's safety online. These communications should aim to: a. keep the community up to date on emerging risks and opportunities for safeguarding children online b. build community understanding of responsibilities, legalities and the ethics of children's interactions online c. encourage proactive responses from the community to make it 'everybody's business' to intervene early, provide support or report issues when concerns for children's safety online are raised d. increase public awareness of how to access advice and support when online incidents occur.	**Accepted. This is a matter for the Australian Government**	The NSW Government welcomes the opportunity to engage with the Office of the eSafety Commissioner on the delivery of national online safety education.

#	Royal Commission recommendation	NSW Government response	Comment
6.21	Pre-service education and in-service staff training should be provided to support child-related institutions in creating safe online environments. The Office of the eSafety Commissioner should advise on and contribute to program design and content. These programs should be aimed at: a. tertiary students studying university, technical and further education, and vocational education and training courses, before entering child-related occupations; and could be provided as a component of a broader program of child sexual abuse prevention education (see Recommendation 6.2) b. staff and volunteers in schools and other child-related organisations, and could build on the existing web-based learning programs of the Office of the eSafety Commissioner.	**Accepted. This is a matter for the Australian Government**	The NSW Government welcomes the opportunity to engage with the Office of the eSafety Commissioner to implement this recommendation. Existing programs in NSW could support its implementation – for example, the initial teacher education accreditation program.
6.22	In partnership with the proposed National Office of Child Safety (see Recommendations 6.16 and 6.17), the Office of the eSafety Commissioner should oversee the development of an online safety framework and resources to support all schools in creating child safe online environments. This work should build on existing school-based e-safety frameworks and guidelines, drawing on Australian and international models. The school-based online safety framework and resources should be designed to: a. support schools in developing, implementing and reviewing their online codes of conduct, policies and procedures to help create an online culture that is safe for children b. guide schools in their response to specific online incidents, in coordination with other agencies. This should include guidance in complaint handling, understanding reporting requirements, supporting victims to minimise further harm, and preserving digital evidence to support criminal justice processes.	**Accepted. This is a matter for the Australian Government**	The NSW Government is committed to creating child safe online environments. The NSW Government will work with the Australian Government and non-government school sectors to implement this recommendation. Work is well progressed in this area for the NSW public education system. For example, the $6.1 million Anti-Bullying Strategy provides resources to schools, parents, carers and students. It also includes a range of professional development initiatives for both government and non-government schools.
6.23	State and territory education departments should consider introducing centralised mechanisms to support government and non-government schools when online incidents occur. This should result in appropriate levels of escalation and effective engagement with all relevant entities, such as the Office of the eSafety Commissioner, technical service providers and law enforcement. Consideration should be given to: a. adopting the promising model of the Queensland Department of Education and Training's Cyber Safety and Reputation Management Unit, which provides advice and a centralised coordination function for schools, working in partnership with relevant entities to remove offensive online content and address other issues b. strengthening or re-establishing multi-stakeholder forums and case-management for effective joint responses involving all relevant agencies, such as police, education, health and child protection.	**Accepted in principle**	The NSW Government is committed to supporting schools to respond to online safety issues. The NSW Government will assess how all schools can be most effectively supported to respond to online incidents. This will occur in consultation with the non-government school sectors in NSW.
6.24	In consultation with the eSafety Commissioner, police commissioners from states and territories and the Australian Federal Police should continue to ensure national capability for coordinated, best practice responses by law enforcement agencies to online child sexual abuse. This could include through: a. establishing regular meetings of the heads of cybersafety units in all Australian police departments to ensure a consistent capacity to respond to emerging incidents and share best practice approaches, tools and resources b. convening regular forums and conferences to bring together law enforcement, government, the technology industry, the community sector and other relevant stakeholders to discuss emerging issues,	**Accepted**	The NSW Police Force's Child Exploitation Internet Unit (CEIU) within the Child Abuse and Sex Crimes Squad has and continues to work closely with all jurisdictions, including the Australian Federal Police (AFP) and the eSafety Commissioner's office, to share information, promote best practice and collaborate on cross-jurisdictional investigations. The NSW Police Force actively promotes the training of officers and participation at relevant training opportunities. The premier training event occurs annually in Queensland, hosted by Task Force Argos, where worldwide contemporary issues involving online child abuse are discussed and investigations are presented to an audience of police, public prosecutors, psychologists and members of the judiciary. The current cyber-safety programs delivered by the NSW Police Force are supported by the 'Think U Know' Program, led by the AFP. The NSW Police Force School Liaison Police are trained in the cyber-safety AFP awareness packages and these are promoted across NSW.

#	Royal Commission recommendation	NSW Government response	Comment
	set agendas and identify solutions to online child sexual abuse and exploitation c. building capability across police departments, through in-service training for: i. frontline police officers to respond to public complaints relating to issues of online child sexual abuse or harmful sexual behaviours ii. police officers who liaise with young people in school and community settings.		The NSW Police Force takes cyberbullying, threats and harassment seriously. While the techniques used by modern cyberbullies, stalkers and trolls to contact and harass victims may have evolved, NSW Police continue to be trained in attending to the victims' welfare and preserving all evidence available. Police have cybercrime toolkits available to assist them to investigate these types of crimes (which include the procedure they should follow in these types of situations, the relevant offences, and victim support). There is also a dedicated Cybercrime Squad, where investigations can be escalated to when required. On 6 February 2018, the Youth and Crime Prevention Command, and Police Citizens Youth Clubs NSW (PCYC) Ltd worked with the eSafety Commissioner to promote Safer Internet Day across NSW. On this day, NSW Police Force officers and PCYC staff delivered 64 cyber safety presentations in PCYCs in NSW.
Volume 7, Improving institutional responding and reporting			
Reporting institutional child sexual abuse			
7.1	State and territory governments that do not have a mandatory reporter guide should introduce one and require its use by mandatory reporters.	**Accepted in principle**	The NSW Government already has a Mandatory Reporter Guide, which is available online for mandatory and non-mandatory reporters to use. Mandatory reporters are provided with training and resources in relation to the use of the Mandatory Reporter Guide.
7.2	Institutions and state and territory governments should provide mandatory reporters with access to experts who can provide timely advice on child sexual abuse reporting obligations.	**Accepted in principle**	In addition to the Mandatory Reporter Guide, which provides mandatory reporters with advice on their reporting obligations, the NSW Government already provides some mandatory reporters with access to experts, through Child Wellbeing Units. Child Wellbeing Units provide reporters with advice and an alternative reporting pathway. There are Child Wellbeing Units within NSW Health, the Department of Education and NSW Police. Further to Child Wellbeing Units, the Child Protection Helpline provides all mandatory reporters with feedback letters advising them of the Helpline's initial assessment outcome. The 'See, Understand and Respond to Child Sexual Abuse – a practical kit' (the kit) was developed by the Department of Family and Community Services (FACS). The kit provides practitioners with tools and resources to use with children where sexual abuse is suspected. It also contains conversation ideas to support caseworkers to talk to children of different ages, parents, and the community about child sexual abuse, as well as specific resources for children including story books and conversation prompts. The kit has been rolled out to all caseworkers with accompanying mandatory training, and was also provided to the non-government sector along with training material to enable capacity building. The kit is publicly available through the FACS website.
7.3	State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction: a. out-of-home care workers (excluding foster and kinship/relative carers) b. youth justice workers c. early childhood workers d. registered psychologists and school counsellors e. people in religious ministry.	**Accepted in principle**	The NSW Government supports national consistency in mandatory reporter groups. The mandatory reporter scheme in NSW already includes most of these groups, with the exception of people in religious ministry and registered psychologists. Registered psychologists who provide services to children are already mandatory reporters, but registered psychologists who do not provide services to children are not. NSW will consider including all registered psychologists and people in religious ministry in the mandatory reporter scheme.
7.4	Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.	**Subject to further consideration**	There is no exemption in the Children and Young Persons (Care and Protection) Act 1998 for persons in religious ministry from reporting knowledge or suspicions formed, in whole or in part, on the information disclosed or in connection with a religious confession. Some persons in religious ministry are already captured by the NSW mandatory reporting scheme if they work with children in another capacity. For example, a priest who is also a teacher at a school would be mandatorily required to make a report if they had reasonable grounds to suspect that a child is at risk of significant harm and those grounds arose during the course of their work as a teacher.

#	Royal Commission recommendation	NSW Government response	Comment
			This is a complex issue that the NSW Government will consider further along with its response to recommendation 35 of the Criminal Justice report which relates to the new failure to report offence applying to members of the clergy.
7.5	The Australian Government and state and territory governments should ensure that legislation provides comprehensive protection for individuals who make reports in good faith about child sexual abuse in institutional contexts. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report, including in relation to: a. mandatory and voluntary reports to child protection authorities under child protection legislation b. notifications concerning child abuse under the Health Practitioner Regulation National Law.	**Accepted**	NSW already provides protections to people who make child protection reports. NSW will strengthen these protections to include specific protections for reporters against all civil liability, criminal liability, reprisals or other detrimental action. NSW will amend the legislation to ensure that the protections recommended by the Royal Commission are in the best interests of children and do not have any unintended consequences; for example, protections will not be provided to a person who is reporting their own criminal actions.
7.6	State and territory governments should amend child protection legislation to provide adequate protection for individuals who make complaints or reports in good faith to any institution engaging in child-related work about: a. child sexual abuse within that institution or b. the response of that institution to child sexual abuse. Such individuals should be protected from civil and criminal liability and from reprisals or other detrimental action as a result of making a complaint or report.	**Accepted**	NSW already provides protections for people who make reports to 'a person who has the power or responsibility to protect a child or young person, or a class of children or young persons'. NSW will broaden this protection to cover reports made to 'any institution engaging in child-related work'. NSW will extend these provisions to explicitly provide protections for reporters from all civil liability, criminal liability, reprisals or other detrimental action. This would encourage reports to be made to institutions, which may avoid over-reporting to the child welfare agency. NSW will amend the legislation to ensure that the protections recommended by the Royal Commission are in the best interests of children and do not have any unintended consequences; for example, protections will not be provided to a person who is reporting their own criminal actions.
Improving institutional responses to complaints			
7.7	Consistent with Child Safe Standard 6: Processes to respond to complaints of child sexual abuse are child focused, institutions should have a clear, accessible and child-focused complaint handling policy and procedure that sets out how the institution should respond to complaints of child sexual abuse. The complaint handling policy and procedure should cover: a. making a complaint b. responding to a complaint c. investigating a complaint d. providing support and assistance e. achieving systemic improvements following a complaint.	**Accepted in principle**	NSW's approach to child safe organisations is consistent with the recommendation. NSW out-of-home care providers are already required to have child-focused complaint handling processes in place, as a requirement of accreditation. NSW will undertake further work and consultation to consider the best way to ensure child-related organisations meet the Child Safe Standards identified by the Royal Commission.
7.8	Consistent with Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture, institutions should have a clear code of conduct that: a. outlines behaviours towards children that the institution considers unacceptable, including concerning conduct, misconduct or criminal conduct b. includes a specific requirement to report any concerns, breaches or suspected breaches of the code to a person responsible for handling complaints in the institution or to an external authority when required by law and/or the institution's complaint handling policy c. outlines the protections available to individuals who make complaints or reports in good faith to any institution engaging in child-related work (see Recommendation 7.6 on reporter protections).	**Accepted in principle**	

#	Royal Commission recommendation	NSW Government response	Comment
Oversight of institutional complaint handling			
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.	**Accepted**	NSW is the national leader in its approach to the reportable conduct scheme. In April 2016, the Council of Australian Governments agreed in principle to harmonise reportable conduct schemes. NSW agrees with this and will work closely with other states and territories to implement and align their schemes.
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 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 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.	**Accepted in principle**	NSW already complies with this recommendation in practice and will consider whether any legislative amendments are necessary.
7.11	State and territory governments should periodically review the operation of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse.	**Accepted in principle**	The NSW Government engages regularly with the NSW Ombudsman to ensure the scheme in NSW is operating efficiently to protect children. The NSW Government agrees that the scheme should be reviewed periodically.
7.12	Reportable conduct schemes should cover institutions that: • exercise a high degree of responsibility for children • engage in activities that involve a heightened risk of child sexual abuse, due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children the institution engages with. At a minimum, these should include institutions that provide: a. accommodation and residential services for children, including: i. housing or homelessness services that provide overnight beds for children and young people ii. providers of overnight camps 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 services, including: i. approved education and care services under the Education and Care Services National Law ii. approved occasional care services	**Accepted in principle**	The NSW reportable conduct scheme already covers most of these providers. NSW will further consider expanding the reportable conduct scheme to explicitly include housing or homelessness services that provide overnight beds for children and young people; and activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children. The Royal Commission was clear within its report that it did not want to impose a disproportionate regulatory burden on clubs and associations that provide activities and services with a significant membership of, or involvement by, children. The NSW Government will work with the NSW Ombudsman's Office to consider options for expanding the reportable conduct scheme to include providers of overnight camps and to ensure that this expansion keeps children safe but does not impose a disproportionate regulatory burden on affected organisations. The NSW Government accepts the recommendation to include registered National Disability Insurance Scheme (NDIS) providers within a scheme that obliges heads of institutions to notify an oversight body of a reportable allegation, conduct or conviction involving any of the institution's employees. The National Disability Insurance Scheme (NDIS) Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 will commence on 1 July 2018. It sets up a reportable incidents scheme that registered NDIS providers in all states and territories must comply with. The NDIS Quality and

#	Royal Commission recommendation	NSW Government response	Comment
	d. child protection services and out-of-home care, including: i. child protection authorities and agencies ii. providers of foster care, kinship or relative care iii. providers of family group homes iv. providers of residential care e. disability services and supports for children with disability, including: i. disability service providers under state and territory legislation ii. registered providers of supports under the National Disability Insurance Scheme f. education services for children, including: i. government and non-government schools ii. TAFEs and other institutions registered to provide senior secondary education or training, courses for overseas students or student exchange programs g. health services for children, including: i. government health departments and agencies, and statutory corporations ii. public and private hospitals iii. providers of mental health and drug or alcohol treatment services that have inpatient beds for children and young people h. justice and detention services for children, including: i. youth detention centres ii. immigration detention facilities.		Safeguards Commissioner will oversee the scheme and will be able to exercise all the powers and functions recommended by the Royal Commission. The elements of the NDIS reportable incidents scheme are largely consistent with the reportable conduct scheme recommended by the Royal Commission. NSW will work with the Australian Government to further consider an approach to including registered providers of NDIS supports under the NDIS reportable incidents scheme and/or the NSW reportable conduct scheme.
Volume 8, Record keeping and information sharing			
Records and recordkeeping			
Minimum retention periods			
8.1	To allow for delayed disclosure of abuse by victims and take account of limitation periods for civil actions for child sexual abuse, institutions that engage in child-related work should retain, for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred.	**Accepted in principle (National priority)**	The NSW Government supports a consistent approach across all Australian jurisdictions and will prioritise collaboration with other jurisdictions, led by archives and records authorities, to develop advice about records retention. Many NSW Government agencies already keep their records for at least 45 years. There are already standards in place for records and recordkeeping for the government sector, which were issued in 2015. The NSW Government will consider ways to ensure that all relevant government retention and disposal authorities maintain records for the recommended time period. The NSW State Archives and Records website already allows the public to access information about the NSW Government's approach to records management or the conduct of certain recordkeeping practices. NSW will encourage non-government institutions to comply with this record retention approach. Jurisdictions will consider whether it is necessary to introduce additional regulatory measures to bring about greater compliance.
8.2	The National Archives of Australia and state and territory public records authorities should ensure that records disposal schedules require that records relating to child sexual abuse that has occurred or is alleged to have occurred be retained for at least 45 years.	**Accepted**	The NSW Government will ensure that all relevant government retention and disposal authorities reflect the recommended time period.
8.3	The National Archives of Australia and state and territory public records authorities should provide guidance to government and non-government institutions on identifying records which, it is reasonable to expect, may become relevant to an actual or alleged incident of child sexual abuse; and on the retention and disposal of such records.	**Accepted**	The NSW Government will work closely with the Council of Australasian Archives and Records Authorities and NSW-based regulation and accreditation bodies to ensure that appropriate guidance is provided to government and non-government institutions.

#	Royal Commission recommendation	NSW Government response	Comment
Records and recordkeeping principles			
8.4	All institutions that engage in child-related work should implement the following principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution. **Principle 1: Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.** Institutions that care for or provide services to children must keep the best interests of the child uppermost in all aspects of their conduct, including recordkeeping. It is in the best interest of children that institutions foster a culture in which the creation and management of accurate records are integral parts of the institution's operations and governance. **Principle 2: Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.** Institutions should ensure that records are created to document any identified incidents of grooming, inappropriate behaviour (including breaches of institutional codes of conduct) or child sexual abuse and all responses to such incidents. Records created by institutions should be clear, objective and thorough. They should be created at, or as close as possible to, the time the incidents occurred, and clearly show the author (whether individual or institutional) and the date created. **Principle 3: Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.** Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained in an indexed, logical and secure manner. Associated records should be collocated or cross-referenced to ensure that people using those records are aware of all relevant information. **Principle 4: Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.** Records relevant to child safety and wellbeing, including child sexual abuse, must only be destroyed in accordance with records disposal schedules or published institutional policies. Records relevant to child sexual abuse should be subject to minimum retention periods that allow for delayed disclosure of abuse by victims, and take account of limitation periods for civil actions for child sexual abuse. **Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.** Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted. Individuals should be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.	**Accepted in principle (National priority)**	Governments will prioritise collaboration with relevant agencies and organisations to develop appropriate guidance on assessing risk and developing recordkeeping principles. There is already a standard in place for the government sector which largely meets this recommendation. The standard will be updated in 2018 to ensure these principles are reflected. NSW has also made progress on providing survivors of child sexual abuse with access to their records. Since 2014, NSW has substantially reduced the processing time for care leaver applications for records through increased resource allocation. The NSW Government also introduced *Guiding Principles for Government Agencies Responding to Civil Claims for Child Abuse* that require agencies to facilitate survivors accessing their records.
Records of non-government schools			
8.5	State and territory governments should ensure that non-government schools operating in the state or territory are required to comply, at a minimum, with standards applicable to government schools in relation	**Accepted in principle**	The NSW Government will work with non-government schools to identify how recordkeeping standards currently differ between school sectors.

#	Royal Commission recommendation	NSW Government response	Comment
	to the creation, maintenance and disposal of records relevant to child safety and wellbeing, including child sexual abuse.		The NSW Government will then assess the need for a mechanism requiring that records are kept for the same period of time as in government schools.
Improving information sharing across sectors			
Elements of a national information exchange scheme			
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.	**Accepted in principle (National priority)**	The NSW Government will prioritise collaboration with other jurisdictions to promote legislative and administrative arrangements for information sharing. NSW has a robust information-sharing regime which allows prescribed bodies within NSW to share information with each other. NSW is leading other jurisdictions in relation to information sharing. Prior to the Royal Commission's recommendation, NSW was already working closely with the other states and territories to implement an interjurisdictional information-sharing scheme through the following pieces of work: • **Guiding principles to promote consistency across jurisdictions:** NSW has led work to develop a set of guiding principles to underpin information-sharing regimes across jurisdictions and promote consistent outcomes. This work has been done through the Child and Families Secretaries Forum (CAFS). The NSW Department of Family and Community Services (FACS) will review guiding principles for consistency with Recommendation 8.7 (*Final report*). • **Protocol to share assessment information:** Section 248B of the *Children and Young Persons (Care and Protection) Act 1998* allows FACS to share information about the suitability of a person to be an adoptive parent, authorised carer or guardian. A ministerial protocol to enable this sharing of information is currently being finalised. • **National standards for Working with Children Checks (WWCCs):** NSW is working with other states and territories to implement a national model for WWCCs, including a centralised WWCC database and consistent national standards to be applied by all state and territories. NSW is already compliant with the majority of national standards proposed, with only minor regulatory or legislative changes suggested, and NSW has already provided in principle support for the centralised database. • **Reviewing Exchange of Criminal History Information for People Working with Children (ECHIPWC)**, and the exchange of criminal history information: NSW is party to an Intergovernmental Agreement on the Exchange of Criminal History Information for People Working with Children, and is the Chair of the ECHIPWC Steering Committee, which comprises representatives from the Commonwealth and each state and territory. In response to the recommendations 4(b) and 17 in the Royal Commission's report on WWCC, in July 2017, the ECHIPWC Steering Committee commenced a review of the information they exchange through the ECHIPWC agreement, and reviewed definitions of the key terms used to describe different types of criminal history records across state and territory jurisdictions. A preliminary analysis indicated that states and territories are consistent in the information they share. NSW is currently working with the states and territories to finalise this work.
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	**Accepted in principle (National priority)**	The NSW Government will work with other jurisdictions to identify and remove barriers to information sharing and to develop methods to promote and enable information-sharing. Governments will seek to build on existing arrangements within jurisdictions and across jurisdictions in preparation for developing an agreed information sharing scheme. NSW's own information-sharing scheme, which is contained in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, complies with most of the provisions recommended by the Royal Commission. NSW will work with other states and territories to ensure national consistency. The NSW information sharing scheme does not currently provide the opportunity for adversely affected persons to respond to untested or unsubstantiated allegations, as recommended at (f).

#	Royal Commission recommendation	NSW Government response	Comment
	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 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.		
Supporting implementation and operation			
8.8	The Australian Government, state and territory governments and prescribed bodies should work together to ensure that the implementation of our recommended information exchange scheme is supported with education, training and guidelines. Education, training and guidelines should promote understanding of, and confidence in, appropriate information sharing to better prevent, identify and respond to child sexual abuse in institutional contexts, including by addressing: a. impediments to information sharing due to limited understanding of applicable laws b. unauthorised sharing and improper use of information.	**Accepted in principle (National priority)**	The NSW Government will continue to collaborate with other jurisdictions to provide awareness raising, education and training around information sharing obligations and requirements. Governments will work with relevant bodies and government agencies, such as the Office of the Australian Information Commissioner, children's commissioners and advocates, and relevant or prescribed bodies. The NSW Government supports using training, education or guidelines to help develop a fuller understanding of presently applicable laws, such as privacy laws, in order to facilitate a greater awareness how information can be properly shared under present regimes.
Improving information sharing in key sectors			
Sharing information about teachers and students			
8.9	The Council of Australian Governments (COAG) Education Council should consider the need for nationally consistent state and territory legislative requirements about the types of information recorded on teacher registers. Types of information that the council should consider, with respect to a person's registration and employment as a teacher, include: a. the person's former names and aliases b. the details of former and current employers c. where relating to allegations or incidents of child sexual abuse: i. current and past disciplinary actions, such as conditions on, suspension of, and cancellation of registration ii. grounds for current and past disciplinary actions iii. pending investigations iv. findings or outcomes of investigations where allegations have been substantiated v. resignation or dismissal from employment.	**Accepted in principle**	The Council of Australian Governments (COAG) Education Council has created a special-purpose working party to develop shared responses to education-related recommendations arising from the Royal Commission's *Final report*, to provide advice to the Education Council and COAG over the next 12 months. The NSW Government acknowledges the importance of schools, education authorities and regulatory authorities recording and sharing information about persons who are unsuitable to teach. This is critical to supporting the safety and wellbeing of children and young people in schools.
8.10	The COAG Education Council should consider the need for nationally consistent provisions in state and territory teacher registration laws providing that teacher registration authorities may, and/or must on request, make information on teacher registers available to: a. teacher registration authorities in other states and territories b. teachers' employers.	**Accepted in principle**	
8.11	The COAG Education Council should consider the need for nationally consistent provisions a. in state and territory teacher registration laws or b. in administrative arrangements, based on legislative authorisation for information sharing under our recommended information exchange scheme	**Accepted in principle**	

#	Royal Commission recommendation	NSW Government response	Comment
	providing that teacher registration authorities may or must notify teacher registration authorities in other states and territories and teachers' employers of information they hold or receive about the following matters where they relate to allegations or incidents of child sexual abuse: a. disciplinary actions, such as conditions or restrictions on, suspension of, and cancellation of registration, including with notification of grounds b. investigations into conduct, or into allegations or complaints c. findings or outcomes of investigations d. resignation or dismissal from employment.		
8.12	In considering improvements to teacher registers and information sharing by registration authorities, the COAG Education Council should also consider what safeguards are necessary to protect teachers' personal information.	**Accepted in principle**	The Council of Australian Governments (COAG) Education Council has created a special-purpose working party to develop shared responses to education-related recommendations arising from the Royal Commission's *Final report*, to provide advice to the Education Council and COAG over the next 12 months. The NSW Government acknowledges the critical importance of ensuring that teachers' personal information is protected, while ensuring that information which is relevant to child protection is recorded and shared with appropriate groups.
8.13	State and territory governments should ensure that policies provide for the exchange of a student's information when they move to another school, where: a. the student may pose risks to other children due to their harmful sexual behaviours or may have educational or support needs due to their experiences of child sexual abuse and b. the new school needs this information to address the safety and wellbeing of the student or of other students at the school. State and territory governments should give consideration to basing these policies on our recommended information exchange scheme (Recommendations 8.6 to 8.8).	**Accepted**	The NSW Government will work with stakeholders to build on existing systems to enhance exchange of relevant information about students within and between school systems.
8.14	State and territory governments should ensure that policies for the exchange of a student's information when they move to another school: a. provide that the principal (or other authorised information sharer) at the student's previous school is required to share information with the new school in the circumstances described in Recommendation 8.13 and b. apply to schools in government and non-government systems.	**Accepted**	
8.15	State and territory governments should ensure that policies about the exchange of a Student's information (as in Recommendations 8.13 and 8.14) provide the following safeguards, in addition to any safeguards attached to our recommended information exchange scheme: a. information provided to the new school should be proportionate to its need for that information to assist it in meeting the student's safety and wellbeing needs and those of other students at the school b. information should be exchanged between principals, or other authorised information sharers, and disseminated to other staff members on a need-to-know basis.	**Accepted**	The law in NSW complies with the recommendation. However, there is a gap in the Australian Government privacy laws for some non-government schools. The NSW Government will work to rectify this legal gap. Under NSW law, information can only be exchanged under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* where it is reasonably believed it would assist the receiving school in making any decision, assessment or plan, or to initiate or conduct any investigation, or provide any service relating to a child or young person's safety, welfare or wellbeing.
8.16	The COAG Education Council should review the Interstate Student Data Transfer Note and Protocol in the context of the implementation of our recommended information exchange scheme (Recommendations 8.6 to 8.8).	**Accepted**	The Council of Australian Governments (COAG) Education Council has created a special-purpose working party to develop shared responses to education-related recommendations arising from the Royal Commission's *Final report*, to provide advice to the Education Council and COAG over the next 12 months. Work on this recommendation will commence once the model for the information exchange scheme (recommendations 8.6 to 8.8 – *Final report*) has been developed.

#	Royal Commission recommendation	NSW Government response	Comment
Carers registers			
8.17	State and territory governments should introduce legislation to establish carers registers in their respective jurisdictions, with national consistency in relation to: a. the inclusion of the following carer types on the carers register: i. foster carers ii. relative/kinship carers iii. residential care staff b. the types of information which, at a minimum, should be recorded on the register c. the types of information which, at a minimum, must be made available to agencies or bodies with responsibility for assessing, authorising or supervising carers, or other responsibilities related to carer suitability and safety of children in out-of-home care.	**Accepted**	The Office of the Children's Guardian maintains a register for carers. It was established in 2015 and includes persons who are authorised, or who apply for authorisation, to provide statutory or supported out-of-home care in NSW. This includes foster carers, and relative and kinship carers. The Office of the Children's Guardian also has a mechanism for gathering information on residential care staff. Work is underway to include residential care workers on a register. An update on progress will be provided in December 2018.
8.18	Carers registers should be maintained by state and territory child protection agencies or bodies with regulatory or oversight responsibility for out-of-home care in that jurisdiction.	**Accepted**	NSW already complies with this recommendation. The NSW carers register is maintained by the Office of the Children's Guardian, which is responsible for accrediting out-of-home care agencies in NSW. The carers register promotes the safety, welfare and wellbeing of children and young people in out-of-home care by supporting the appropriate authorisation of carers and providing a way for agencies to share information about carers and prospective carers.
8.19	State and territory governments should consider the need for carers registers to include, at a minimum, the following information (register information) about, or related to, applicant or authorised carers, and persons residing on the same property as applicant/ authorised home-based carers (household members): a. lodgement or grant of applications for authorisation b. status of the minimum checks set out in Recommendation 12.6 as requirements for authorisation, indicating their outcomes as either satisfactory or unsatisfactory c. withdrawal or refusal of applications for authorisation in circumstances of concern (including in relation to child sexual abuse) d. cancellation or surrender of authorisation in circumstances of concern (including in relation to child sexual abuse) e. previous or current association with an out-of-home care agency, whether by application for authorisation, assessment, grant of authorisation, or supervision f. the date of reportable conduct allegations, and their status as either current, finalised with ongoing risk-related concerns, and/or requiring contact with the reportable conduct oversight body.	**Accepted**	NSW already complies with this recommendation. These requirements are outlined in Division 6 and Schedule 2 of the Children and Young Persons (Care and Protection) Regulation 2012.
8.20	State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies to: a. record register information in minimal detail b. record register information as a mandatory part of carer authorisation c. update register information about authorised carers.	**Accepted**	NSW already complies with this recommendation. These requirements are outlined in Division 6 of the Children and Young Persons (Care and Protection) Regulation 2012.
8.21	State and territory governments should consider the need for legislative and administrative arrangements to require responsible agencies: a. before they authorise or recommend authorisation of carers, to: i. undertake a check for relevant register information, and ii. seek further relevant information from another out-of-home care agency where register information indicates applicant carers, or their household members (in the case of prospective home-based carers) have a prior or current association with that other agency	**Accepted**	NSW already complies with this recommendation. These arrangements are provided for in Schedule 2 of the Children and Young Persons (Care and Protection) Regulation 2012.

#	Royal Commission recommendation	NSW Government response	Comment
	i. in the course of their assessment, authorisation, or supervision of carers, to: i. seek further relevant information from other agencies or bodies, where register information indicates they hold, or may hold, additional information relevant to carer suitability, including reportable conduct information. State and territory governments should give consideration to enabling agencies to seek further information for these purposes under our recommended information exchange scheme (Recommendations 8.6 to 8.8).		
8.22	State and territory governments should consider the need for effective mechanisms to enable agencies and bodies to obtain relevant information from registers in any state or territory holding such information. Consideration should be given to legislative and administrative arrangements, and digital platforms, which will enable: a. agencies responsible for assessing, authorising or supervising carers b. other agencies, including jurisdictional child protection agencies and regulatory and oversight bodies, with responsibilities related to the suitability of persons to be carers and the safety of children in out-of-home care to obtain relevant information from their own and other jurisdictions' registers for the purpose of exercising their responsibilities and functions.	**Accepted**	Section 248B of the *Children and Young Persons (Care and Protection) Act 1998* allows NSW to share information about the suitability of a person to be an adoptive parent, authorised carer or guardian. A ministerial protocol to enable this sharing of information is currently being finalised. NSW will work with other states and territories to develop a system for obtaining information from registers in others states and territories.
8.23	In considering the legislative and administrative arrangements required for carers registers in their jurisdiction, state and territory governments should consider the need for guidelines and training to promote the proper use of carers registers for the protection of children in out-of-home care. Consideration should also be given to the need for specific safeguards to prevent inappropriate use of register information.	**Accepted**	NSW already complies with this recommendation. The Office of the Children's Guardian (OCG) has developed a *Carer Register User Guide*, a suite of fact sheets and training modules available on the OCG website.
Volume 9, Advocacy, support and therapeutic treatment services			
Dedicated community support services for victims and survivors			
9.1	The Australian Government and state and territory governments should fund dedicated community support services for victims and survivors in each jurisdiction, to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts. Funding and related agreements should require and enable these services to: a. be trauma-informed and have an understanding of institutional child sexual abuse b. be collaborative, available, accessible, acceptable and high quality c. use case management and brokerage to coordinate and meet service needs d. support and supervise peer-led support models.	**Accepted in principle**	Recommendations 9.1, 9.2 and 9.3 refer to community-based approaches that offer practical support for children and adults who have experienced sexual abuse. This includes peer support, advocacy and counselling responses. The NSW Government currently delivers and funds a range of services that provide the components of support and treatment identified in recommendation 9.1 to 9.3, which includes: • NSW Victims Support Scheme, including the Approved Counselling Service • NSW Health Sexual Assault Services • access to the National Redress Scheme, which the NSW Government has joined. The scheme offers eligible survivors a redress payment of up to $150,000, access to counselling and psychological services, and a direct personal response from the responsible institution • funding for a range of non-government organisations to provide community-based support services for children and adults who have experience sexual abuse. The NSW Government will consider options to improve community-based support for victims and survivors of sexual abuse. The NSW Government acknowledges that support and treatment services should be appropriate for the diverse needs, experiences and contexts of victims and survivors of sexual abuse. Recommendations 9.2 and 9.3 specifically address the needs of Aboriginal and Torres Strait Islander people and people with disability who have experienced sexual abuse. **Meeting the needs of Aboriginal and Torres Strait Islander people who experience sexual abuse** Culturally safe service delivery to Aboriginal people will be considered in options to improve community-based support services, noting that healing approaches will be central to this. The review
9.2	The Australian Government and state and territory governments should fund Aboriginal and Torres Strait Islander healing approaches as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse. These approaches should be evaluated in accordance with culturally appropriate methodologies, to contribute to evidence of best practice.	**Accepted in principle**	
9.3	The Australian Government and state and territory governments should fund support services for people with disability who have experienced	**Accepted in principle**	

#	Royal Commission recommendation	NSW Government response	Comment
	sexual abuse in childhood as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse.		of NSW Health violence abuse and neglect services will also consider the accessibility and appropriateness of services for Aboriginal people. This will be complemented by the work underway as part of Opportunity Choice Healing Responsibility Empowerment (OCHRE). Under OCHRE, the NSW Government is engaging in a dialogue with Aboriginal people and communities to develop a deeper understanding of how agencies can operate, engage and deliver services to Aboriginal people in a way that supports healing. **Meeting the needs of people with disability who experience sexual abuse** The NSW Government supports the rights of people with disability who have experienced sexual abuse to have equitable access to support and treatment services. Accessible and appropriate services for people with disability will be considered in options to improve community-based support services. Accessibility and appropriateness of the NSW Health Sexual Assault Services for people with disability will be further considered through the NSW Health Violence Abuse and Neglect Services Redesign and Planning Project. The Royal Commission also noted the importance of advocacy and the impact of the transition to the National Disability Insurance Scheme (NDIS) on supporting people with disability, including those who have experienced sexual abuse. By 30 June 2018, the NDIS will be available across NSW. NDIS-funded support will work alongside NSW Government services to support people with disability to access mainstream services, including services that provide support and treatment for victims and survivors of sexual assault. The NSW Government has provided a Transitional Advocacy Funding Supplement of $26 million to provide advocacy services during the first two years following the transition to the NDIS. **Leadership from the Australian Government** The Australian Government currently has an important role in funding support services that assist children and adults to recover from sexual abuse. This includes support for Aboriginal healing, and responsibility for support services for people with disability through the NDIS. The NSW Government welcomes Australian Government leadership and continued investment in support for people who have experienced sexual abuse.
National service to navigate legal processes			
9.4	The Australian Government should establish and fund a legal advice and referral service for victims and survivors of institutional child sexual abuse. The service should provide advice about accessing, amending and annotating records from institutions, and options for initiating police, civil litigation or redress processes as required. Support should include advice, referrals to other legal services for representation and general assistance for people to navigate the legal service system. Funding and related agreements should require and enable these services to be: a. trauma-informed and have an understanding of institutional child sexual abuse b. collaborative, available, accessible, acceptable and high quality.	**Accepted. This is a matter for the Australian Government**	The NSW Government would welcome a national legal advice and referral service. This would be an important initiative, and would complement existing NSW Government activities.
National telephone helpline and website			
9.5	The Australian Government should fund a national website and helpline as a gateway to accessible advice and information on childhood sexual abuse. This should provide information for victims and survivors, particularly victims and survivors of institutional child sexual abuse, the general public and practitioners about supporting children and adults who have experienced sexual abuse in childhood and available services. The gateway may be operated by an existing service with appropriate experience and should: a. be trauma-informed and have an understanding of institutional child sexual abuse b. be collaborative, available, accessible, acceptable and high quality	**Accepted. This is a matter for the Australian Government**	The establishment of a visible, centralised national website and helpline would support clearer pathways for victims, and would support access to existing treatment services in NSW.

#	Royal Commission recommendation	NSW Government response	Comment
	c. provide telephone and online information and initial support for victims and survivors, including independent legal information and information about reporting to police d. provide assisted referrals to advocacy and support and therapeutic treatment services.		
Enhancing the capacity of specialist sexual assault services			
9.6	The Australian Government and state and territory governments should address existing specialist sexual assault service gaps by increasing funding for adult and child sexual assault services in each jurisdiction, to provide advocacy and support and specialist therapeutic treatment for victims and survivors, particularly victims and survivors of institutional child sexual abuse. Funding agreements should require and enable services to: a. be trauma-informed and have an understanding of institutional child sexual abuse b. be collaborative, available, accessible, acceptable and high quality c. use collaborative community development approaches d. provide staff with supervision and professional development.	**Subject to further consideration**	NSW Health provides a 24-hour, seven-days-a-week frontline response for people who have experienced sexual assault, including child sexual assault. Crisis and ongoing services are provided through a network of specialist Sexual Assault Services delivered by local health districts across NSW. NSW Health continues to increase the number of doctors and nurses trained to deliver medical and forensic examinations as part of an integrated response for sexual assault victims.
9.7	Primary Health Networks, within their role to commission joined up local primary care services, should support sexual assault services to work collaboratively with key services such as disability-specific services, Aboriginal and Torres Strait Islander services, culturally and linguistically diverse services, youth justice, aged care and child and youth services to better meet the needs of victims and survivors.	**Accepted. This is a matter for the Australian Government**	The NSW Government acknowledges that within their existing role, Primary Health Networks aim to improve coordination of care and to support the efficiency and effectiveness of health services.
Responsive mainstream services			
9.8	The Australian Government and state and territory government agencies responsible for the delivery of human services should ensure relevant policy frameworks and strategies recognise the needs of victims and survivors and the benefits of implementing trauma-informed approaches.	**Accepted**	The shift towards delivering trauma-informed approaches in NSW's human service agencies has already begun. NSW Government agencies are prioritising trauma-informed approaches in the development of key human services strategies and policies. The NSW Government will continue to work to support victims and survivors of sexual abuse and other trauma to experience safety, trustworthiness, choice, collaboration and empowerment in service delivery. To build the evidence-base for trauma-informed interventions, agencies will work closely to share expertise and collaborate on training delivery.
National leadership to reduce stigma, promote help-seeking and support good practice			
9.9	The Australian Government, in conjunction with state and territory governments, should establish and fund a national centre to raise awareness and understanding of the impacts of child sexual abuse, support help-seeking and guide best practice advocacy and support and therapeutic treatment. The national centre's functions should be to: a. raise community awareness and promote destigmatising messages about the impacts of child sexual abuse b. increase practitioners' knowledge and competence in responding to child and adult victims and survivors by translating knowledge about the impacts of child sexual abuse and the evidence on effective responses into practice and policy. This should include activities to: i. identify, translate and promote research in easily available and accessible formats for advocacy and support and therapeutic treatment practitioners ii. produce national training materials and best practice clinical resources	**Accepted in principle**	The work of the Royal Commission has made a significant contribution to the community's understanding of the nature and prevalence of institutional child sexual abuse. All Australian governments must provide leadership to support an ongoing commitment to reducing stigma, and promote best practice to support victims and survivors of sexual abuse. The NSW Government will work with the Australian Government and other states and territories to further consider a national centre dedicated to stigma reduction and practice reform.

#	Royal Commission recommendation	NSW Government response	Comment
	iii. partner with training organisations to conduct training and workforce development programs iv. influence national tertiary curricula to incorporate child sexual abuse and trauma-informed care v. inform government policy making c. lead the development of better service models and interventions through coordinating a national research agenda and conducting high-quality program evaluation. The national centre should partner with survivors in all its work, valuing their knowledge and experience.		
Volume 10, Children with harmful sexual behaviours			
A framework for improving responses			
10.1	The Australian Government and state and territory governments should ensure the issue of children's harmful sexual behaviours is included in the national strategy to prevent child sexual abuse that we have recommended (see Recommendations 6.1 to 6.3). Harmful sexual behaviours by children should be addressed through each of the following: a. primary prevention strategies to educate family, community members, carers and professionals (including mandatory reporters) about preventing harmful sexual behaviours b. secondary prevention strategies to ensure early intervention when harmful sexual behaviours are developing c. tertiary intervention strategies to address harmful sexual behaviours.	**Accepted in principle (National priority)**	The NSW Government will work with other jurisdictions to prioritise the inclusion of the complex issue of children's harmful sexual behaviours in frameworks and strategies to support the wellbeing and safety of all children. Embedding this complex issue within a national strategy would create opportunities for national leadership in primary prevention and early intervention. A national approach could also promote coordination among primary prevention education and training programs. To support a consistent national approach, the Australian Government, and state and territory governments should work together to develop a suite of national services and resources that inform and advise parents and/or carers about children's sexual behaviours.
Improving assessment and therapeutic intervention			
10.2	The Australian Government and state and territory governments should ensure timely expert assessment is available for individual children with problematic and harmful sexual behaviours, so they receive appropriate responses, including therapeutic interventions, which match their particular circumstances.	**Subject to further consideration**	All children and young people with problematic or harmful sexual behaviours should have access to an assessment that is commensurate to their level of need, and facilitates an appropriate and effective response. Expert assessments of children with problematic and harmful sexual behaviour are currently provided by qualified and skilled practitioners in specialist services in NSW Health, Juvenile Justice, Family and Community Services and within the private sector. While some children may require an expert assessment to determine the appropriate therapeutic or statutory intervention, many children with behaviours and circumstances that are less serious or complex will not require expert intervention and can be adequately supported by generalist services. Frontline human services all have an important role in preventing, identifying and responding to children's problematic or harmful sexual behaviours. The NSW Department of Education has worked with other NSW Government agencies to develop resources to help schools identify and respond to children with problematic and harmful sexual behaviours. These include guidelines on how to identify relevant behaviours, suggested roles and responsibilities, and checklists of actions to consider when investigating and reporting the behaviours. To support responses to children in the child protection system, the Office of the Senior Practitioner within Family and Community Services has developed the 'See, Understand and Respond to Child Sexual Abuse – a practical kit' and related training. The kit was designed for Family and Community Services practitioners, however, it is publicly available. The kit includes: • information to help identify factors that increase the risk of a child displaying harmful sexual behaviours • information to assess risk when working with children with harmful sexual behaviours • practical resources to use when working with children with harmful sexual behaviours. Evaluation of the kit and related training has demonstrated an improvement in the confidence of practitioners working with children with harmful sexual behaviours.

#	Royal Commission recommendation	NSW Government response	Comment
			Existing initiatives support professionals in schools and the child protection system to identify and respond to children's harmful sexual behaviours. The NSW Government recognises further work is required to support all professionals working with children, young people, parents, carers and the community to be able to identify and respond to children's problematic or harmful sexual behaviours.
10.3	The Australian Government and state and territory governments should adequately fund therapeutic interventions to meet the needs of all children with harmful sexual behaviours. These should be delivered through a network of specialist and generalist therapeutic services. Specialist services should also be adequately resourced to provide expert support to generalist services.	**Subject to further consideration**	The NSW Government currently funds therapeutic interventions through a range of generalist and specialist services. The existing specialist therapeutic services in NSW are: • NSW Health New Street services, which provide a specialised, early-intervention, community-based service to address harmful sexual behaviours displayed by young people (10 to 17 years old). New Street services are currently delivered from several metropolitan and regional sites across NSW, with an outreach service for remote locations • Juvenile Justice psychological services, which provides generalist support and offence-focused interventions. In collaboration with caseworkers, psychologists are responsible for the assessment and treatment of children and young people who sexually harm other children. Juvenile Justice psychologists identify and build on protective and supportive factors with the child, their family and community in a multi-systemic approach. The NSW Government will expand therapeutic services for children and young people with harmful sexual behaviours by opening one additional NSW Health New Street service. The NSW Government will also consider options to build a stronger network of generalist and specialist therapeutic service providers. To reduce the risk of recidivism and support continuity of therapeutic treatment, NSW Health and Juvenile Justice will partner to develop support pathways for children and young people leaving the juvenile justice system. This will include support for children in detention and in the community through family engagement work, 'in-reach handover' prior to release from detention, and intensive engagement post release.
10.4	State and territory governments should ensure that there are clear referral pathways for children with harmful sexual behaviours to access expert assessment and therapeutic intervention, regardless of whether the child is engaging voluntarily, on the advice of an institution or through their involvement with the child protection or criminal justice systems.	**Accepted in principle**	Children with harmful sexual behaviours should have access to assessment and therapeutic intervention. Therapeutic interventions can help children to stop their problematic and harmful sexual behaviours and promote the safety and wellbeing of all children. Appropriate criminal justice responses are also required to provide justice for victims and survivors of sexual assault, and serve the interests of the community. The NSW Government will give careful consideration to options to implement clear referral pathways. This will include consideration of referral pathways through the child protection and criminal justice system, where participation in therapeutic treatment is required.
10.5	Therapeutic intervention for children with harmful sexual behaviours should be based on the following principles: a. a contextual and systemic approach should be used b. family and carers should be involved c. safety should be established d. there should be accountability and responsibility for the harmful sexual behaviours e. there should be a focus on behaviour change f. developmentally and cognitively appropriate interventions should be used g. the care provided should be trauma-informed h. therapeutic services and interventions should be culturally safe i. therapeutic interventions should be accessible to all children with harmful sexual behaviours.	**Accepted**	The NSW Government accepts these principles as reflecting best-practice therapeutic intervention for children with harmful sexual behaviours. The NSW Government is committed to delivering high-quality, evidence-based services. Specialist therapeutic interventions provided by the NSW Government include NSW Health New Street services and Juvenile Justice psychologist services. These services largely comply with these best practice principles. In addition, the NSW Government will develop stronger collaboration across specialist therapeutic services to provide ongoing and interagency support for evidence-based and effective therapeutic interventions.
Strengthening the workforce			
10.6	The Australian Government and state and territory governments should ensure that all services funded to provide therapeutic intervention for children with harmful sexual behaviours provide professional training and clinical supervision for their staff.	**Accepted**	The NSW Government is committed to delivering high-quality services, including the ongoing development of the skills and competencies of the specialist and generalist therapeutic workforce.

#	Royal Commission recommendation	NSW Government response	Comment
			Specialist therapeutic interventions provided by the NSW Government include NSW Health New Street services and Juvenile Justice psychologist services. These services provide professional training and clinical supervision for their staff who deliver specialist therapeutic interventions for children with harmful sexual behaviour. The NSW Government will consider ways to promote interagency training and professional development opportunities for professionals working with children with problematic or harmful sexual behaviours.
Improving evaluation			
10.7	The Australian Government and state and territory governments should fund and support evaluation of services providing therapeutic interventions for problematic and harmful sexual behaviours by children.	**Accepted**	Evaluation of therapeutic services is important to understanding what works in supporting children with problematic or harmful sexual behaviours. Evaluations of NSW Health's New Street services have found that the services have achieved significant outcomes with young people and their families, with positive impacts for both individuals and the child protection system as a whole.
Volume 12, Contemporary out-of-home care			
Data collection and reporting			
12.1	The Australian Government and state and territory governments should develop nationally agreed key terms and definitions in relation to child sexual abuse for the purpose of data collection and reporting by the Australian Institute of Health and Welfare (AIHW) and the Productivity Commission.	**Accepted** **(National priority)**	The NSW Government accepts recommendations 12.1, 12.2 and 12.3, and will work with other jurisdictions to achieve nationally agreed key terms and definitions in relation to child sexual abuse through relevant agencies and portfolios. Governments will work together to agree research priorities and timeframes, noting the complexity and importance of establishing nationally agreed terms and definitions to provide a basis for further national research. NSW has recently improved its collection of 'safety in care' data in accordance with these recommendations, and will continue to progress improvements to data measures and quality in NSW through the progressive implementation of a new information technology system.
12.2	The Australian Government and state and territory governments should prioritise enhancements to the Child Protection National Minimum Data Set to include: a. data identifying children with disability, children from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander children b. the number of children who were the subject of a substantiated report of sexual abuse while in out-of-home care c. the demographics of those children d. the type of out-of-home care placement in which the abuse occurred e. information about when the abuse occurred f. information about who perpetrated the abuse, including their age and their relationship to the victim, if known.	**Accepted** **(National priority)**	The NSW Government will work with the Australian Government, and state and territory governments to prioritise enhancements to the Child Protection National Minimum Data Set specified in Recommendation 12.2. More specifically, with regard to the implementation of Recommendation 12.2, all states/territories are committed to the following Child Protection National Minimum Dataset (CP NMDS) enhancements within two years: • improved identification of children with disability, through ensuring all jurisdictions report this data, and continuous quality improvement at the state/territory level • continued capture and improved quality of data identifying Aboriginal and Torres Strait Islander children • collection of data to facilitate reporting on the number of children who were the subject of a substantiated report of sexual abuse while in out-of-home care, including the demographics of those children. States/territories are also committed to this enhanced information being published at the state/territory level as part of Child Protection Australia 2019–20 reporting, to be released in 2020–21. The enhanced information will also be included in subsequent annual reporting about child protection. Jurisdictions are already working with the Australian Institute of Health and Welfare to agree the initial two-year work plan needed to achieve the above enhancements.
12.3	State and territory governments should agree on reporting definitions and data requirements to enable reporting in the *Report on government services* on outcome indicators for 'improved health and wellbeing of the child', 'safe return home' and 'permanent care'.	**Accepted** **(National priority)**	The NSW Government will work with other jurisdictions to agree on out-of-home care reporting definitions and data requirements for the Report on the government services through relevant agencies and portfolios. See response to Recommendation 12.1 (*Final report*).

#	Royal Commission recommendation	NSW Government response	Comment
Accreditation of out-of-home care service providers			
12.4	Each state and territory government should revise existing mandatory accreditation schemes to: a. incorporate compliance with the Child Safe Standards identified by the Royal Commission b. extend accreditation requirements to both government and non-government out-of-home care service providers.	**Accepted**	The NSW Government already meets the intent of this recommendation. The NSW out-of-home care accreditation criteria (the NSW Child Safe Standards for Permanent Care) already meet and exceed the Royal Commission's recommendations regarding child safe standards. Both government and non-government out-of-home care providers must meet these standards in order to provide out-of-home care services in NSW. The NSW Children's Guardian provides independent oversight of the out-of-home care sector.
12.5	In each state and territory, an existing statutory body or office that is independent of the relevant child protection agency and out-of-home care service providers, for example a children's guardian, should have responsibility for: a. receiving, assessing and processing applications for accreditation of out-of-home care service providers b. conducting audits of accredited out-of-home care service providers to ensure ongoing compliance with accreditation standards and conditions.	**Accepted**	NSW has a well-established accreditation and monitoring system for out-of-home care and adoption service providers. The accreditation scheme commenced in 2003 and has been regularly reviewed to reflect changes in research and practice regarding vulnerable children and young people, and to support important reforms to the child protection and out-of-home care systems. Independent oversight is provided by the Children's Guardian and both government and non-government providers must meet the same standards of care. See response to Recommendation 12.4 (*Final report*).
Carer authorisation			
12.6	In addition to a National Police Check, Working with Children Check and referee checks, authorisation of all foster and kinship/relative carers and all residential care staff should include: a. community services checks of the prospective carer and any adult household members of home-based carers b. documented risk management plans to address any risks identified through community services checks c. at least annual review of risk management plans as part of carer reviews and more frequently as required.	**Accepted**	NSW has one of the most rigorous carer assessment and authorisation systems in Australia, which includes a range of background and probity checks and high minimum standards for carer assessments. A register of authorised carers was implemented in 2015 and is administered by the independent regulator, the Children's Guardian. The NSW Government will explore options to ensure that extensive background checks are conducted for carers and household members who were exempted under legislative amendments introduced in 2015 and who are currently caring for children. When reviews are completed, this will more comprehensively meet the intent of the Royal Commission's recommendations for carer assessments.
12.7	All out-of-home care service providers should conduct annual reviews of authorised carers that include interviews with all children in the placement with the carer under review, in the absence of the carer.	**Accepted**	In NSW, all accredited out-of-home care agencies are contractually required to conduct carer reviews at least annually. As part of their monitoring and review of compliance, the Office of the Children's Guardian looks at practice regarding caseworkers speaking with children independently of their carers. The NSW Government will explore options to revise policies and procedures to include explicit requirements for interviews with children in the absence of the carer. This will ensure the voices of children are considered with a more comprehensive approach to determining the ongoing suitability of a person to provide care. This further work will also consider exceptions to this requirement in situations where it is not in the best interests of the child.
12.8	Each state and territory government should adopt a model of assessment appropriately tailored for kinship/relative care. This type of assessment should be designed to: a. better identify the strengths as well as the support and training needs of kinship/relative carers b. ensure holistic approaches to supporting placements that are culturally safe c. include appropriately resourced support plans.	**Accepted**	The NSW Government is committed to holistic and appropriate carer assessments. In NSW, all out-of-home care service providers are required to undertake thorough assessments of all prospective carers, guardians and adoptive parents using an evidence-informed and competency-based assessment format. See also response to Recommendation 12.6 (*Final report*).
Child sexual abuse education strategy			
12.9	All state and territory governments should collaborate in the development of a sexual abuse prevention education strategy, including online safety, for children in out-of-home care that includes: a. input from children in out-of-home care and care-leavers	**Accepted**	The NSW Government supports national collaboration on the development of a prevention education strategy. The NSW Government will work with other state and territory governments to share existing resources and identify opportunities for greater consistency in delivering prevention education that is tailored for children in out-of-home care.

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	b. comprehensive, age-appropriate and culture-appropriate education about sexuality and healthy relationships that is tailored to the needs of children in out-of-home care c. resources tailored for children in care, for foster and kinship/relative carers, for residential care staff and for caseworkers d. resources that can be adapted to the individual needs of children with disability and their carers.		
Creating a culture that supports disclosure and identification of child sexual abuse			
12.10	State and territory governments, in collaboration with out-of-home care service providers and peak bodies, should develop resources to assist service providers to: a. provide appropriate support and mechanisms for children in out-of-home care to communicate, either verbally or through behaviour, their views, concerns and complaints b. provide appropriate training and support to carers and caseworkers to ensure they hear and respond to children in out-of-home care, including ensuring children are involved in decisions about their lives c. regularly consult with the children in their care as part of continuous improvement processes.	**Accepted in principle**	The NSW Government accepts in principle recommendations 12.10, 12.11 and 12.13. The NSW Government supports the Royal Commission's recommendations for building the capabilities of people and professionals who care for and work with children in out-of-home care. In NSW, the Department of Family and Community Services (FACS) provides training, resources and advice to government practitioners and develops targeted training and resources to address gaps. FACS has developed a comprehensive resource and accompanying training to guide caseworkers in identifying and responding to sexual abuse, including harmful sexual behaviour. This resource is also available to non-government organisations. FACS funds a number of peak organisations to provide learning and development activities to the non-government sector. NSW is exploring options to provide further training, support and resources to improve the skill base of government and non-government workers and carers.
12.11	State and territory governments and out-of-home care service providers should ensure that training for foster and relative/kinship carers, residential care staff and child protection workers includes an understanding of trauma and abuse, the impact on children and the principles of trauma-informed care to assist them to meet the needs of children in out-of-home care, including children with harmful sexual behaviours.	**Accepted in principle**	
Identifying, assessing and supporting children with harmful sexual behaviours			
12.12	When placing a child in out-of-home care, state and territory governments and out-of-home care service providers should take the following measures to support children with harmful sexual behaviours: a. undertake professional assessments of the child with harmful sexual behaviours, including identifying their needs and appropriate supports and interventions to ensure their safety b. establish case management and a package of support services c. undertake careful placement matching that includes: i. providing sufficient relevant information to the potential carer/s and residential care staff to ensure they are equipped to support the child, and additional training as necessary ii. rigorously assessing potential threats to the safety of other children, including the child's siblings, in the placement.	**Accepted in principle**	In NSW, the Department of Family and Community Services (FACS) child protection staff provide non-clinical assessment and placement planning which focuses on safety and risk for both the child with harmful sexual behaviour, and children at risk of being harmed by that behaviour. When a child enters care, there are processes through which the needs of children with harmful sexual behaviour are identified and through which expert clinical assessments and appropriate placement matching can occur. These processes include the Out of Home Care Health Pathway Program and the NSW Child Assessment Tool (CAT). The CAT is used by FACS caseworkers to identify the appropriate level of care for a child or young person who has entered out-of-home care, where a placement has not been identified with relatives or kin. It assesses the child or young person's behavioural, health and developmental needs to determine the most appropriate level of care. A CAT outcome can be reviewed if there is new information about behaviours, health or developmental needs. Under the cross-government reform Their Futures Matter, the NSW Government is delivering whole-of-system changes to better support vulnerable children and families. This includes moving towards needs-based support through wrap-around support packages for children who are in or at risk of entering out-of-home care. Children with harmful sexual behaviours who are in out-of-home care will benefit from supports provided under a range of other initiatives including the Permanency Support Program and Intensive Therapeutic Care. From July 2018, Intensive Therapeutic Care will replace residential care and will include a new 'Therapeutic Specialist' role. Therapeutic Specialists are clinicians (with a qualification in psychology, social work, occupational therapy or mental health nursing, plus at least five years' work experience in a therapeutic care setting or clinical environment with children and young people in out-of-home care) and are responsible for acting as 'therapeutic practice experts'.

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			FACS has also developed the 'See, Understand and Respond to Child Sexual Abuse – a practical kit' and related training for the Department's practitioners. The kit includes information and resources to support practitioners to identify and respond to children with problematic or harmful sexual behaviour. The NSW Government has processes in place to help caseworkers to make placement decisions for a child and ensure that appropriate information about the child is shared. Further work is required to build capacity of child protection practitioners to assess, respond to and support children with harmful sexual behaviour. See response to recommendations 12.10, 12.11 and 12.13 (*Final report*). Specialist therapeutic services for children with harmful sexual behaviour are discussed at Recommendation 10.3 (*Final report*).
12.13	State and territory governments and out-of-home care service providers should provide advice, guidelines and ongoing professional development for all foster and kinship/relative carers and residential care staff about preventing and responding to the harmful sexual behaviours of some children in out-of-home care.	**Accepted in principle**	See response to Recommendation 12.10 (*Final report*).
Preventing and responding to child sexual exploitation			
12.14	All state and territory governments should develop and implement coordinated and multi-disciplinary strategies to protect children in residential care by: a. identifying and disrupting activities that indicate risk of sexual exploitation b. supporting agencies to engage with children in ways that encourage them to assist in the investigation and prosecution of sexual exploitation offences.	**Accepted in principle**	The NSW Government accepts in principle the Royal Commission's recommendation for coordinated and multi-disciplinary strategies to identify and disrupt the sexual exploitation of children in residential care. The NSW Government is committed to the implementation of a multi-agency pilot aimed at preventing sexual exploitation of children in residential out-of-home care as a matter of priority.
12.15	Child protection departments in all states and territories should adopt a nationally consistent definition for child sexual exploitation to enable the collection and reporting of data on sexual exploitation of children in out-of-home care as a form of child sexual abuse.	**Accepted (National priority)**	The NSW Government will work with other jurisdictions to adopt a nationally consistent definition for child sexual exploitation through relevant agencies and portfolios. The NSW Government will consider the implementation and timing for the application of the new definition. In the interim, the Department of Family and Community Services will make further amendments to its new child protection and out-of-home care information technology system in order to enable the collection and reporting of data specifically on child sexual exploitation.
Increasing the stability of placements			
12.16	All institutions that provide out-of-home care should develop strategies that increase the likelihood of safe and stable placements for children in care. Such strategies should include: a. improved processes for 'matching' children with carers and other children in a placement, including in residential care b. the provision of necessary information to carers about a child, prior to and during their placement, to enable carers to properly support the child c. support and training for carers to deal with the different developmental needs of children as well as managing difficult situations and challenging behaviour.	**Accepted**	The NSW Government complies with this recommendation and current reforms will continue to strengthen NSW systems and practice. The Permanency Support Program requires that all out-of-home care service providers include permanency planning in every new case plan. The Permanency Support Program also sets out review periods to ensure that case plan goals are on track. A major component of the Permanency Support Program is new statewide program for the recruitment, development and support of guardians, adoptive parents and other carers, aimed at supporting more children and young people to achieve placement permanency. The NSW Government has developed a joint protocol with key stakeholders including the Department of Family and Community Services and NSW Police to reduce the contact children in out-of-home care have with the criminal justice system. The joint protocol informs policy and practice to facilitate collaboration between NSW Police and out-of-home care providers, coordinate a trauma-informed approach, and divert young people from the criminal justice system; thereby improving placement stability.
Supporting kinship/relative care placements			
12.17	Each state and territory government should ensure that:	**Accepted**	The NSW Government complies with this recommendation and current reforms will continue to strengthen NSW systems and practice.

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	a. the financial support and training provided to kinship/relative carers is equivalent to that provided to foster carers b. the need for any additional supports are identified during kinship/relative carer assessments and are funded c. additional casework support is provided to maintain birth family relationships.		A new statewide program will commence on 1 July 2018 to improve the recruitment of and support for guardians, adoptive parents and other carers. This includes setting a minimum amount for the carer allowance and providing a means-tested adoption allowance. The new program will also deliver high-quality support and meet the development needs of all carers.
Residential care			
12.18	The key focus of residential care for children should be based on an intensive therapeutic model of care framework designed to meet the complex needs of children with histories of abuse and trauma.	**Accepted**	The NSW Government complies with this recommendation and current reforms will continue to strengthen NSW systems and practice. From July 2018, the NSW Government will introduce a new Intensive Therapeutic Care service system to replace residential care for children and young people over the age of 12 who have been assessed as requiring intensive therapy for recovery of trauma. Intensive Therapeutic Care focuses on recovery from trauma and is underpinned by the NSW Therapeutic Care Framework, which has been developed by the Department of Family and Community Services and out-of-home care sector peaks and service providers. The Therapeutic Care Framework guides best practice in trauma-informed care to support vulnerable children and families.
12.19	All residential care staff should be provided with regular training and professional supervision by appropriately qualified clinicians.	**Accepted in principle**	The NSW Government's current reforms to residential care will continue to strengthen NSW systems and practice. The Intensive Therapeutic Care model includes minimum qualification and training requirements as well as a commitment to learning and reflective practice for all Intensive Therapeutic Care staff.
Aboriginal and Torres Strait Islander children			
12.20	Each state and territory government, in consultation with appropriate Aboriginal and Torres Strait Islander organisations and community representatives, should develop and implement plans to: a. fully implement the Aboriginal and Torres Strait Islander Child Placement Principle b. improve community and child protection sector understanding of the intent and scope of the principle c. develop outcome measures that allow quantification and reporting on the extent of the full application of the principle, and evaluation of its impact on child safety and the reunification of Aboriginal and Torres Strait Islander children with their families d. invest in community capacity building as a recognised part of kinship care, in addition to supporting individual carers, in recognition of the role of Aboriginal and Torres Strait Islander communities in bringing up children.	**Accepted in principle**	In NSW, the Aboriginal and Torres Strait Islander Child Placement Principles are legislated in Section 13 of the *Children and Young Persons (Care and Protection) Act 1998*. The Department of Family and Community Services has mandated adherence to these principles, and there are ongoing practice efforts in progress to meet this recommendation's intent. Compliance with the Aboriginal and Torres Strait Islander Child Placement Principles is also included in the NSW Child Safe Standards for Permanent Care and monitored by the Office of the Children's Guardian. The NSW Government has commissioned a comprehensive independent review of Aboriginal children in out-of-home care. The 'Family is Culture: Independent Review of Aboriginal Children and Young People in Out of Home Care in NSW' is exploring how the placement principles have been applied. It will investigate how systems, policies and practices in out-of-home care and child protection have contributed to the number of Indigenous children and young people in out-of-home care. The independent review's final report will provide recommendations on systemic policy and practice issues and is vital to informing further systemic improvements. It will form a critical basis for informing NSW Government responses around the placement principle and opportunities for reform.
Children with disability			
12.21	Each state and territory government should ensure: a. the adequate assessment of all children with disability entering out-of-home care b. the availability and provision of therapeutic support c. support for disability-related needs d. the development and implementation of care plans that identify specific risk-management and safety strategies for individual children, including the identification of trusted and safe adults in the child's life.	**Accepted in principle**	Children with a significant and permanent disability and their carers are eligible to access a range of support services through the National Disability Insurance Scheme (NDIS). The NDIS is implemented by the Australian Government through the National Disability Insurance Agency (NDIA). It provides support to people with a disability to access mainstream and community services and supports, maintain informal support arrangements, and in some circumstances receive funded supports. The NDIA will provide NDIS plans to meet the needs of children and young people with disability, and respite/short-term accommodation. It will also provide care and support that is related to the child's disability where those supports are reasonable and necessary and where the child cannot be supported in their own home due to their family circumstances and disability needs. The NSW Government (Department of Family and Community Services) will be responsible for the supervision of providers proving care and supervision to children with disabilities living outside the family home, flexible support packages for family preservation and restoration to try to keep families together, as well as board and lodging for children under 16 years who are eligible for the NDIA and

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			may need to live away from home. The NSW Government will continue to strengthen NSW systems and practice. The Permanency Support Program introduces new individualised service packages tailored to each child or young person's case plan goal and individual circumstances, including Child Needs Packages.
Care-leavers			
12.22	State and territory governments should ensure that the supports provided to assist all care-leavers to safely and successfully transition to independent living include: a. strategies to assist care-leavers who disclose that they were sexually abused while in out-of-home care to access general post-care supports b. the development of targeted supports to address the specific needs of sexual abuse survivors, such as help in accessing therapeutic treatment to deal with impacts of abuse, and for these supports to be accessible until at least the age of 25.	**Accepted in principle**	In NSW, there are ongoing practice improvements in progress to meet the intent of this recommendation. All out-of-home care service providers must support every young person's plan for their future from 15 years of age. The Permanency Support Program also requires service providers to support young people up to the age of 25 years. From 1 July 2018, the Permanency Support Program will support service providers to develop 'leaving care' plans through payment of an annual leaving care funding package. This funds non-government practitioners to spend more time with young people to develop leaving care plans which support their long-term goals and transition into adulthood. Further to this, the Their Futures Matter reform will include aftercare services to ensure further improvements are considered by government.
Volume 13, Schools			
Child Safe Standards			
13.1	All schools should implement the Child Safe Standards identified by the Royal Commission.	**Accepted in principle**	The Office of the Children's Guardian will engage with NSW Department of Education, non-government schools and the NSW Education Standards Authority regarding the implementation of child safe standards.
13.2	State and territory independent oversight authorities responsible for implementing the Child Safe Standards (see Recommendation 6.10) should delegate to school registration authorities the responsibility for monitoring and enforcing the Child Safe Standards in government and non-government schools.	**Subject to further consideration**	The Office of the Children's Guardian (OCG) is an experienced regulator of child-related services. The functions of the Children's Guardian include encouraging organisations to be safe for children. The NSW Child Safe Organisations program has been operating since 2003 and is delivered by the OCG. The Child Safe Organisations training program includes a comprehensive suite of face-to-face workshops, eLearning modules, a resilience-building program for young children, and a disability-specific child safe training program. The program has been well-utilised by child-related organisations. The OCG will consult with existing regulators on the preferred approach to comply with this recommendation. An update on progress will be provided in December 2018.
13.3	School registration authorities should place particular emphasis on monitoring government and non-government boarding schools to ensure they meet the Child Safe Standards. Policy guidance and practical support should be provided to all boarding schools to meet these standards, including advice on complaint handling.	**Accepted**	The Office of the Children's Guardian will engage with the NSW Education Standards Authority regarding the implementation of Child Safe Standards in government and non-government schools, including boarding schools.
Supporting boarding schools			
13.4	The Australian Government and state and territory governments should ensure that needs-based funding arrangements for Aboriginal and Torres Strait Islander boarding students are sufficient for schools and hostels to create child safe environments.	**Accepted in principle**	The Australian Government has a significant role in funding arrangements for Aboriginal and Torres Strait Islander boarding students. NSW will engage with the Australian Government on the implementation of this recommendation.
13.5	Boarding hostels for children and young people should implement the Child Safe Standards identified by the Royal Commission. State and territory independent oversight authorities should monitor and enforce the Child Safe Standards in these institutions.	**Accepted in principle**	The Office of the Children's Guardian will engage with boarding hostels regarding the implementation of Child Safe Standards in NSW.
Responding to complaints relating to children with harmful sexual behaviours			
13.6	Consistent with the Child Safe Standards, complaint handling policies for schools (see Recommendation 7.7) should include effective policies	**Accepted**	Guidelines supporting schools to respond to children with harmful sexual behaviours are being piloted in NSW Government schools. A new incident reporting protocol which streamlines the access of

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	and procedures for managing complaints about children with harmful sexual behaviours.		government schools to expert advice when working with children with harmful sexual behaviours has been introduced. The NSW Government will consult with non-government schools on implementation of the Child Safe Standards.
Guidance for teachers and principals			
13.7	State and territory governments should provide nationally consistent and easily accessible guidance to teachers and principals on preventing and responding to child sexual abuse in all government and non-government schools.	**Accepted**	NSW has annual training modules which include training on child protection issues such as child sexual abuse, and which are compulsory for Department of Education staff and available to all other teachers. NSW also supports nationally consistent guidance for teachers and principals on preventing and responding to child sexual abuse.
Teacher registration			
13.8	The Council of Australian Governments (COAG) should consider strengthening teacher registration requirements to better protect children from sexual abuse in schools. In particular, COAG should review minimum national requirements for assessing the suitability of teachers and conducting disciplinary investigations.	**Accepted in principle**	The Council of Australian Governments (COAG) Education Council has created a special-purpose working party to develop shared responses to education-related recommendations arising from the Royal Commission's *Final report*. This working party will provide advice to the Education Council and COAG over the next 12 months. The NSW Government acknowledges the importance of schools, education authorities and regulatory authorities recording information about persons who are unsuitable to teach. These measures have a critical role in helping to protect children from sexual abuse and other forms of harm.
Volume 14, Sport, recreation, arts, culture, community and hobby groups			
Child Safe Standards			
14.1	All sport and recreation institutions, including arts, culture, community and hobby groups, that engage with or provide services to children should implement the Child Safe Standards identified by the Royal Commission.	**Accepted in principle**	The NSW Government supports all institutions that deliver services to children upholding children's rights and implementing the Child Safe Standards. The Child Safe Standards are consistent with the approach to child safe organisations currently operating in NSW. NSW will undertake further work and consultation to consider the best way to ensure child-related organisations meet the Child Safe Standards identified by the Royal Commission.
A representative voice for the sector			
14.2	The National Office for Child Safety should establish a child safety advisory committee for the sport and recreation sector with membership from government and non-government peak bodies to advise the national office on sector-specific child safety issues.	**Accepted. This is a matter for the Australian Government**	The NSW Government would welcome the establishment of an advisory committee for the sport and recreation sector.
Expanding Play by the Rules			
14.3	The education and information website known as Play by the Rules should be expanded and funded to develop resources – in partnership with the National Office for Child Safety – that are relevant to the broader sport and recreation sector.	**Accepted in principle**	The NSW Government supports the expansion of Play by the Rules. Play by the Rules is a joint collaboration between the Australian Government and state and territory Governments, as well as several other key agencies. Through the Office of Sport and Office of the Children's Guardian, the NSW Government will work with all Play by the Rues partners to explore options to expand the service.
Improving communication			
14.4	The independent state and territory oversight bodies that implement the Child Safe Standards should establish a free email subscription function for the sport and recreation sector so that all providers of these services to children can subscribe to receive relevant child safe information and links to resources.	**Accepted**	The Office of the Children's Guardian operates a free subscription list that provides an electronic bulletin with information on child safe organisations and resources. There are currently 17,000 subscribers to the list, including providers from the sport and recreation sectors. The Office of the Children's Guardian also provides free child safe training for the sports sector. Free seminars are delivered across NSW to assist sports clubs to understand Working with Children Check obligations and how to make clubs child safe.

#	Royal Commission recommendation	NSW Government response	Comment
Volume 15, Contemporary detention environments			
Contemporary detention environments			
15.1	All institutions engaged in child-related work, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission.	**Accepted in principle**	The Office of the Children's Guardian will engage with services which involve detention-like practices and engage in child-related work, such as Juvenile Justice Centres and adolescent mental health facilities, to promote awareness and understanding about the Royal Commission's Child Safe Standards. NSW will undertake further work and consultation to consider the best way to ensure child-related organisations meet the Child Safe Standards identified by the Royal Commission.
15.2	Given the Australian Government's commitment to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the National Preventive Mechanism(s) should be provided with the expertise to consider and make recommendations relating to preventing and responding to child sexual abuse as part of regularly examining the treatment of persons deprived of their liberty in places of detention.	**Accepted in principle**	The NSW Government accepts this recommendation in principle, subject to intergovernmental agreement on OPCAT implementation and consideration of whether the National Preventative Mechanism is the appropriate mechanism to consider and make recommendations about child sexual abuse. NSW already: • has legislation, policy, procedural guidelines and oversight mechanisms in place to monitor places of detention • ensures protection of and respect for human rights • ensures compliance with OPCAT principles • provides protections for people in custody.
Youth detention			
Creating a safer physical environment			
15.3	Youth justice agencies in each state and territory should review the building and design features of youth detention to identify and address elements that may place children at risk. This should include consideration of how to most effectively use technology, such as closed-circuit television (CCTV) cameras and body-worn cameras, to capture interactions between children and between staff and children without unduly infringing children's privacy.	**Accepted in principle**	The NSW Government adopts the Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand, developed by the Victorian Department of Health and Community Services and the Australasian Juvenile Justice Administrators. The NSW Government is progressively upgrading existing CCTV infrastructure in Juvenile Justice Centres to enhance security features. NSW has considered a trial of body-worn cameras in juvenile detention centres and will monitor trials in other jurisdictions. The NSW Government commits to continuing reforms already underway to progressively enhance Juvenile Justice Centres, and ensure practices and infrastructure are child safe and rehabilitative. This approach to juvenile detention accompanies NSW's existing initiatives in youth justice to reduce the number of children and young people in detention and complements the Their Futures Matter reform.
15.4	As part of efforts to mitigate risks of child sexual abuse in the physical environment of youth detention, state and territory governments should review legislation, policy and procedures to ensure: a. appropriate and safe placements of children in youth detention, including a risk assessment process before placement decisions that identifies if a child may be vulnerable to child sexual abuse or if a child is displaying harmful sexual behaviours b. children are not placed in adult prisons c. frameworks take into account the importance of children having access to trusted adults, including family, friends and community, in the prevention and disclosure of child sexual abuse and provide for maximum contact between children and trusted adults through visitation, and use of the telephone and audio-visual technology d. best practice processes are in place for strip searches and other authorised physical contact between staff and children, including sufficient safeguards to protect children such as: i. adequate communication between staff and the child before, during and after a search is conducted or other physical contact occurs	**Accepted**	The NSW Government recognises the risks presented to children in detention. **Current strategies to manage risks in juvenile detention which meet the recommendation:** a. Children are risk assessed on admission to a Juvenile Justice Centre and routinely throughout their period in detention. b. Legislative provisions allow young people aged 16 years or above to be held in adult correctional facilities; however, this provision is only used in exceptional circumstances and with the authorisation of the Children's Court. Young people can be detained in a Juvenile Justice Centre up to the age of 21 years if their offence was committed as a juvenile. c. Juvenile Justice promotes family and community engagement in policy, procedures and programs. Children and young people are supported in maintaining strong familial relationships through regular visits and contact while in custody. Juvenile Justice recently added the option of Audio Visual Link visits for families that may be geographically isolated and unable to visit a centre in person. See response to Recommendation 15.10 (Final report). d. Juvenile Justice staff are authorised to search children in secure environments in accordance with strict procedures and guidelines. Juvenile Justice does not conduct strip searches, but rather, partial body searches. A new searching procedure will be implemented in the second half of 2018 which enhances risk assessments and reduces the frequency of routine searches. Trauma-informed

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	ii. clear protocols detailing when such practices are permitted and how they should be performed. The key elements of these protocols should be provided to children in an accessible format iii. staff training that highlights the potential for strip searching to re-traumatise children who have been sexually abused and how the misuse of search powers can lead to sexual humiliation or abuse. State and territory governments should consider implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching children.		practice will be incorporated into the new procedure and training. The Department of Justice intends to examine regulatory options to guide the practice of searching children in juvenile detention centres.
Responding to children's different needs			
15.5	State and territory governments should consider further strategies that provide for the cultural safety of Aboriginal and Torres Strait Islander children in youth detention including: a. recruiting and developing Aboriginal and Torres Strait Islander staff to work at all levels of the youth justice system, including in key roles in complaint handling systems b. providing access to interpreters, particularly with respect to induction and education programs, and accessing internal and external complaint handling systems c. ensuring that all youth detention facilities have culturally appropriate policies and procedures that facilitate connection with family, community and culture, and reflect an understanding of, and respect for, cultural practices in different clan groups d. employing, training and professionally developing culturally competent staff who understand the particular needs and experiences of Aboriginal and Torres Strait Islander children, including the specific barriers that Aboriginal and Torres Strait Islander children face in disclosing sexual abuse.	**Accepted in principle**	The NSW Government acknowledges the unacceptably high proportion of Aboriginal children in detention across Australia, including in NSW. Juvenile Justice is prioritising Aboriginal engagement to reduce overrepresentation and to ensure Juvenile Justice policies, procedures and programs are culturally responsive. Juvenile Justice is developing a strategy for Aboriginal recruitment and retention to further increase the already high proportion of Aboriginal staff employed. The Juvenile Justice Aboriginal Strategic Coordination Unit provides cultural advice on programs and service delivery, and promotes the support and development of Aboriginal employees. The NSW Government is also working with the NSW Council of Aboriginal Regional Alliances on strategies to actively reduce the number of Aboriginal children in detention for non-violent offences. The NSW Government recognises there is further work to do to reduce the overrepresentation of Aboriginal children in detention.
15.6	All staff should receive appropriate training on the needs and experiences of children with disability, mental health problems, and alcohol or other drug problems, and children from culturally and linguistically diverse backgrounds that highlights the barriers these children may face in disclosing sexual abuse.	**Accepted in principle**	The NSW Government recognises the high proportion of children in detention who present with complex needs, including mental and cognitive impairment, low levels of education, a history of trauma and substance abuse, and volatile family or living environments. Juvenile Justice has recently reformed recruitment practices to attract a more diverse staffing profile and enhance staff capability to respond to the experiences of children with complex needs and from a wide range of backgrounds. Juvenile Justice is also improving operational training to embed trauma-informed practice, and is strengthening clinical practices. Juvenile Justice introduced 22 custodial caseworker roles in 2017 to improve the case management of children in detention and their transition into the community. NSW delivers therapeutic interventions to children in custody through Juvenile Justice and recognises many children in detention are also victims of abuse. Psychologists provide therapeutic counselling both in the community and custody to children and young people with a history of sexual victimisation. Referrals are made to community services to ensure continuity of trauma counselling beyond expiration of the court order. Victims Services in the Department of Justice, in partnership with Juvenile Justice, is trialling counselling at three Juvenile Justice Centres to provide therapeutic services to address issues of trauma and victimisation, particularly to victims of sexual and violent assault. NSW recognises there is more to do to provide for the complex needs of children in detention.
15.7	State and territory governments should improve access to therapeutic treatment for survivors of child sexual abuse who are in youth detention, including by assessing their advocacy, support and therapeutic treatment needs and referring them to appropriate services, and ensure they are linked to ongoing treatment when they leave detention.	**Accepted in principle**	
15.8	State and territory governments should ensure that all staff in youth detention are provided with training and ongoing professional development in trauma-informed care to assist them to meet the needs of children in youth detention, including children at risk of sexual abuse and children with harmful sexual behaviours.	**Accepted in principle**	
Improving complaint handling systems			
15.9	State and territory governments should review the current internal and external complaint handling systems concerning youth detention to ensure they are capable of effectively dealing with complaints of child sexual abuse, including so that: a. children can easily access child-appropriate information about internal complaint processes and external oversight bodies that may	**Accepted**	NSW provides a comprehensive complaint handling system for juvenile detention facilities. Juvenile Justice currently has in place: • a Client Complaint Procedure to manage complaints as quickly, transparently and fairly as possible, and ensure procedural fairness • an Ethics and Professional Standards Unit which investigates allegations of reportable conduct and/or reports matters to the NSW Police Force and the NSW Ombudsman

#	Royal Commission recommendation	NSW Government response	Comment
	receive or refer children's complaints, such as visitor's schemes, ombudsmen, inspectors of custodial services, and children's commissioners or guardians b. children have confidential and unrestricted access to external oversight bodies c. staff involved in managing complaints both internally and externally include Aboriginal and Torres Strait Islander peoples and professionals qualified to provide trauma-informed care d. complaint handling systems are accessible for children with literacy difficulties or who speak English as a second language e. children are regularly consulted about the effectiveness of complaint handling systems and systems are continually improved.		• free unlimited and unmonitored phone calls from detention centres to the NSW Ombudsman • an Official Visitor Scheme. Juvenile Justice Centres also facilitate Detainee Representative Committees to enable children in detention to participate in regular and organised forums to raise, discuss and resolve concerns. Children and young people are further consulted about centre operations including complaint handling systems through routine quality assurance practices. Juvenile Justice, the NSW Ombudsman's Office, the Inspector of Custodial Services, the Official Visitor Scheme, and the Advocate for Children and Young People have identified roles to ensure culturally appropriate access to complaint systems. The Advocate for Children and Young People also routinely engages with children in detention to represent their views and experiences.
Independent oversight of youth detention			
15.10	State and territory governments should ensure they have an independent oversight body with the appropriate visitation, complaint handling and reporting powers, to provide oversight of youth detention. This could include an appropriately funded and independent Inspector of Custodial Services or similar body. New and existing bodies should have expertise in child-trauma, and the prevention and identification of child sexual abuse.	**Accepted**	NSW has strong independent oversight of youth detention. Children in detention are advised of their rights upon admission and Juvenile Justice Centres display information about how to make a complaint and how to access the NSW Ombudsman. Oversight functions for youth detention in NSW include those agencies listed below. **Official Visitor Scheme** NSW has an Official Visitor Scheme operating under the *Children (Detention Centres) Act 1987*, providing independent monitoring of Juvenile Justice Centres. It ensures the protection of rights, improves advocacy and enhances other forms of assistance related to the welfare and treatment of children in custody. There is an Aboriginal-identified Official Visitor role for each Juvenile Justice Centre. Official Visitors attend Juvenile Justice Centres weekly and ensure every child knows they are present and asks whether they need to speak with them about any issues or concerns. **Inspector of Custodial Services** NSW has an independent Inspector of Custodial Services to inspect Juvenile Justice Centres and report to Parliament on the findings of these inspections. The Inspector oversees the Official Visitor Scheme. **NSW Ombudsman** All investigations into reportable conduct have oversight from the NSW Ombudsman. Allegations are notified to the Ombudsman in accordance with the *Ombudsman Act 1976* and the investigation file is provided to the Ombudsman's Office for review. Children in detention have free and unmonitored access by phone to specialist investigation officers to raise any complaint about their custody or any other matter in the Ombudsman's jurisdiction. These staff also routinely visit Juvenile Justice Centres to speak with children in private and to meet with staff. Each occasion a child in detention is segregated or separated for 24 or more hours these staff are automatically notified via the Juvenile Justice client database. NSW Ombudsman custodial investigation staff have access to this database. **Children's Guardian** Allegations of sexual abuse or serious physical assault are notified to the NSW Office of the Children's Guardian, in accordance with the requirements under the Working with Children Check legislation. **Other independent bodies** The NSW Advocate for Children and Young People and the National Children's Commissioner also engage with children in detention in NSW.
Immigration detention			
The Child Protection Panel recommendations			
15.11	The Department of Immigration and Border Protection should publicly report within 12 months on how it has implemented the Child Protection Panel's recommendations.	**Accepted. This is a matter for the Australian Government**	

#	Royal Commission recommendation	NSW Government response	Comment
Implementing the Child Safe Standards in immigration detention			
15.12	a. The Australian Government should establish a mechanism to regularly audit the implementation of the Child Safe Standards in immigration detention by staff, contractors and agents of the Department of Immigration and Border Protection. The outcomes of each audit should be publicly reported. b. The Department of Immigration and Border Protection should contractually require its service providers to comply with the Child Safe Standards identified by the Royal Commission, as applied to immigration detention.	**Accepted. This is a matter for the Australian Government**	
Therapeutic support for victims in immigration detention			
15.13	The Department of Immigration and Border Protection should identify the scope and nature of the need for support services for victims in immigration detention. The Department of Immigration and Border Protection should ensure that appropriate therapeutic and other specialist and support services are funded to meet the identified needs of victims in immigration detention and ensure they are linked to ongoing treatment when they leave detention.	**Accepted. This is a matter for the Australian Government**	
Training and supporting department and service provider staff			
15.14	The Department of Immigration and Border Protection should designate appropriately qualified child safety officers for each place in which children are detained. These officers should assist and build the capacity of staff and service providers at the local level to implement the Child Safe Standards.	**Accepted. This is a matter for the Australian Government**	
Preventive monitoring and oversight			
15.15	The Department of Immigration and Border Protection should implement an independent visitors program in immigration detention.	**Accepted. This is a matter for the Australian Government**	
Volume 16, Religious institutions			
Recommendations to the Anglican Church			
16.1	The Anglican Church of Australia should adopt a uniform episcopal standards framework that ensures that bishops and former bishops are accountable to an appropriate authority or body in relation to their response to complaints of child sexual abuse.	**Noted – for religious institutions to respond**	
16.2	The Anglican Church of Australia should adopt a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse, which expressly covers: a. members of professional standards bodies b. members of diocesan councils (otherwise known as bishop-in-council or standing committee of synod) c. members of the Standing Committee of the General Synod d. chancellors and legal advisers for dioceses.	**Noted – for religious institutions to respond**	
16.3	The Anglican Church of Australia should amend *Being together* and any other statement of expectations or code of conduct for lay members of the Anglican Church to expressly refer to the importance of child safety.	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
16.4	The Anglican Church of Australia should develop a national approach to the selection, screening and training of candidates for ordination in the Anglican Church.	**Noted – for religious institutions to respond**	
16.5	The Anglican Church of Australia should develop and each diocese should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, clergy, religious and lay personnel): a. undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry and child safety b. undertake mandatory professional/pastoral supervision c. undergo regular performance appraisals.	**Noted – for religious institutions to respond**	
Recommendations to the Catholic Church			
16.6	The bishop of each Catholic Church diocese in Australia should ensure that parish priests are not the employers of principals and teachers in Catholic schools.	**Noted – for religious institutions to respond**	
16.7	The Australian Catholic Bishops Conference should conduct a national review of the governance and management structures of dioceses and parishes, including in relation to issues of transparency, accountability, consultation and the participation of lay men and women. This review should draw from the approaches to governance of Catholic health, community services and education agencies.	**Noted – for religious institutions to respond**	
16.8	In the interests of child safety and improved institutional responses to child sexual abuse, the Australian Catholic Bishops Conference should request the Holy See to: a. publish criteria for the selection of bishops, including relating to the promotion of child safety b. establish a transparent process for appointing bishops which includes the direct participation of lay people.	**Noted – for religious institutions to respond**	
16.9	The Australian Catholic Bishops Conference should request the Holy See to amend the 1983 Code of Canon Law to create a new canon or series of canons specifically relating to child sexual abuse, as follows: a. All delicts relating to child sexual abuse should be articulated as canonical crimes against the child, not as moral failings or as breaches of the 'special obligation of clerics and religious to observe celibacy. b. All delicts relating to child sexual abuse should apply to any person holding a 'dignity, office or responsibility in the Church' regardless of whether they are ordained or not ordained. c. In relation to the acquisition, possession, or distribution of pornographic images, the delict (currently contained in Article 6 §2 1° of the revised 2010 norms attached to the motu proprio *Sacramentorum sanctitatis tutela*) should be amended to refer to minors under the age of 18, not minors under the age of 14.	**Noted – for religious institutions to respond**	
16.10	The Australian Catholic Bishops Conference should request the Holy See to amend canon law so that the pontifical secret does not apply to any aspect of allegations or canonical disciplinary processes relating to child sexual abuse.	**Noted – for religious institutions to respond**	
16.11	The Australian Catholic Bishops Conference should request the Holy See to amend canon law to ensure that the 'pastoral approach' is not an essential precondition to the commencement of canonical action relating to child sexual abuse.	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
16.12	The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the time limit (prescription) for commencement of canonical actions relating to child sexual abuse. This amendment should apply retrospectively.	**Noted – for religious institutions to respond**	
16.13	The Australian Catholic Bishops Conference should request the Holy See to amend the 'imputability' test in canon law so that a diagnosis of paedophilia is not relevant to the prosecution of or penalty for a canonical offence relating to child sexual abuse.	**Noted – for religious institutions to respond**	
16.14	The Australian Catholic Bishops Conference should request the Holy See to amend canon law to give effect to Recommendations 16.55 and 16.56.	**Noted – for religious institutions to respond**	
16.15	The Australian Catholic Bishops Conference and Catholic Religious Australia, in consultation with the Holy See, should consider establishing an Australian tribunal for trying canonical disciplinary cases against clergy, whose decisions could be appealed to the Apostolic Signatura in the usual way.	**Noted – for religious institutions to respond**	
16.16	The Australian Catholic Bishops Conference should request the Holy See to introduce measures to ensure that Vatican Congregations and canonical appeal courts always publish decisions in disciplinary matters relating to child sexual abuse, and provide written reasons for their decisions. Publication should occur in a timely manner. In some cases it may be appropriate to suppress information that might lead to the identification of a victim.	**Noted – for religious institutions to respond**	
16.17	The Australian Catholic Bishops Conference should request the Holy See to amend canon law to remove the requirement to destroy documents relating to canonical criminal cases in matters of morals, where the accused cleric has died or ten years have elapsed from the condemnatory sentence. In order to allow for delayed disclosure of abuse by victims and to take account of the limitation periods for civil actions for child sexual abuse, the minimum requirement for retention of records in the secret archives should be at least 45 years.	**Noted – for religious institutions to respond**	
16.18	The Australian Catholic Bishops Conference should request the Holy See to consider introducing voluntary celibacy for diocesan clergy.	**Noted – for religious institutions to respond**	
16.19	All Catholic religious institutes in Australia, in consultation with their international leadership and the Holy See as required, should implement measures to address the risks of harm to children and the potential psychological and sexual dysfunction associated with a celibate rule of religious life. This should include consideration of whether and how existing models of religious life could be modified to facilitate alternative forms of association, shorter terms of celibate commitment, and/or voluntary celibacy (where that is consistent with the form of association that has been chosen).	**Noted – for religious institutions to respond**	
16.20	In order to promote healthy lives for those who choose to be celibate, the Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should further develop, regularly evaluate and continually improve, their processes for selecting, screening and training of candidates for the clergy and religious life, and their processes of ongoing formation, support and supervision of clergy and religious.	**Noted – for religious institutions to respond**	
16.21	The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a national protocol for screening candidates	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
	before and during seminary or religious formation, as well as before ordination or the profession of religious vows.		
16.22	The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a mechanism to ensure that diocesan bishops and religious superiors draw upon broad-ranging professional advice in their decision-making, including from staff from seminaries or houses of formation, psychologists, senior clergy and religious, and lay people, in relation to the admission of individuals to: a. seminaries and houses of religious formation b. ordination and/or profession of vows.	**Noted – for religious institutions to respond**	
16.23	In relation to guideline documents for the formation of priests and religious: a. The Australian Catholic Bishops Conference should review and revise the *Ratio nationalis institutionis sacerdotalis: Programme for priestly formation* (current version December 2015), and all other guideline documents relating to the formation of priests, permanent deacons, and those in pastoral ministry, to explicitly address the issue of child sexual abuse by clergy and best practice in relation to its prevention. b. All Catholic religious institutes in Australia should review and revise their particular norms and guideline documents relating to the formation of priests, religious brothers, and religious sisters, to explicitly address the issue of child sexual abuse and best practice in relation to its prevention.	**Noted – for religious institutions to respond**	
16.24	The Australian Catholic Bishops Conference and Catholic Religious Australia should conduct a national review of current models of initial formation to ensure that they promote pastoral effectiveness, (including in relation to child safety and pastoral responses to victims and survivors) and protect against the development of clericalist attitudes.	**Noted – for religious institutions to respond**	
16.25	The Australian Catholic Bishops Conference and Catholic Religious Australia should develop and each diocese and religious institute should implement mandatory national standards to ensure that all people in religious or pastoral ministry (bishops, provincials, clergy, religious, and lay personnel): a. undertake mandatory, regular professional development, compulsory components being professional responsibility and boundaries, ethics in ministry, and child safety b. undertake mandatory professional/pastoral supervision c. undergo regular performance appraisals.	**Noted – for religious institutions to respond**	
16.26	The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether: a. information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession b. if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.	**Noted – for religious institutions to respond**	
Recommendations to the Jehovah's Witness organisation			
16.27	The Jehovah's Witness organisation should abandon its application of the two-witness rule in cases involving complaints of child sexual abuse.	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
16.28	The Jehovah's Witness organisation should revise its policies so that women are involved in processes related to investigating and determining allegations of child sexual abuse.	**Noted – for religious institutions to respond**	
16.29	The Jehovah's Witness organisation should no longer require its members to shun those who disassociate from the organisation in cases where the reason for disassociation is related to a person being a victim of child sexual abuse.	**Noted – for religious institutions to respond**	
Recommendations to Jewish institutions			
16.30	All Jewish institutions in Australia should ensure that their complaint handling policies explicitly state that the *halachic* concepts of *mesirah*, *moser* and *loshon horo* do not apply to the communication and reporting of allegations of child sexual abuse to police and other civil authorities.	**Noted – for religious institutions to respond**	
16.31	All institutions that provide activities or services of any kind, under the auspices of a particular religious denomination or faith, through which adults have contact with children, should implement the 10 Child Safe Standards identified by the Royal Commission.	**Noted – for religious institutions to respond**	See response to Recommendation 6.8 (*Final report*).
16.32	Religious organisations should adopt the Royal Commission's 10 Child Safe Standards as nationally mandated standards for each of their affiliated institutions.	**Noted – for religious institutions to respond**	See response to Recommendation 6.8 (*Final report*).
16.33	Religious organisations should drive a consistent approach to the implementation of the Royal Commission's 10 Child Safe Standards in each of their affiliated institutions.	**Noted – for religious institutions to respond**	
16.34	Religious organisations should work closely with relevant state and territory oversight bodies to support the implementation of and compliance with the Royal Commission's 10 Child Safe Standards in each of their affiliated institutions.	**Noted – for religious institutions to respond**	
16.35	Religious institutions in highly regulated sectors, such as schools and out-of-home care service providers, should report their compliance with the Royal Commission's 10 Child Safe Standards, as monitored by the relevant sector regulator, to the religious organisation to which they are affiliated.	**Noted – for religious institutions to respond**	
16.36	Consistent with Child Safe Standard 1, each religious institution in Australia should ensure that its religious leaders are provided with leadership training both pre- and post-appointment, including in relation to the promotion of child safety.	**Noted – for religious institutions to respond**	
16.37	Consistent with Child Safe Standard 1, leaders of religious institutions should ensure that there are mechanisms through which they receive advice from individuals with relevant professional expertise on all matters relating to child sexual abuse and child safety. This should include in relation to prevention, policies and procedures and complaint handling. These mechanisms should facilitate advice from people with a variety of professional backgrounds and include lay men and women.	**Noted – for religious institutions to respond**	
16.38	Consistent with Child Safe Standard 1, each religious institution should ensure that religious leaders are accountable to an appropriate authority or body, such as a board of management or council, for the decisions they make with respect to child safety.	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
16.39	Consistent with Child Safe Standard 1, each religious institution should have a policy relating to the management of actual or perceived conflicts of interest that may arise in relation to allegations of child sexual abuse. The policy should cover all individuals who have a role in responding to complaints of child sexual abuse.	**Noted – for religious institutions to respond**	
16.40	Consistent with Child Safe Standard 2, wherever a religious institution has children in its care, those children should be provided with age-appropriate prevention education that aims to increase their knowledge of child sexual abuse and build practical skills to assist in strengthening self-protective skills and strategies. Prevention education in religious institutions should specifically address the power and status of people in religious ministry and educate children that no one has a right to invade their privacy and make them feel unsafe.	**Noted – for religious institutions to respond**	
16.41	Consistent with Child Safe Standard 3, each religious institution should make provision for family and community involvement by publishing all policies relevant to child safety on its website, providing opportunities for comment on its approach to child safety, and seeking periodic feedback about the effectiveness of its approach to child safety.	**Noted – for religious institutions to respond**	
16.42	Consistent with Child Safe Standard 5, each religious institution should require that candidates for religious ministry undergo external psychological testing, including psychosexual assessment, for the purposes of determining their suitability to be a person in religious ministry and to undertake work involving children.	**Noted – for religious institutions to respond**	
16.43	Each religious institution should ensure that candidates for religious ministry undertake minimum training on child safety and related matters, including training that: a. equips candidates with an understanding of the Royal Commission's 10 Child Safe Standards b. educates candidates on: i. professional responsibility and boundaries, ethics in ministry and child safety ii. policies regarding appropriate responses to allegations or complaints of child sexual abuse, and how to implement these policies iii. how to work with children, including childhood development iv. identifying and understanding the nature, indicators and impacts of child sexual abuse.	**Noted – for religious institutions to respond**	
16.44	Consistent with Child Safe Standard 5, each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, are subject to effective management and oversight and undertake annual performance appraisals.	**Noted – for religious institutions to respond**	
16.45	Consistent with Child Safe Standard 5, each religious institution should ensure that all people in religious or pastoral ministry, including religious leaders, have professional supervision with a trained professional or pastoral supervisor who has a degree of independence from the institution within which the person is in ministry.	**Noted – for religious institutions to respond**	
16.46	Religious institutions which receive people from overseas to work in religious or pastoral ministry, or otherwise within their institution, should have targeted programs for the screening, initial training and professional supervision and development of those people. These programs should include material covering professional responsibility and boundaries, ethics in ministry and child safety.	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
16.47	Consistent with Child Safe Standard 7, each religious institution should require that all people in religious or pastoral ministry, including religious leaders, undertake regular training on the institution's child safe policies and procedures. They should also be provided with opportunities for external training on best practice approaches to child safety.	**Noted – for religious institutions to respond**	
16.48	Religious institutions which have a rite of religious confession for children should implement a policy that requires the rite only be conducted in an open space within the clear line of sight of another adult. The policy should specify that, if another adult is not available, the rite of religious confession for the child should not be performed.	**Noted – for religious institutions to respond**	
16.49	Codes of conduct in religious institutions should explicitly and equally apply to people in religious ministry and to lay people.	**Noted – for religious institutions to respond**	
16.50	Consistent with Child Safe Standard 7, each religious institution should require all people in religious ministry, leaders, members of boards, councils and other governing bodies, employees, relevant contractors and volunteers to undergo initial and periodic training on its code of conduct. This training should include: a. what kinds of allegations or complaints relating to child sexual abuse should be reported and to whom b. identifying inappropriate behaviour which may be a precursor to abuse, including grooming c. recognising physical and behavioural indicators of child sexual abuse d. that all complaints relating to child sexual abuse must be taken seriously, regardless of the perceived severity of the behaviour.	**Noted – for religious institutions to respond**	
16.51	All religious institutions' complaint handling policies should require that, upon receiving a complaint of child sexual abuse, an initial risk assessment is conducted to identify and minimise any risks to children.	**Noted – for religious institutions to respond**	
16.52	All religious institutions' complaint handling policies should require that, if a complaint of child sexual abuse against a person in religious ministry is plausible, and there is a risk that person may come into contact with children in the course of their ministry, the person be stood down from ministry while the complaint is investigated.	**Noted – for religious institutions to respond**	
16.53	The standard of proof that a religious institution should apply when deciding whether a complaint of child sexual abuse has been substantiated is the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*.	**Noted – for religious institutions to respond**	
16.54	Religious institutions should apply the same standards for investigating complaints of child sexual abuse whether or not the subject of the complaint is a person in religious ministry.	**Noted – for religious institutions to respond**	
16.55	Any person in religious ministry who is the subject of a complaint of child sexual abuse which is substantiated on the balance of probabilities, having regard to the principles in *Briginshaw v Briginshaw*, or who is convicted of an offence relating to child sexual abuse, should be permanently removed from ministry. Religious institutions should also take all necessary steps to effectively prohibit the person from in any way holding himself or herself out as being a person with religious authority.	**Noted – for religious institutions to respond**	
16.56	Any person in religious ministry who is convicted of an offence relating to child sexual abuse should:	**Noted – for religious institutions to respond**	

#	Royal Commission recommendation	NSW Government response	Comment
	a. in the case of Catholic priests and religious, be dismissed from the priesthood and/or dispensed from his or her vows as a religious b. in the case of Anglican clergy, be deposed from holy orders c. in the case of Uniting Church ministers, have his or her recognition as a minister withdrawn d. in the case of an ordained person in any other religious denomination that has a concept of ordination, holy orders and/or vows, be dismissed, deposed or otherwise effectively have their religious status removed.		
16.57	Where a religious institution becomes aware that any person attending any of its religious services or activities is the subject of a substantiated complaint of child sexual abuse, or has been convicted of an offence relating to child sexual abuse, the religious institution should: a. assess the level of risk posed to children by that perpetrator's ongoing involvement in the religious community b. take appropriate steps to manage that risk.	**Noted – for religious institutions to respond**	
16.58	Each religious organisation should consider establishing a national register which records limited but sufficient information to assist affiliated institutions identify and respond to any risks to children that may be posed by people in religious or pastoral ministry.	**Noted – for religious institutions to respond**	
Volume 17, Beyond the Royal Commission			
Monitoring and reporting on implementation			
An initial government response			
17.1	The Australian Government and state and territory governments should each issue a formal response to this Final Report within six months of it being tabled, indicating whether our recommendations are accepted, accepted in principle, rejected or subject to further consideration.	**Accepted (National priority)**	The NSW Government agrees to issue formal responses to the Final report in June 2018.
Ongoing periodic reporting			
17.2	The Australian Government and state and territory governments should, beginning 12 months after this Final Report is tabled, report on their implementation of the Royal Commission's recommendations made in this Final Report and its earlier *Working with Children Checks*, *Redress and civil litigation* and *Criminal justice* reports, through five consecutive annual reports tabled before their respective parliaments.	**Accepted (National priority)**	The NSW Government agrees to report on progress in implementing the Royal Commission's recommendations from the Final report, and the Working with Children Checks, Redress and civil litigation, and Criminal justice reports. These progress reports will be tabled before the NSW Parliament. Information will also be shared with the public, with a focus on ensuring information is accessible to survivors, families, children and institutions.
17.3	Major institutions and peak bodies of institutions that engage in child-related work should, beginning 12 months after this Final Report is tabled, report on their implementation of the Royal Commission's recommendations to the National Office for Child Safety through five consecutive annual reports. The National Office for Child Safety should make these reports publicly available. At a minimum, the institutions reporting should include those that were the subject of the Royal Commission's institutional review hearings held from 5 December 2016 to 10 March 2017.	**Noted – for major institutions and peak bodies of institutions to respond**	
10-year review			
17.4	The Australian Government should initiate a review to be conducted 10 years after the tabling of this Final Report. This review should:	**Accepted. This is a matter for the Australian Government**	The NSW Government welcomes a future review by the Australian Government on the implementation of the Royal Commission's recommendations.

#	Royal Commission recommendation	NSW Government response	Comment
	a. establish the extent to which the Royal Commission's recommendations have been implemented 10 years after the tabling of the Final Report b. examine the extent to which the measures taken in response to the Royal Commission have been effective in preventing child sexual abuse, improving the responses of institutions to child sexual abuse and ensuring that victims and survivors of child sexual abuse obtain justice, treatment and support c. advise on what further steps should be taken by governments and institutions to ensure continuing improvement in policy and service delivery in relation to child sexual abuse in institutional contexts.		
Preserving the records of the Royal Commission			
17.5	The Australian Government should host and maintain the Royal Commission website for the duration of the national redress scheme for victims and survivors of institutional child sexual abuse.	**Accepted. This is a matter for the Australian Government**	The NSW Government supports a national website. In addition, the NSW Government provides updates on progress at www.nsw.gov.au/royalcommission.
A national memorial to victims and survivors of child sexual abuse in institutional contexts			
17.6	A national memorial should be commissioned by the Australian Government for victims and survivors of child sexual abuse in institutional contexts. Victims and survivors should be consulted on the memorial design and it should be located in Canberra.	**Accepted. This is a matter for the Australian Government**	The NSW Government recognises the courage of survivors who shared their heartbreaking accounts of the abuse experienced in institutions entrusted with their care.

Criminal justice report NSW Government response

The *Criminal justice report* was released in August 2017.

It includes 85 recommendations.

The recommendations cover:

- police responses
- child sexual abuse offences
- third-party offences
- prosecution responses
- tendency and coincidence evidence, and joint trials.

03

#	Royal Commission recommendation	NSW Government response	Comment
Our approach to criminal justice reforms			
1	In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met: a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused b. criminal justice responses are available for victims and survivors c. victims and survivors are supported in seeking criminal justice responses.	**Accepted**	The NSW Government has introduced a package of reforms to strengthen child sexual abuse laws to ensure the criminal justice system in NSW meets these objectives and reflects the spirit of all the Royal Commission's criminal justice recommendations.
Current police responses			
2	Australian governments should refer to the Steering Committee for the Report on Government Services for review the issues of: a. how the reporting framework for police services in the Report on Government Services could be extended to include reporting on child sexual abuse offences b. whether any outcome measures that would be appropriate for police investigations of child sexual abuse offences could be developed and reported on.	**Accepted**	The NSW Government welcomes consideration of these two issues by the Steering Committee for the Report on Government Services. The NSW Police Force will consider the types of measures that can be identified and developed for inclusion in the report, and will seek input from the Department of Family and Community Services and NSW Health as necessary.
Issues in police responses			
Principles for initial police responses			
3	Each Australian government should ensure that its policing agency: a. recognises that a victim or survivor's initial contact with police will be important in determining their satisfaction with the entire criminal justice response and in influencing their willingness to proceed with a report and to participate in a prosecution b. ensures that all police who may come into contact with victims or survivors of institutional child sexual abuse are trained to: establishes arrangements to ensure that, on initial contact from a i. have a basic understanding of complex trauma and how it can affect people who report to police, including those who may have difficulties dealing with institutions or persons in positions of authority (such as the police) ii. treat anyone who approaches the police to report child sexual abuse with consideration and respect, taking account of any relevant cultural safety issues c. victim or survivor, police refer victims and survivors to appropriate support services.	**Accepted**	The NSW Police Force has worked with the Royal Commission to develop a Mandatory Continuing Police Education training package which is schedule for delivery to all police in 2017–2018. Issues covered by the training include the importance of the initial police response, the impact of complex trauma on reporting, treating victims with dignity and respect, and referrals to external support or service providers. In addition, the NSW Police Force has reviewed and updated its internal policies to ensure they reflect victim care and support best practice.
Encouraging reporting			
4	To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency: a. takes steps to communicate to victims (and their families or support people where the victims are children or are particularly vulnerable) that their decision whether to participate in a police investigation will be respected – that is, victims retain the right to withdraw at any stage in the process and to decline to proceed further with police and/or any prosecution b. provides information on the different ways in which victims and survivors can report to police or seek advice from police on their options for reporting or not reporting abuse – this should be in a	**Accepted in principle**	The NSW Police Force is committed to encouraging and facilitating the reporting of child sexual abuse. a. The NSW Police Force currently delivers training on communication with victims, including on encouraging victims to be involved in the decision-making process. The NSW Government will consider including the right of a victim to withdraw from the process in the Charter of Victims Rights or the Code of Practice for the Charter of Victims Rights. b. The NSW Police Force, Department of Family and Community Services, NSW Health and the Department of Education will consider what improvements can be made to communication materials on reporting options that are made available to the community. c. The NSW Police Force will consider additional channels for reporting and will consider what improvements may be made to existing channels.

#	Royal Commission recommendation	NSW Government response	Comment
	format that allows institutions and survivor advocacy and support groups and support services to provide it to victims and survivors c. makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting d. works with survivor advocacy and support groups and support services, including those working with people from culturally and linguistically diverse backgrounds and people with disability, to facilitate reporting by victims and survivors e. allows victims and survivors to benefit from the presence of a support person of their choice if they so wish throughout their dealings with police, provided that this will not interfere with the police investigation or risk contaminating evidence f. is willing to take statements from victims and survivors in circumstances where the alleged perpetrator is dead or is otherwise unlikely to be able to be tried.		d. The NSW Police Force and other relevant agencies (such as Victims Services within the Department of Justice) actively engage with diverse victim advocacy and support groups to facilitate reporting. e. Victims may be accompanied by a support person in accordance with NSW Police Force policy, and may elect an alternative support person if their first choice would interfere with the investigation or prosecution. f. The NSW Police Force is committed to taking reports from victims where the alleged perpetrator is dead or is otherwise unlikely to be able to be brought before a court. The NSW Government will consider if a supporting amendment should be made to the Charter of Victims Rights or the Code of Practice for the Charter of Victims Rights.
5	To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, among Aboriginal and Torres Strait Islander victims and survivors, each Australian government should ensure that its policing agency: a. takes the lead in developing good relationships with Aboriginal and Torres Strait Islander communities b. provides channels for reporting outside of the community (such as telephone numbers and online reporting forms).	**Accepted**	The Aboriginal Strategic Direction 2018–2023 guides the NSW Police Force in seeking a genuine level of Aboriginal community ownership and involvement through a consultative and proactive approach. Minor crimes can be reported to the NSW Police Force via telephone or the internet. The NSW Police Force will consider whether these reporting channels should be available when reporting child sexual abuse.
6	To encourage prisoners and former prisoners to report allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency: a. provides channels for reporting that can be used from prison and that allow reports to be made confidentially b. does not require former prisoners to report at a police station.	**Accepted in principle**	The NSW Police Force, NSW Corrective Services and Victims Services will develop a protocol to support reporting from prisons.
Police investigations			
7	Each Australian government should ensure that its policing agency conducts investigations of reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles: a. While recognising the complexity of police rosters, staffing and transfers, police should recognise the benefit to victims and their families and survivors of continuity in police staffing and should take steps to facilitate, to the extent possible, continuity in police staffing on an investigation of a complaint. b. Police should recognise the importance to victims and their families and survivors of police maintaining regular communication with them to keep them informed of the status of their report and any investigation unless they have asked not to be kept informed. c. Particularly in relation to historical allegations of institutional child sexual abuse, police who assess or provide an investigative response to allegations should be trained to: i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant.	**Accepted**	The NSW Police Force will ensure that these principles continue to be upheld in practice. a. The NSW Police Force aims for staff continuity in an investigation, and facilitates this by maintaining dedicated investigators for child sexual abuse and other child abuse in Child Abuse Units. b. The importance of communication with victims is emphasised by the requirements of regular contact in the Charter of Victims Rights. c. The new Mandatory Continuing Police Education training package developed collaboratively with the Royal Commission covers best practice for responding to and investigating child sexual abuse matters.
8	State and territory governments should introduce legislation to implement Recommendation 20-1 of the report of the Australian Law	**Accepted**	Recommendation 20–1 was based on NSW legislative provisions introduced in response to recommendations made in the *Report of the Special Commission of Inquiry into Child Protection*

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	Reform Commission and the New South Wales Law Reform Commission *Family violence: A national legal response* in relation to disclosing or revealing the identity of a mandatory reporter to a law enforcement agency. *Recommendation 20–1: State and territory child protection legislation should authorise a person to disclose to a law enforcement agency—including federal, state and territory police—the identity of a reporter, or the contents of a report from which the reporter's identity may be revealed, where:* *a. the disclosure is in connection with the investigation of a serious offence alleged to have been committed against a child or young person; and* *b. the disclosure is necessary to safeguard or promote the safety, welfare and wellbeing of any child or young person, whether or not the child or young person is the victim of the alleged offence.* *The information should only be disclosed where:* *a. the information is requested by a senior law enforcement officer, who has certified in writing beforehand that obtaining the reporter's consent would prejudice the investigation of the serious offence concerned; or* *b. the agency that discloses the identity of the reporter has certified in writing that it is impractical to obtain the consent.* *Where information is disclosed, the person who discloses the identity of the reporter, or the contents of a report from which the identity of a reporter may be revealed, should notify the reporter as soon as practicable of this fact, unless to do so would prejudice the investigation.*		*Services in NSW* in 2008. These provisions commenced in 2010 and are still in place (see section 29(4A)-(4C) of the *Children and Young Persons (Care and Protection) Act 1998*).
Investigative interviews for use as evidence in chief			
9	Each Australian government should ensure that its policing agency conducts investigative interviewing in relation to reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles: a. All police who provide an investigative response (whether specialist or generalist) to child sexual abuse should receive at least basic training in understanding sexual offending, including the nature of child sexual abuse and institutional child sexual abuse offending. b. All police who provide an investigative response (whether specialist or generalist) to child sexual abuse should be trained to interview the complainant in accordance with current research and learning about how memory works in order to obtain the complainant's memory of the events. c. The importance of video recorded interviews for children and other vulnerable witnesses should be recognised, as these interviews usually form all, or most, of the complainant's and other relevant witnesses' evidence in chief in any prosecution. d. Investigative interviewing of children and other vulnerable witnesses should be undertaken by police with specialist training. The specialist training should focus on: i. a specialist understanding of child sexual abuse, including institutional child sexual abuse, and the developmental and communication needs of children and other vulnerable witnesses ii. skill development in planning and conducting interviews, including use of appropriate questioning techniques. e. Specialist police should undergo refresher training on a periodical basis to ensure that their specialist understanding and skills remain up to date and accord with current research.	**Accepted**	The NSW Police Force will ensure that these principles continue to be upheld in practice. a, b, d, e. All child sexual abuse matters in NSW are investigated and victims are interviewed by qualified and trained criminal investigators, mostly from specialised Child Abuse Units. The new Mandatory Continuing Police Education training package developed collaboratively with the Royal Commission will enhance the investigative response and investigative interviews undertaken by police. A refresher course is currently being developed which will be regularly delivered to Child Abuse Units. c. All interviews with children under 16 or with a cognitive impairment are recorded. f, g. The NSW Police Force is developing a process to review sample interviews of all Child Abuse Unit investigators, and will assess and address any impediments to using these interviews for quality assurance and training purposes. h. The NSW Police Force is currently trialling the use of high-definition Pan Tilt Zoom cameras in dedicated child interview suites. i. Interpreters are made available to any victim or witness where necessary. j. The NSW Government is trialling the use of witness intermediaries for child victims as part of the Child Sexual Offence Evidence Pilot (CSO Evidence Pilot). See response to Recommendation 59 (*Criminal justice report*).

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	f. From time to time, experts should review a sample of video recorded interviews with children and other vulnerable witnesses conducted by specialist police for quality assurance and training purposes and to reinforce best-practice interviewing techniques. g. State and territory governments should introduce legislation to remove any impediments, including in relation to privacy concerns, to the use of video recorded interviews so that the relevant police officer, his or her supervisor and any persons engaged by police in quality assurance and training can review video recorded interviews for quality assurance and training purposes. This should not authorise the use of video recorded interviews for general training in a manner that would raise privacy concerns. h. Police should continue to work towards improving the technical quality of video recorded interviews so that they are technically as effective as possible in presenting the complainant's and other witnesses' evidence in chief. i. Police should recognise the importance of interpreters, including for some Aboriginal and Torres Strait Islander victims, survivors and other witnesses. j. Intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses.		
Police charging decisions			
10	Each Australian government should ensure that its policing agency makes decisions in relation to whether to lay charges for child sexual abuse offences in accordance with the following principles: a. Recognising that it is important to complainants that the correct charges be laid as early as possible so that charges are not significantly downgraded at or close to trial, police should ensure that care is taken, and that early prosecution advice is sought, where appropriate, in laying charges. b. In making decisions about whether to charge, police should not: i. expect or require corroboration where the victim or survivor's account does not suggest that there should be any corroboration available ii. rely on the absence of corroboration as a determinative factor in deciding not to charge, where the victim or survivor's account does not suggest that there should be any corroboration available, unless the prosecution service advises otherwise.	**Accepted**	The NSW Police Force will ensure that these principles continue to be upheld in practice. a. The early appropriate guilty pleas scheme (see response to Recommendation 72 – *Criminal justice report*) includes a charge certification component. A senior prosecutor reviews the brief of evidence as soon as it is served and confirms that the charges will proceed. b. The NSW Police Force seeks to reach a standard of sufficiency of evidence to commence criminal proceedings, whether through corroborating evidence or other evidence.
11	The Victorian Government should review the operation of section 401 of the *Criminal Procedure Act 2009* (Vic) and consider amending the provision to restrict the awarding of costs against police if it appears that the risk of costs awards might be affecting police decisions to prosecute. The government of any other state or territory that has similar provisions should conduct a similar review and should consider similar amendments.	**Accepted**	This recommendation is not applicable to NSW, where costs may be awarded against a public officer in limited prescribed circumstances (see section 177 of the *Criminal Procedure Act 1986*).
Police responses to reports of historical child sexual abuse			
12	Each Australian government should ensure that, if its policing agency does not provide a specialist response to victims and survivors reporting historical child sexual abuse, its policing agency develops and implements a document in the nature of a 'guarantee of service' which sets out for the benefit of victims and survivors – and as a reminder to the police involved – what victims and survivors are entitled to expect in the police response	**Accepted in principle**	The NSW Police Force provides a specialist response to victims in Child Abuse Units under the Child Abuse and Sex Crimes Squad. However, there are also numerous policies in place setting out what victims are entitled to expect in the police response to their report, including the Charter of Victims Rights. The NSW Government will review the Charter of Victims Rights and the Code of Practice for the Charter of Victims Rights to ensure there are no gaps in its coverage of the specific entitlements identified by the Royal Commission.

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	to their report of child sexual abuse. The document should include information to the effect that victims and survivors are entitled to: a. be treated by police with consideration and respect, taking account of any relevant cultural safety issues b. have their views about whether they wish to participate in the police investigation respected c. be referred to appropriate support services d. contact police through a support person or organisation rather than contacting police directly if they prefer e. have the assistance of a support person of their choice throughout their dealings with police unless this will interfere with the police investigation or risk contaminating evidence f. have their statement taken by police even if the alleged perpetrator is dead g. be provided with the details of a nominated person within the police service for them to contact h. be kept informed of the status of their report and any investigation unless they do not wish to be kept informed i. have the police focus on the credibility of the complaint or allegations rather than focusing only on the credibility of the complainant, recognising that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record.		
Police responses to reports of child sexual abuse made by people with disability			
13	Each Australian government should ensure that its policing agency responds to victims and survivors with disability, or their representatives, who report or seek to report child sexual abuse, including institutional child sexual abuse, to police in accordance with the following principles: a. Police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor's credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability. b. Police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor's credibility or reliability because of their disability. c. Police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview. d. Decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.	**Accepted**	The NSW Police Force will ensure that these principles continue to be upheld in practice. The NSW Police Force provides training and resources to police on how to respond to victims and victims with disability. Police are encouraged to rely on the strength of a complainant's evidence and not make any adverse assessment based on their disability, and are advised to encourage victims with disability to have a support person to assist them.
Police responses and institutions			
Police communication and advice			
14	In order to assist in the investigation of current allegations of institutional child sexual abuse, each Australian government should ensure that its policing agency:	**Accepted**	The Local Contact Point Protocol (LCPP) is a joint procedure developed by the Department of Family and Community Services (FACS), the NSW Police Force and NSW Health, which aligns with existing policies and procedures governing the three agencies and that of the NSW Department of Education.

#	Royal Commission recommendation	NSW Government response	Comment
	a. develops and keeps under review procedures and protocols to guide police and institutions about the information and assistance police can provide to institutions where a current allegation of institutional child sexual abuse is made b. develops and keeps under review procedures and protocols to guide the police, other agencies, institutions and the broader community on the information and assistance police can provide to children and parents and the broader community where a current allegation of institutional child sexual abuse is made.		The LCPP allows for the provision of information and support to the parents of children who may be at risk and concerned community members where there are allegations of child sexual abuse involving an institution. Led by the NSW Police Force, and supported by FACS and NSW Health, the protocol will be updated to reflect the Royal Commission's recommendations and any outstanding recommendations from the August 2017 NSW Ombudsman review report.
15	The New South Wales Standard Operating Procedures for Employment Related Child Abuse Allegations and the Joint Investigation Response Team Local Contact Point Protocol should serve as useful precedents for other Australian governments to consider.	**Accepted**	This recommendation is based on existing practice in NSW.
Blind reporting			
16	In relation to blind reporting, institutions and survivor advocacy and support groups should: a. be clear that, where the law requires reporting to police, child protection or another agency, the institution or group or its relevant staff member or official will report as required b. develop and adopt clear guidelines to inform staff and volunteers, victims and their families and survivors, and police, child protection and other agencies as to the approach the institution or group will take in relation to allegations, reports or disclosures it receives that it is not required by law to report to police, child protection or another agency.	**Accepted**	The NSW Department of Justice has consulted victim advocacy and support groups on recommendations 16–19 and has communicated the Royal Commission's recommended approach to blind reporting. To further assist victim and advocacy groups to develop or update their own processes and resources, Victims Services will facilitate consultations between the victim advocacy and support groups and the NSW Police Force through existing forums.
17	If a relevant institution or survivor advocacy and support group adopts a policy of reporting survivors' details to police without survivors' consent – that is, if it will not make blind reports – it should seek to provide information about alternative avenues for a survivor to seek support if this aspect of the institution or group's guidelines is not acceptable to the survivor.	**Accepted**	
18	Institutions and survivor advocacy and support groups that adopt a policy that they will not report the survivor's details without the survivor's consent should make a blind report to police in preference to making no report at all.	**Accepted**	
19	Regardless of an institution or survivor advocacy and support group's policy in relation to blind reporting, the institution or group should provide survivors with: a. information to inform them about options for reporting to police b. support to report to police if the survivor is willing to do so.	**Accepted**	
20	Police should ensure that they review any blind reports they receive and that they are available as intelligence in relation to any current or subsequent police investigations. If it appears that talking to the survivor might assist with a police investigation, police should contact the relevant institution or survivor advocacy and support group, and police and the institution or group should cooperate to try to find a way in which the survivor will be sufficiently supported so that they are willing to speak to police.	**Accepted**	The NSW Police Force (NSWPF) will continue to review all reports received, including blind reports, and work with survivor advocacy and support groups to ensure victims are supported to speak to police if they decide to do so.
Persistent child sexual abuse offences			
21	Each state and territory government should introduce legislation to amend its persistent child sexual abuse offence so that:	**Accepted**	The NSW Government has introduced legislation to reform and strengthen the persistent child sexual abuse offence so that it is based on maintaining an unlawful relationship, where an accused engages in

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	a. the actus reus is the maintaining of an unlawful sexual relationship b. an unlawful sexual relationship is established by more than one unlawful sexual act c. the trier of fact must be satisfied beyond reasonable doubt that the unlawful sexual relationship existed but, where the trier of fact is a jury, jurors need not be satisfied of the same unlawful sexual acts d. the offence applies retrospectively but only to sexual acts that were unlawful at the time they were committed e. on sentencing, regard is to be had to relevant lower statutory maximum penalties if the offence is charged with retrospective application.		two or more unlawful sexual acts with or towards a child over any period of time. The maximum penalty for the offence has been increased from 25 years to life imprisonment.
22	The draft provision in Appendix H provides for the recommended reform. Legislation to the effect of the draft provision should be introduced.	**Accepted in principle**	
23	State and territory governments (other than Victoria) should consider introducing legislation to establish legislative authority for course of conduct charges in relation to child sexual abuse offences if legislative authority may assist in using course of conduct charges.	**Accepted in principle**	The NSW Government considered introducing a course of conduct charge and determined that it is unnecessary. Any conduct that could be prosecuted through a course of conduct charge will be able to be prosecuted under the strengthened offence of persistent child sexual abuse (see response to Recommendation 21 – *Criminal Justice report*).
24	State and territory governments should consider providing for any of the two or more unlawful sexual acts that are particularised for the maintaining an unlawful sexual relationship offence to be particularised as courses of conduct.	**Accepted in principle**	
Grooming offences			
25	To the extent they do not already have a broad grooming offence, each state and territory government should introduce legislation to amend its criminal legislation to adopt a broad grooming offence that captures any communication or conduct with a child undertaken with the intention of grooming the child to be involved in a sexual offence.	**Accepted in principle**	The NSW Government has introduced legislation to broaden the offence of grooming to include where an adult provides a child with gifts or money with the intention of making it easier to procure the child for unlawful sexual activity. This ensures the offence captures common grooming behaviour, while ensuring that the prosecution can continue to use evidence of more general relationship and trust-building behaviours by the accused on sentence for substantive offences.
26	Each state and territory government (other than Victoria) should introduce legislation to extend its broad grooming offence to the grooming of persons other than the child.	**Accepted**	The NSW Government has introduced legislation making it an offence for an adult to groom another adult. The offence covers circumstances where an adult provides another adult, who has care of or authority over a child, with a financial or material benefit with the intention of making it easier to access the child for unlawful sexual activity
Position of authority offences			
27	State and territory governments should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age and the offender is in a position of authority (however described) in relation to the victim. If the offences require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), states and territories should introduce legislation to amend the offences so that the existence of the relationship is sufficient.	**Accepted**	The 'special care offence' in s 73 of the *Crimes Act 1900* is aligned with this recommendation. The NSW Government recently acted to further strengthen the offence by broadening the definition of 'teacher' to include any person who works at a school and has students under their care or authority. In addition, a new special care offence was introduced to criminalise sexual touching within a special care relationship. The NSW Government has also instigated a parliamentary inquiry into the adequacy and scope of the special care offence to ensure it is achieving its aim of protecting children.
28	State and territory governments should review any provisions allowing consent to be negatived in the event of sexual contact between a victim of 16 or 17 years of age and an offender who is in a position of authority (however described) in relation to the victim. If the provisions require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), state and territory governments should introduce legislation to amend the provisions so that the existence of the relationship is sufficient.	**Accepted**	The special care offence in s 73 of the *Crimes Act 1900* is aligned with this recommendation.

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29	If there is a concern that one or more categories of persons in a position of authority (however described) may be too broad and may catch sexual contact which should not be criminalised when it is engaged in by such persons with children above the age of consent, state and territory governments could consider introducing legislation to establish defences such as a similar-age consent defence.	**Accepted**	The NSW Government has introduced a limited similar-age defence that is available where there is less than a two-year age gap between the complainant and the accused, and the complainant is 14 or older. The similar-age defence also provides a defence to the special care offence in circumstances where the two parties are aged within two years of each other.
Limitation periods and immunities			
30	State and territory governments should introduce legislation to remove any remaining limitation periods, or any remaining immunities, that apply to child sexual abuse offences, including historical child sexual abuse offences, in a manner that does not revive any sexual offences that are no longer in keeping with community standards.	**Accepted**	There are no remaining limitation periods or immunities in NSW other than those referenced in other recommendations (see responses to recommendations 31 and 83 – *Criminal Justice report*).
31	Without limiting recommendation 30, the New South Wales Government should introduce legislation to give the repeal of the limitation period in section 78 of the *Crimes Act 1900* (NSW) retrospective effect.	**Accepted**	The NSW Government has introduced legislation to give the repeal of the limitation period retrospective effect. This removed a restriction on the prosecutions of certain child sexual abuse offences committed against girls aged 14 to 15 that occurred before May 1992 (when the limitation period was repealed).
Failure to report offence			
Moral or ethical duty to report to police			
32	Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under recommendation 16).	**Accepted**	The NSW Government supports this statement of principle.
Failure to report offence			
33	Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows: a. The failure to report offence should apply to any adult person who: i. is an owner, manager, staff member or volunteer of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions ii. otherwise requires a Working with Children Check clearance for the purposes of their role in the institution but it should not apply to individual foster carers or kinship carers. b. The failure to report offence should apply if the person fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child. c. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster and kinship care services should be included (but not individual foster carers or kinship carers). Facilities and services provided by religious institutions, and any services or functions performed by persons in religious ministry, should be included.	**Accepted in principle**	The NSW Government has introduced a 'failure to report' offence that applies where any adult knows, believes or should reasonably have known that a sexual offence, serious physical assault offence or serious neglect offence has been committed against a child under 18, and fails, without reasonable excuse, to report material information to police that may assist in the apprehension or prosecution of an offender. A reasonable excuse includes where a person believes the material information is already known to police, or has reported the offence under regulatory schemes, or reasonably fears for the safety of any person, or where the victim is now an adult and does not wish the offence to be reported.

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	d. If the knowledge is gained or the suspicion is or should have been formed after the failure to report offence commences, the failure to report offence should apply if any of the following circumstances apply: i. A child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years). ii. The person who is known to have abused a child or is or should have been suspected of abusing a child is either: • still associated with the institution • known or believed to be associated with another relevant institution. iii. The knowledge gained or the suspicion that is or should have been formed relates to abuse that may have occurred within the previous 10 years. e. If the knowledge is gained or the suspicion is or should have been formed before the failure to report offence commences, the failure to report offence should apply if any of the following circumstances apply: i. A child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years) and is still associated with the institution (that is, they are still in the care, supervision or control of the institution). ii. The person who is known to have abused a child or is or should have been suspected of abusing a child is either: • still associated with the institution • known or believed to be associated with another relevant institution.		
Interaction with regulatory reporting			
34	State and territory governments should: a. ensure that they have systems in place in relation to their mandatory reporting scheme and any reportable conduct scheme to ensure that any reports made under those schemes that may involve child sexual abuse offences are brought to the attention of police b. include appropriate defences in the failure to report offence to avoid duplication of reporting under mandatory reporting and any reportable conduct schemes.	**Accepted**	All reports made to Family and Community Services under the NSW mandatory reporting scheme that indicate a crime has been committed are brought to the attention of police. Reports made to the NSW Ombudsman under the reportable conduct scheme are not necessarily reported to police, but will always also be reported through the mandatory reporting scheme. Under the new failure to report offence, it will be a reasonable excuse for not reporting knowledge or suspicion of child sexual abuse to police if the person has reported through regulatory reporting channels (see response to Recommendation 33 – *Criminal justice report*).
Treatment of religious confessions			
35	Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows: a. The criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession. b. The legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective. c. Religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned.	**Subject to further consideration**	The new failure to report offence (see response to Recommendation 33 – *Criminal justice report*) will apply to any person, including members of the clergy. Whether or how the offence will apply to members of the clergy where the information about an offence was gathered through religious confession is a complex issue that has been referred to the Council of Attorneys-General for national consideration.

#	Royal Commission recommendation	NSW Government response	Comment
Failure to protect offence			
36	State and territory governments should introduce legislation to create a criminal offence of failure to protect a child within a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution as follows: a. The offence should apply where: i. an adult person knows that there is a substantial risk that another adult person associated with the institution will commit a sexual offence against: • a child under 16 • a child of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child ii. the person has the power or responsibility to reduce or remove the risk iii. the person negligently fails to reduce or remove the risk. b. The offence should not be able to be committed by individual foster carers or kinship carers. c. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship care services should be included, but individual foster carers and kinship carers should not be included. Facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included. d. State and territory governments should consider the Victorian offence in section 49C of the *Crimes Act 1958* (Vic) as a useful precedent, with an extension to include children of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child.	**Accepted**	The NSW Government has introduced a 'failure to protect' offence, which is based on the recommended offence, but is broader in some respects. The NSW offence applies where an adult: • occupies a position within a relevant organisation • knows there is a risk that another adult associated with the organisation will commit a sexual offence, serious physical abuse or serious neglect offence against a child • has the power or responsibility to reduce or remove the risk, and • negligently fails to reduce or remove the risk.
Issues in prosecution responses			
Principles for prosecution responses			
37	All Australian Directors of Public Prosecutions, with assistance from the relevant government in relation to funding, should ensure that prosecution responses to child sexual abuse are guided by the following principles: a. All prosecution staff who may have professional contact with victims of institutional child sexual abuse should be trained to have a basic understanding of the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and how it can affect people who are involved in a prosecution process, including those who may have difficulties dealing with institutions or person in positions of authority. b. While recognising the complexity of prosecution staffing and court timetables, prosecution agencies should recognise the benefit to victims and their families and survivors of continuity in prosecution team staffing and should take steps to facilitate, to the extent possible, continuity in staffing of the prosecution team involved in a prosecution. c. Prosecution agencies should continue to recognise the importance to victims and their families and survivors of the prosecution agency maintaining regular communication with them to keep them informed of the status of the prosecution unless they have asked not to be kept informed.	**Accepted**	The Office of the Director of Public Prosecutions (ODPP) supports the recommended principles to guide prosecution responses to child sexual abuse. All of the principles are reflected in existing processes, including those developed for the early appropriate guilty pleas scheme. The ODPP will also update the Prosecution Guidelines to reflect the principles.

#	Royal Commission recommendation	NSW Government response	Comment
	d. Witness Assistance Services should be funded and staffed to ensure that they can perform their task of keeping victims and their families and survivors informed and ensuring that they are put in contact with relevant support services, including staff trained to provide a culturally appropriate service for Aboriginal and Torres Strait Islander victims and survivors. Specialist services for children should also be considered. e. Particularly in relation to historical allegations of institutional child sexual abuse, prosecution staff who are involved in giving early charge advice or in prosecuting child sexual abuse matters should be trained to: i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant. f. Prosecution agencies should recognise that children with disability are at a significantly increased risk of abuse, including child sexual abuse. Prosecutors should take this increased risk into account in any decisions they make in relation to prosecuting child sexual abuse offences.		
38	Each state and territory government should facilitate the development of standard material to provide to complainants or other witnesses in child sexual abuse trials to better inform them about giving evidence. The development of the standard material should be led by Directors of Public Prosecutions in consultation with Witness Assistance Services, public defenders (where available), legal aid services and representatives of the courts to ensure that it: a. is likely to be of adequate assistance for complainants who are not familiar with criminal trials and giving evidence b. is fair to the accused as well as to the prosecution c. does not risk rehearsing or coaching the witness.	**Accepted**	The Office of the Director of Public Prosecutions is reviewing all material provided to complainants and other witnesses in child sexual abuse trials to ensure it communicates necessary information clearly to support witnesses' participation in trials.
Charging and plea decisions			
39	All Australian Directors of Public Prosecutions should ensure that prosecution charging and plea decisions in prosecutions for child sexual abuse offences are guided by the following principles: a. Prosecutors should recognise the importance to complainants of the correct charges being laid as early as possible so that charges are not significantly downgraded or withdrawn at or close to trial. Prosecutors should provide early advice to police on appropriate charges to lay when such advice is sought. b. Regardless of whether such advice has been sought, prosecutors should confirm the appropriateness of the charges as early as possible once they are allocated the prosecution to ensure that the correct charges have been laid and to minimise the risk that charges will have to be downgraded or withdrawn closer to the trial date. c. While recognising the benefit of securing guilty pleas, prosecution agencies should also recognise that it is important to complainants – and to the criminal justice system – that the charges for which a guilty plea is accepted reasonably reflect the true criminality of the abuse they suffered. d. Prosecutors must endeavour to ensure that they allow adequate time to consult the complainant and the police in relation to any proposal to downgrade or withdraw charges or to accept a negotiated plea and that the complainant is given the opportunity to obtain assistance from relevant witness assistance officers or other	**Accepted**	The Office of the Director of Public Prosecutions supports the recommended principles to guide prosecution charging and plea decisions, and will incorporate them into the Prosecution Guidelines or standard operating procedures.

#	Royal Commission recommendation	NSW Government response	Comment
	advocacy and support services before they give their opinion on the proposal. If the complainant is a child, prosecutors must endeavour to ensure that they give the child the opportunity to consult their carer or parents unless the child does not wish to do so.		
DPP complaints and oversight mechanisms			
40	Each Australian Director of Public Prosecutions should: a. have comprehensive written policies for decision-making and consultation with victims and police b. publish all policies online and ensure that they are publicly available c. provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.	**Accepted in principle**	The Office of the Director of Public Prosecutions (ODPP) has comprehensive, published written policies for decision-making and consultation with victims and police, including the Victims Charter, Prosecution Guideline 19, and s35A of the *Crimes (Sentencing Procedure) Act 1999*. The ODPP will consider the rights of the complainant to seek written reasons in conjunction with the development of a formal process to seek a merits review (see response to Recommendation 41 – *Criminal justice report*).
41	Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.	**Accepted**	The Office of the Director of Public Prosecutions will develop a formal process for merits review of decisions to withdraw all charges or refuse to certify any charges.
42	Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.	**Accepted**	The Office of the Director of Public Prosecutions has an Audit and Risk Committee which undertakes internal audits of compliance with policies.
43	Each Australian Director of Public Prosecutions should publish the existence of their complaints mechanism and internal audit processes and data on their use and outcomes online and in their annual reports.	**Accepted**	All new policies and processes concerning complaints and internal auditing will be published.
Tendency and coincidence and joint trials			
44	In order to ensure justice for complainants and the community, the laws governing the admissibility of tendency and coincidence evidence in prosecutions for child sexual abuse offences should be reformed to facilitate greater admissibility and cross-admissibility of tendency and coincidence evidence and joint trials.	**Accepted in principle**	The law on tendency and evidence in NSW is governed by uniform evidence law that also applies in the Commonwealth, Victoria, ACT, Tasmania and Northern Territory. To preserve consistency in the uniform law, the Attorney General of NSW is leading a national reform project in this area through the Council of Attorneys-General.
45	Tendency or coincidence evidence about the defendant in a child sexual offence prosecution should be admissible: a. if the court thinks that the evidence will, either by itself or having regard to the other evidence, be 'relevant to an important evidentiary issue' in the proceeding, with each of the following kinds of evidence defined to be 'relevant to an important evidentiary issue' in a child sexual offence proceeding: i. evidence that shows a propensity of the defendant to commit particular kinds of offences if the commission of an offence of the same or a similar kind is in issue in the proceeding ii. evidence that is relevant to any matter in issue in the proceeding if the matter concerns an act or state of mind of the defendant and is important in the context of the proceeding as a whole b. unless, on the application of the defendant, the court thinks, having regard to the particular circumstances of the proceeding, that both: i. admission of the evidence is more likely than not to result in the proceeding being unfair to the defendant ii. if there is a jury, the giving of appropriate directions to the jury about the relevance and use of the evidence will not remove the risk.	**Subject to further consideration**	See response to Recommendation 44 (*Criminal Justice report*). This recommendation will be considered in detail through a national process agreed by the Council of Attorneys-General.
46	Common law principles or rules that restrict the admission of propensity or similar fact evidence should be explicitly abolished or excluded in	**Subject to further consideration**	

#	Royal Commission recommendation	NSW Government response	Comment
	relation to the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution.		
47	Issues of concoction, collusion or contamination should not affect the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution. The court should determine admissibility on the assumption that the evidence will be accepted as credible and reliable, and the impact of any evidence of concoction, collusion or contamination should be left to the jury or other fact-finder.	**Subject to further consideration**	
48	Tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.	**Subject to further consideration**	
49	Evidence of: a. the defendant's prior convictions b. acts for which the defendant has been charged but not convicted (other than acts for which the defendant has been acquitted) should be admissible as tendency or coincidence evidence if it otherwise satisfies the test for admissibility of tendency or coincidence evidence about a defendant in a child sexual offence prosecution.	**Subject to further consideration**	
50	Australian governments should introduce legislation to make the reforms we recommend to the rules governing the admissibility of tendency and coincidence evidence.	**Subject to further consideration**	
51	The draft provisions in Appendix N provide for the recommended reforms for Uniform Evidence Act jurisdictions. Legislation to the effect of the draft provisions should be introduced for Uniform Evidence Act jurisdictions and non–Uniform Evidence Act jurisdictions.	**Subject to further consideration**	
Evidence of victims and survivors			
Prerecording			
52	State and territory governments should ensure that the necessary legislative provisions and physical resources are in place to allow for the prerecording of the entirety of a witness's evidence in child sexual abuse prosecutions. This should include both: a. in summary and indictable matters, the use of a prerecorded investigative interview as some or all of the witness's evidence in chief b. in matters tried on indictment, the availability of pre-trial hearings to record all of a witness's evidence, including cross-examination and re-examination, so that the evidence is taken in the absence of the jury and the witness need not participate in the trial itself.	**Accepted in principle**	The Child Sexual Offence Evidence Pilot (CSO Evidence Pilot) is piloting prerecording measures and the use of witness intermediaries in NSW until March 2019. An interim independent evaluation of process in 2017 found that the CSO Evidence Pilot was operating well. The NSW Government has brought forward a final evaluation of outcomes to mid-2018 so it can make an earlier decision on the potential continuation or expansion of prerecording measures in NSW.
53	Full prerecording should be made available for: a. all complainants in child sexual abuse prosecutions b. any other witnesses who are children or vulnerable adults c. any other prosecution witness that the prosecution considers necessary.	**Accepted in principle**	
54	Where the prerecording of cross-examination is used, it should be accompanied by ground rules hearings to maximise the benefits of such a procedure.	**Accepted in principle**	See response to Recommendation 52 (*Criminal Justice report*). Ground rules hearings occur regularly as part of the Child Sexual Offence Evidence Pilot, at the court's discretion.
55	State and territory governments should work with courts to improve the technical quality of closed circuit television and audiovisual links and the	**Accepted**	In NSW, there is no issue with the technical quality of closed circuit television and audiovisual links (AVL). The Justice Video Conferencing Network in NSW includes over 550 AVL suites installed in the

#	Royal Commission recommendation	NSW Government response	Comment
	equipment used and staff training in taking and replaying prerecorded and remote evidence.		Department of Justice's (DoJ) agencies. A $40 million Justice AVL Consolidation Project is underway (running from 2014 to 2018) to expand technology, transform business processes in DoJ agencies, and provide a support system to meet the future needs of criminal and civil proceedings.
Recording			
56	State and territory governments should introduce legislation to require the audiovisual recording of evidence given by complainants and other witnesses that the prosecution considers necessary in child sexual abuse prosecutions, whether tried on indictment or summarily, and to allow these recordings to be tendered and relied on as the relevant witness's evidence in any subsequent trial or retrial. The legislation should apply regardless of whether the relevant witness gives evidence live in court, via closed circuit television or in a prerecorded hearing.	**Accepted in principle**	Where possible, evidence given live in court is recorded in audiovisual form in proceedings for sexual offences including child sexual abuse offences. Any record made of evidence given by complainants in these proceedings may be tendered as evidence in a retrial or subsequent trial, including an audiovisual recording, an audio recording or a transcript. The NSW Government is considering making audiovisual recording available and able to be tendered in more circumstances.
57	State and territory governments should ensure that the courts are adequately resourced to provide this facility, in terms of both the initial recording and its use in any subsequent trial or retrial.	**Accepted in principle**	
58	If it is not practical to record evidence given live in court in a way that is suitable for use in any subsequent trial or retrial, prosecution guidelines should require that the fact that a witness may be required to give evidence again in the event of a retrial be discussed with witnesses when they make any choice as to whether to give evidence via prerecording, closed circuit television or in person.	**Accepted in principle**	See response to Recommendation 56 (*Criminal justice report*). It is already possible in NSW to record evidence given live in court for use in subsequent trials or retrials.
Intermediaries			
59	State and territory governments should establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution. Governments should ensure that the scheme: a. requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses b. provides intermediaries with training on their role and in understanding that their duty is to assist the court to communicate with the witness and to be impartial c. makes intermediaries available at both the police interview stage and trial stage d. enables intermediaries to provide recommendations to police and the court on how best to communicate with the witness and to intervene in an interview or examination where they observe a communication breakdown.	**Accepted in principle**	The Child Sexual Offence (CSO) Evidence Pilot is piloting prerecording measures and the use of witness intermediaries in NSW until March 2019. All the recommended requirements are in place. An interim independent evaluation of process in 2017 found that the CSO Evidence Pilot was operating well. The NSW Government has brought forward a final evaluation of outcomes to mid-2018 so it can make an earlier decision on the potential continuation or expansion of the witness intermediary scheme in NSW (for example, to include other prosecution witnesses or people with a disability).
60	State and territory governments should work with their courts administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a prerecorded hearing or during the trial. This should be essential where a witness intermediary scheme is in place and should allow, at a minimum, a report from an intermediary to be considered.	**Accepted in principle**	See response to Recommendation 54 (*Criminal justice report*). Ground rules hearings occur regularly as part of the Child Sexual Offence Evidence Pilot, at the court's discretion. This occurs without an explicit legislative provision.
Other special measures			
61	The following special measures should be available in child sexual abuse prosecutions for complainants, vulnerable witnesses and other prosecution witnesses where the prosecution considers it necessary:	**Accepted**	All recommended special measures are already in place for sexual assault complainants and vulnerable witnesses (that is, children and witnesses with a cognitive impairment). The NSW Government is considering whether the protections should be extended to other categories of prosecution witnesses.

#	Royal Commission recommendation	NSW Government response	Comment
	a. giving evidence via closed circuit television or audiovisual link so that the witness is able to give evidence from a room away from the courtroom b. allowing the witness to be supported when giving evidence, whether in the courtroom or remotely, including, for example, through the presence of a support person or a support animal or by otherwise creating a more child-friendly environment c. if the witness is giving evidence in court, using screens, partitions or one-way glass so that the witness cannot see the accused while giving evidence d. clearing the public gallery of a courtroom during the witness's evidence e. the judge and counsel removing their wigs and gowns.		
Courtroom issues			
62	State and territory governments should introduce legislation to allow a child's competency to give evidence in child sexual abuse prosecutions to be tested as follows: a. Where there is any doubt about a child's competence to give evidence, a judge should establish the child's ability to understand basic questions asked of them by asking simple, non-theoretical questions – for example, about their age, school, family et cetera. b. Where it does not appear that the child can give sworn evidence, the judge should simply ask the witness for a promise to tell the truth and allow the examination of the witness to proceed.	**Accepted**	In NSW, a child is competent to give sworn evidence if they have the capacity to understand that they are under an obligation to tell the truth. Judges can establish a child's ability to understand basic questions to help determine whether they are competent to give sworn evidence. If a child gives unsworn evidence, the child is not required to promise to tell the truth, but the court is required to provide guidance to the child by telling the child it is important to tell the truth.
Use of interpreters			
63	State and territory governments should provide adequate interpreting services such that any witness in a child sexual abuse prosecution who needs an interpreter is entitled to an interpreter who has sufficient expertise in their primary language, including sign language, to provide an accurate and impartial translation.	**Accepted**	Interpreters are organised by court registries or the NSW Police Force, and are provided free of charge for prosecution witnesses and accused persons in criminal cases. Interpreters are provided when a witness or accused person is either deaf, has a hearing impairment or is unable to communicate with reasonable fluency in English, and needs an interpreter to comprehend and fully participate in court proceedings.
Judicial directions and informing juries			
Reforming judicial directions			
64	State and territory governments should consider or reconsider the desirability of partial codification of judicial directions now that Victoria has established a precedent from which other jurisdictions could develop their own reforms.	**Accepted in principle**	The NSW Government has reconsidered the codification of jury directions and has determined to continue the existing approach of prohibiting or requiring specific jury directions when this becomes desirable or necessary. It is unclear that codification for its own sake will improve the prosecution of child sexual offences in NSW, especially as the Royal Commission's substantive recommendations about jury directions will all be implemented (see response to recommendations 65–71 – *Criminal justice report*).
65	Each state and territory government should review its legislation and introduce any amending legislation necessary to ensure that it has the following provisions in relation to judicial directions and warnings: a. **Delay and credibility:** Legislation should provide that: i. there is no requirement for a direction or warning that delay affects the complainant's credibility ii. the judge must not direct, warn or suggest to the jury that delay affects the complainant's credibility unless the direction, warning or suggestion is requested by the accused and is warranted on the evidence in the particular circumstances of the trial iii. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'.	**Accepted**	All recommended judicial directions are already legislated in NSW. The Royal Commission noted that NSW jury directions on corroboration, delay and reliability are consistent with social science research.

#	Royal Commission recommendation	NSW Government response	Comment
	b. **Delay and forensic disadvantage:** Legislation should provide that: i. there is no requirement for a direction or warning as to forensic disadvantage to the accused ii. the judge must not direct, warn or suggest to the jury that delay has caused forensic disadvantage to the accused unless the direction, warning or suggestion is requested by the accused and there is evidence that the accused has suffered significant forensic disadvantage iii. the mere fact of delay is not sufficient to establish forensic disadvantage iv. in giving any direction, warning or comment, the judge should inform the jury of the nature of the forensic disadvantage suffered by the accused v. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'. c. **Uncorroborated evidence:** Legislation should provide that the judge must not direct, warn or suggest to the jury that it is 'dangerous or unsafe to convict' on the uncorroborated evidence of the complainant or that the uncorroborated evidence of the complainant should be 'scrutinised with great care'. d. **Children's evidence:** Legislation should provide that: i. the judge must not direct, warn or suggest to the jury that children as a class are unreliable witnesses ii. the judge must not direct, warn or suggest to the jury that it would be 'dangerous or unsafe to convict' on the uncorroborated evidence of a child or that the uncorroborated evidence of a child should be 'scrutinised with great care' iii. the judge must not give a direction or warning about, or comment on, the reliability of a child's evidence solely on account of the age of the child.		
66	The New South Wales Government, the Queensland Government and the government of any other state or territory in which Markuleski directions are required should consider introducing legislation to abolish any requirement for such directions.	**Accepted in principle**	The NSW Government has considered abolishing the Markuleski direction and has determined not to take this approach. The direction is not mandatory, and consequently, there is no need to abolish a requirement to give the direction.
Improving information for judges and legal professionals			
67	State and territory governments should support and encourage the judiciary, public prosecutors, public defenders, legal aid and the private Bar to implement regular training and education programs for the judiciary and legal profession in relation to understanding child sexual abuse and current social science research in relation to child sexual abuse.	**Accepted**	The NSW Government has supported and encouraged legal agencies to develop training and to continue to provide relevant training that is already in place. The NSW Department of Justice (DoJ) has offered legal agencies the assistance of Victims Services within DoJ to help these agencies to develop and implement further training programs.
68	Relevant Australian governments should ensure that bodies such as: a. the Australasian Institute of Judicial Administration b. the National Judicial College of Australia c. the Judicial Commission of New South Wales d. the Judicial College of Victoria are adequately funded to provide leadership in making relevant information and training available in the most effective forms to the judiciary and, where relevant, the broader legal profession so that they understand and keep up to date with current social science research that is relevant to understanding child sexual abuse.	**Accepted**	The Judicial Commission of NSW is responsible for organising and supervising an appropriate scheme of continuing education and training of judicial officers in NSW. The commission already provides extensive relevant information and training on understanding child sexual abuse through speeches at conferences, training and seminars for particular courts, and published articles.

#	Royal Commission recommendation	NSW Government response	Comment
Improving information for jurors			
69	In any state or territory where provisions such as those in sections 79(2) and 108C of the Uniform Evidence Act or their equivalent are not available, the relevant government should introduce legislation to allow for expert evidence in relation to the development and behaviour of children generally and the development and behaviour of children who have been victims of child sexual abuse offences.	**Accepted**	Expert evidence can be used in child sexual abuse proceedings in NSW (see sections 79(2) and 108C of the *Evidence Act 1995*).
70	Each state and territory government should lead a process to consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, with a view to settling standard directions and introducing legislation as soon as possible to authorise and require the directions to be given. The National Child Sexual Assault Reform Committee's recommended mandatory judicial directions and the Victorian Government's proposed directions on inconsistencies in the complainant's account should be the starting point for the consultation process, subject to the removal of the limitation in the third direction recommended by the National Child Sexual Assault Reform Committee in relation to children's responses to sexual abuse so that it can apply regardless of the complainant's age at trial.	**Accepted in principle**	The NSW Government has introduced legislation based on a direction already in place in Victoria requiring a judge in sexual assault proceedings to instruct the jury about the common reasons for inconsistency in a complainant's account of abuse, where there appears to be an inconsistency. This addresses key misconceptions juries may form about a complainant's credibility. Other issues (such as the reliability of children's evidence and the effect of trauma on children's behaviour) can more easily be addressed through the use of expert evidence.
71	In advance of any more general codification of judicial directions, each state and territory government should work with the judiciary to identify whether any legislation is required to permit trial judges to assist juries by giving relevant directions earlier in the trial or to otherwise assist juries by providing them with more information about the issues in the trial. If legislation is required, state and territory governments should introduce the necessary legislation.	**Accepted**	In NSW, directions are sometimes given early in the trial (rather than at its conclusion). No legislation is necessary to support this practice continuing.
Delays and case management			
72	Each state and territory government should work with its courts, prosecution, legal aid and policing agencies to ensure that delays are reduced and kept to a minimum in prosecutions for child sexual abuse offences, including through measures to encourage: a. the early allocation of prosecutors and defence counsel b. the Crown – including subsequently allocated Crown prosecutors – to be bound by early prosecution decisions c. appropriate early guilty pleas d. case management and the determination of preliminary issues before trial.	**Accepted**	The NSW Government recently implemented the early appropriate guilty plea scheme to encourage appropriate pleas in indictable criminal matters. The reform package was designed to reduce delays in the District Court. It includes the following measures: early disclosure of evidence, charge certification, mandatory criminal case conferencing, Local Court case management and statutory sentence discounts.
73	In those states and territories that have a qualified privilege in relation to sexual assault communications, the relevant state or territory government should work with its courts, prosecution and legal aid agencies to implement any necessary procedural or case management reforms to ensure that complainants are effectively able to claim the privilege without risking delaying the trial.	**Accepted in principle**	A formal review of the sexual assault communications privilege provisions is being undertaken by the NSW Department of Justice in 2018 to investigate ways of improving the provisions and their practical operation.
Sentencing			
Excluding good character as a mitigating factor			
74	All state and territory governments (other than New South Wales and South Australia) should introduce legislation to provide that good character be excluded as a mitigating factor in sentencing for child	**Accepted**	In 2009, the NSW Government excluded good character as a mitigating factor in sentencing for child sexual abuse offences where that good character facilitated the offending. The NSW Government has introduced legislation to ensure this rule also applies in prosecutions for historic offences.

#	Royal Commission recommendation	NSW Government response	Comment
	sexual abuse offences where that good character facilitated the offending, similar to that applying in New South Wales and South Australia.		
Cumulative and concurrent sentencing			
75	State and territory governments should introduce legislation to require sentencing courts, when setting a sentence in relation to child sexual abuse offences involving multiple discrete episodes of offending and/or where there are multiple victims, to indicate the sentence that would have been imposed for each offence had separate sentences been imposed.	**Accepted**	When setting an aggregate sentence for multiple offences instead of separate sentences, sentencing courts are required to indicate the sentence that would have been imposed for each offence had separate sentences been imposed instead of an aggregate sentence (see s 53A, *Crimes (Sentencing Procedure) Act 1999*, which commenced in 2010).
Sentencing standards in historical cases			
76	State and territory governments should introduce legislation to provide that sentences for child sexual abuse offence should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of the offending, but the sentence must be limited to the maximum sentence available for the offence at the date when the offence was committed.	**Accepted**	The NSW Government has introduced legislation to require a court sentencing an offender for a child sexual abuse offence to have regard to the sentencing patterns that exist at the time of sentencing.
Victim impact statements			
77	State and territory governments, in consultation with their respective Directors of Public Prosecutions, should improve the information provided to victims and survivors of child sexual abuse offences to: a. give them a better understanding of the role of the victim impact statement in the sentencing process b. better prepare them for making a victim impact statement, including in relation to understanding the sort of content that may result in objection being taken to the statement or parts of it.	**Accepted in principle**	This issue was considered by the Sentencing Council in its review of victims' involvement in the sentencing process. The final report of the review is under consideration by the NSW Government.
78	State and territory governments should ensure that, as far as reasonably practicable, special measures to assist victims of child sexual abuse offences to give evidence in prosecutions are available for victims when they give a victim impact statement, if they wish to use them.	**Accepted in principle**	
Appeals			
79	State and territory governments should introduce legislation, where necessary, to expand the Director of Public Prosecution's right to bring an interlocutory appeal in prosecutions involving child sexual abuse offences so that the appeal right: a. applies to pre-trial judgments or orders and decisions or rulings on the admissibility of evidence, but only if the decision or ruling eliminates or substantially weakens the prosecution's case b. is not subject to a requirement for leave c. extends to 'no case' rulings at trial.	**Accepted**	The Royal Commission's recommendation is based on current law in NSW (see section 5F of the *Criminal Appeal Act 2012*).
80	State and territory governments should work with their appellate court and the Director of Public Prosecutions to ensure that the court is sufficiently well resourced to hear and determine interlocutory appeals in prosecutions involving child sexual abuse offences in a timely manner.	**Accepted**	The NSW Supreme Court and Office of the Director of Public Prosecutions have confirmed that courts in NSW are able to hear and determine interlocutory appeals in a timely manner. It is current practice to deal with an interlocutory appeal within a few days if it is likely to affect an imminent or ongoing trial.
81	Directors of Public Prosecutions should amend their prosecution guidelines, where necessary, in relation to the decision as to whether there should be a retrial following a successful conviction appeal in child sexual abuse prosecutions. The guidelines should require that the	**Accepted in principle**	The Office of the Director of Public Prosecutions (ODPP) undertakes consultation with the complainant and relevant police officer as recommended. The ODPP will consider making a supportive amendment to the Prosecution Guidelines.

#	Royal Commission recommendation	NSW Government response	Comment
	prosecution consult the complainant and relevant police officer before the Director of Public Prosecutions decides whether to retry a matter.		
82	State and territory governments should ensure that a relevant government agency, such as the Office of the Director of Public Prosecutions, is monitoring the number, type and success rate of appeals in child sexual abuse prosecutions and the issues raised to: a. identify areas of the law in need of reform b. ensure any reforms – including reforms arising from the Royal Commission's recommendations in relation to criminal justice, if implemented – are working as intended.	**Accepted**	The NSW Government has established a monitoring group to generally monitor all reforms made in response to the Royal Commission's *Criminal justice report*, chaired by the NSW Department of Justice (see Recommendation 85 – *Criminal justice report*). Identified law reform issues can be raised through this group. Statistics on the number, type and success rate of appeals in child sexual abuse prosecutions can be obtained from the Office of the Director of Public Prosecutions, Judicial Commission, or the NSW Bureau of Crime Statistics and Research to assist the monitoring group.
Juvenile offenders			
83	State and territory governments (other than the Northern Territory) should give further consideration to whether the abolition of the presumption that a male under the age of 14 years is incapable of having sexual intercourse should be given retrospective effect and whether any immunity which has arisen as a result of the operation of the presumption should be abolished. State and territory governments (other than the Northern Territory) should introduce any legislation they consider necessary as a result of this consideration.	**Accepted in principle**	The NSW Government has considered the retrospective abolition of the presumption and has determined against imposing retrospectivity. A retrospective repeal has the potential to expose defendants to a maximum penalty of life imprisonment in circumstances where they were previously protected from prosecution, and where they were young children at the time of the offence.
84	State and territory governments should review their legislation – and if necessary introduce amending legislation – to ensure that complainants in child sexual abuse prosecutions do not have to give evidence on any additional occasion in circumstances where the accused, or one of two or more co-accused, is a juvenile at the time of prosecution or was a juvenile at the time of the offence.	**Accepted**	NSW will introduce legislation to ensure complainants are no longer required to give evidence twice where an accused is aged under 18 and the proceedings commence in the Children's Court but continue in a higher court. The Children's Court will determine if an accused should be sent to a higher court without calling the complainant to give evidence, unless the court is satisfied that there are special reasons in the interests of justice why this should occur.
Criminal justice and regulatory responses			
85	State and territory governments should keep the interaction of: a. their legislation relevant to regulatory responses to institutional child sexual abuse b. their crimes legislation and the crimes legislation of all other Australian jurisdictions, particularly in relation to child sexual abuse offences and sex offender registration under regular review to ensure that their regulatory responses work together effectively with their relevant crimes legislation and the relevant crimes legislation of all other Australian jurisdictions in the interests of responding effectively to institutional child sexual abuse.	**Accepted**	The NSW Government has established a monitoring group to generally monitor all reforms made in response to the Royal Commission's *Criminal justice report*, chaired by the NSW Department of Justice. Part of the monitoring group's role will be to monitor the interaction of regulatory responses and criminal legislation in light of the changes made in response to the Royal Commission's *Criminal justice report*.

Redress and civil litigation report NSW Government response

The *Redress and civil litigation report* was released in September 2015.

It includes 99 recommendations.

The recommendations cover:

- what redress should be provided
- how redress should be provided
- civil litigation.

04

#	Royal Commission recommendation	NSW Government response	Comment
Justice for victims			
1	A process for redress must provide equal access and equal treatment for survivors – regardless of the location, operator, type, continued existence or assets of the institution in which they were abused – if it is to be regarded by survivors as being capable of delivering justice.	**Accepted**	The NSW Government has joined the National Redress Scheme, to provide support and recognition to survivors of institutional child sexual abuse.
Redress elements and principles			
2	Appropriate redress for survivors should include the elements of: a. direct personal response b. counselling and psychological care c. monetary payments.	**Accepted**	The proposed National Redress Scheme includes the three elements: • a monetary payment of up to $150,000 • access to counselling and psychological support, depending on where the person lives – in the form of services or a maximum payment of $5000 • a direct personal response from the participating institution or institutions responsible.
3	Funders or providers of existing support services should maintain their current resourcing for existing support services, without reducing or diverting resources in response to the Royal Commission's recommendations on redress and civil litigation.	**Accepted**	The NSW Government will continue to fund and deliver a range of support services for victims and survivors of sexual abuse.
4	Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles: a. Redress should be survivor focused. b. There should be a 'no wrong door' approach for survivors in gaining access to redress. c. All redress should be offered, assessed and provided with appropriate regard to what is known about the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and to the cultural needs of survivors. d. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.	**Accepted**	To ensure that the National Redress Scheme is survivor-focused, redress will be assessed, offered and provided in accordance with general principles that reflect the Royal Commission recommendations. This includes having regard to the nature and impact of child sexual abuse, the cultural needs of survivors and the needs of those who are particularly vulnerable.
Direct personal response			
5	Institutions should offer and provide a direct personal response to survivors in accordance with the following principles: a. Re-engagement between a survivor and an institution should only occur if, and to the extent that, a survivor desires it. b. Institutions should make clear what they are willing to offer and provide by way of direct personal response to survivors of institutional child sexual abuse. Institutions should ensure that they are able to provide the direct personal response they offer to survivors. c. At a minimum, all institutions should offer and provide on request by a survivor: i. an apology from the institution ii. the opportunity to meet with a senior institutional representative and receive an acknowledgement of the abuse and its impact on them iii. an assurance or undertaking from the institution that it has taken, or will take, steps to protect against further abuse of children in that institution. d. In offering direct personal responses, institutions should try to be responsive to survivors' needs. e. Institutions that already offer a broader range of direct personal responses to survivors and others should consider continuing to offer those forms of direct personal response.	**Accepted**	Direct personal responses (DPRs) are a key element of the National Redress Scheme. The principles guiding the provision of DPRs are informed by the Royal Commission recommendations. A Direct Personal Response Framework also sets out the arrangements under which institutions will deliver DPRs to survivors as part of the National Redress Scheme.

#	Royal Commission recommendation	NSW Government response	Comment
	f. Direct personal responses should be delivered by people who have received some training about the nature and impact of child sexual abuse and the needs of survivors, including cultural awareness and sensitivity training where relevant. g. Institutions should welcome feedback from survivors about the direct personal response they offer and provide.		
6	Those who operate a redress scheme should offer to facilitate the provision of a written apology, a written acknowledgement and/or a written assurance of steps taken to protect against further abuse for survivors who seek these forms of direct personal response but who do not wish to have any further contact with the institution.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme.
7	Those who operate a redress scheme should facilitate the provision of these forms of direct personal response by conveying survivors' requests for these forms of direct personal response to the relevant institution.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme.
8	Institutions should accept a survivor's choice of intermediary or representative to engage with the institution on behalf of the survivor, or with the survivor as a support person, in seeking or obtaining a direct personal response.	**Accepted**	The National Redress Scheme Direct Personal Response Framework allows for support persons to facilitate survivors receiving a direct personal response.
Counselling and psychological care			
9	Counselling and psychological care should be supported through redress in accordance with the following principles: a. Counselling and psychological care should be available throughout a survivor's life. b. Counselling and psychological care should be available on an episodic basis. c. Survivors should be allowed flexibility and choice in relation to counselling and psychological care. d. There should be no fixed limits on the counselling and psychological care provided to a survivor. e. Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma. f. Treating practitioners should be required to conduct ongoing assessment and review to ensure treatment is necessary and effective. If those who fund counselling and psychological care through redress have concerns about services provided by a particular practitioner, they should negotiate a process of external review with that practitioner and the survivor. Any process of assessment and review should be designed to ensure it causes no harm to the survivor. g. Counselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.	**Accepted in principle**	Under the National Redress Scheme, survivors who reside in NSW will receive access to counselling and psychological services, provided by approved counsellors through NSW Victims Services. The Intergovernmental Agreement for the National Redress Scheme includes National Service Standards for the provision of state- and/or territory-based counselling and psychological care.
10	To facilitate the provision of counselling and psychological care by practitioners with appropriate capabilities to work with clients with complex trauma: a. the Australian Psychological Society should lead work to design and implement a public register to enable identification of practitioners with appropriate capabilities to work with clients with complex trauma	**Accepted in principle. This is matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.

#	Royal Commission recommendation	NSW Government response	Comment
	b. the public register and the process to identify practitioners with appropriate capabilities to work with clients with complex trauma should be designed and implemented by a group that includes representatives of the Australian Psychological Society, the Australian Association of Social Workers, the Royal Australian and New Zealand College of Psychiatrists, Adults Surviving Child Abuse, a specialist sexual assault service, and a non-government organisation with a suitable understanding of the counselling and psychological care needs of Aboriginal and Torres Strait Islander survivors c. the funding for counselling and psychological care under redress should be used to provide financial support for the public register if required d. those who operate a redress scheme should ensure that information about the public register is made available to survivors who seek counselling and psychological care through the redress scheme.		
11	Those who administer support for counselling and psychological care through redress should ensure that counselling and psychological care are supported through redress in accordance with the following principles: a. Counselling and psychological care provided through redress should supplement, and not compete with, existing services. b. Redress should provide funding for counselling and psychological care services and should not itself provide counselling and psychological care services. c. Redress should fund counselling and psychological care as needed by survivors rather than providing a lump sum payment to survivors for their future counselling and psychological care needs.	**Accepted.**	Under the National Redress Scheme, in NSW counselling and psychological care will be provided directly by Victims Services. Counselling will be provided in accordance with agreed service standards consistent with guiding principles for service systems outlined in the Royal Commission's *Final report*. These include for services to be collaborative, available, accessible, high quality and inclusive of Aboriginal and Torres Strait Islander healing approaches. Survivors will receive a minimum of 20 hours of counselling services, to be provided over the course of their lifetime.
12	The Australian Government should remove any restrictions on the number of sessions of counselling and psychological care, whether in a particular period of time or generally, for which Medicare funding is available for survivors who are assessed as eligible for redress under a redress scheme.	**Accepted. This is a matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.
13	The Australian Government should expand the range of counselling and psychological care services for which Medicare funding is available for survivors who are assessed as eligible for redress under a redress scheme to include longer-term interventions that are suitable for treating complex trauma, including through non-cognitive approaches.	**Accepted in principle. This is a matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.
14	The funding obtained through redress to ensure that survivors' needs for counselling and psychological care are met should be used to fund measures that help to meet those needs, including: a. measures to improve survivors' access to Medicare by: i. funding case management style support to help survivors to understand what is available through the Better Access initiative and Access to Allied Psychological Services and why a GP diagnosis and referral is needed ii. maintaining a list of GPs who have mental health training, are familiar with the existence of the redress scheme and are willing to be recommended to survivors as providers of GP services, including referrals, in relation to counselling and psychological care iii. supporting the establishment and use of the public register that provides details of practitioners who have been identified as having appropriate capabilities to treat survivors and who are registered practitioners for Medicare purposes	**Accepted in principle. This is a matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.

#	Royal Commission recommendation	NSW Government response	Comment
	b. providing funding to supplement existing services provided by state-funded specialist services to increase the availability of services and reduce waiting times for survivors c. measures to address gaps in expertise and geographical and cultural gaps by: i. supporting the establishment and promotion of the public register that provides details of practitioners who have been identified as having appropriate capabilities to treat survivors ii. funding training in cultural awareness for practitioners who have the capabilities to work with survivors but have not had the necessary training or experience in working with Aboriginal and Torres Strait Islander survivors iii. funding rural and remote practitioners, or Aboriginal and Torres Strait Islander practitioners, to obtain appropriate capabilities to work with survivors iv. providing funding to facilitate regional and remote visits to assist in establishing therapeutic relationships; these could then be maintained largely by online or telephone counselling. There could be the potential to fund additional visits if required from time to time d. providing funding for counselling and psychological care for survivors whose needs for counselling and psychological care cannot otherwise be met, including by paying reasonable gap fees charged by practitioners if survivors are unable to afford these fees.		
Monetary payments			
15	The purpose of a monetary payment under redress should be to provide a tangible recognition of the seriousness of the hurt and injury suffered by a survivor.	**Accepted**	The National Redress Scheme includes a monetary payment to survivors as a tangible means of recognising the wrong they have suffered.
16	Monetary payments should be assessed and determined by using the following matrix: **Factor** **Value** Severity of abuse 1–40 Impact of abuse 1–40 Additional elements 1–20	**Accepted in principle**	An assessment framework will set out the method and matters to take into account for working out redress payments under the National Redress Scheme.
17	The 'Additional elements' factor should recognise the following elements: a. whether the applicant was in state care at the time of the abuse – that is, as a ward of the state or under the guardianship of the relevant Minister or government agency b. whether the applicant experienced other forms of abuse in conjunction with the sexual abuse – including physical, emotional or cultural abuse or neglect c. whether the applicant was in a 'closed' institution or without the support of family or friends at the time of the abuse d. whether the applicant was particularly vulnerable to abuse because of his or her disability.	**Accepted in principle**	The National Redress Scheme assessment framework takes into account the elements recommended by the Royal Commission.
18	Those establishing a redress scheme should commission further work to develop this matrix and the detailed assessment procedures and guidelines required to implement it: a. in accordance with our discussion of the factors b. taking into account expert advice in relation to institutional child sexual abuse, including child development, medical, psychological, social and legal perspectives	**Accepted**	The Australian Government has developed the assessment framework in consultation with stakeholders, including government, institutions and survivor groups.

#	Royal Commission recommendation	NSW Government response	Comment
	c. with the benefit of actuarial advice in relation to the actuarial modelling on which the level and spread of monetary payments and funding expectations are based.		
19	The appropriate level of monetary payments under redress should be: a. a minimum payment of $10,000 b. a maximum payment of $200,000 for the most severe case c. an average payment of $65,000.	**Accepted in principle**	Under the National Redress Scheme, redress includes a payment of up to $150,000. The minimum payment will be $10,000 (including impact on the survivor). The average payment is expected to be approximately $76,000.
20	Monetary payments should be assessed and paid without any reduction to repay past Medicare expenses, which are to be repaid (if required) as part of the administration costs of a redress scheme.	**Accepted. This is a matter for the Australian Government**	Under the National Redress Scheme, payments will not be reduced due to previous Medicare expenses.
21	Consistent with our view that monetary payments under redress are not income for the purposes of social security, veterans' pensions or any other Commonwealth payments, those who operate a redress scheme should seek a ruling to this effect to provide certainty for survivors.	**Accepted. This is a matter for the Australian Government**	The National Redress Scheme will exempt redress payments from being considered compensation or damages under social security and veterans' entitlements legislation.
22	Those who operate a redress scheme should give consideration to offering monetary payments by instalments at the option of eligible survivors, taking into account the likely demand for this option from survivors and the cost to the scheme of providing it.	**Accepted in principle. This is matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.
23	Survivors who have received monetary payments in the past – whether under other redress schemes, statutory victims of crime schemes, through civil litigation or otherwise – should be eligible to be assessed for a monetary payment under redress.	**Accepted in principle**	Under the National Redress Scheme, prior payments will be taken into account in determining the amount of redress payable to a person.
24	The amount of the monetary payments that a survivor has already received for institutional child sexual abuse should be determined as follows: a. monetary payments already received should be counted on a gross basis, including any amount the survivor paid to reimburse Medicare or in legal fees b. no account should be taken of the cost of providing any services to the survivor, such as counselling services c. any uncertainty as to whether a payment already received related to the same abuse for which the survivor seeks a monetary payment through redress should be resolved in the survivor's favour.	**Accepted in principle**	24(a) and (b) are features of the National Redress Scheme. In relation to 24(c), uncertainty as to whether a payment already received relates to the same abuse will be determined on a case-by-case basis.
25	The monetary payments that a survivor has already received for institutional child sexual abuse should be taken into account in determining any monetary payment under redress by adjusting the amount of the monetary payments already received for inflation and then deducting that amount from the amount of the monetary payment assessed under redress.	**Accepted**	Under the National Redress Scheme, relevant prior payments will be adjusted for inflation and taken into account in the determination of the monetary redress payment. A relevant prior payment is one that was made by or on behalf of the responsible participating institution in recognition of the harm caused by the abuse that is within the scope of the scheme.
Redress structure and funding			
Redress scheme structure			
26	In order to provide redress under the most effective structure for ensuring justice for survivors, the Australian Government should establish a single national redress scheme.	**Accepted**	The NSW Government has consistently supported the establishment of a single, national redress scheme. The National Redress Scheme will provide consistent, accessible redress to survivors.

#	Royal Commission recommendation	NSW Government response	Comment
27	If the Australian Government does not establish a single national redress scheme, as the next best option for ensuring justice for survivors, each state and territory government should establish a redress scheme covering government and non-government institutions in the relevant state or territory.	**Accepted in principle**	Not required, as the National Redress Scheme has been established.
28	The Australian Government should determine and announce by the end of 2015 that it is willing to establish a single national redress scheme.	**Accepted in principle**	In November 2016, the Australian Government announced that it would establish a national redress scheme.
29	If the Australian Government announces that it is willing to establish a single national redress scheme, the Australian Government should commence national negotiations with state and territory governments and all parties to the negotiations should seek to ensure that the negotiations proceed as quickly as possible to agree the necessary arrangements for a single national redress scheme.	**Accepted**	The Australian Government has worked closely with state and territory governments, including NSW, to develop the National Redress Scheme.
30	If the Australian Government does not announce that it is willing to establish a single national redress scheme, each state and territory government should establish a redress scheme for the relevant state or territory that covers government and non-government institutions. State and territory governments should undertake national negotiations as quickly as possible to agree the necessary matters of detail to provide the maximum possible consistency for survivors between the different state and territory schemes.	**Accepted in principle**	Not required, as the National Redress Scheme has been established.
31	Whether there is a single national redress scheme or separate state and territory redress schemes, the scheme or schemes should be established and ready to begin inviting and accepting applications from survivors by no later than 1 July 2017.	**Accepted in principle**	The National Redress Scheme will commence on 1 July 2018.
32	The Australian Government (if it announces that it is willing to establish a single national redress scheme) or state and territory governments should establish a national redress advisory council to advise all participating governments on the establishment and operation of the redress scheme or schemes.	**Accepted**	In 2016, the Australian Prime Minister established an Independent Advisory Council to advise on the design and development of the National Redress Scheme.
33	The national redress advisory council should include representatives: a. of survivor advocacy and support groups b. of non-government institutions, particularly those that are expected to be required to respond to a significant number of claims for redress c. with expertise in issues affecting survivors with disabilities d. with expertise in issues of particular importance to Aboriginal and Torres Strait Islander survivors e. with expertise in psychological and legal issues relevant to survivors f. with any other expertise that may assist in advising on the establishment and operation of the redress scheme or schemes.	**Accepted**	See response to Recommendation 32 (*Redress and civil litigation report*). The Independent Advisory Council includes survivors of institutional child sexual abuse, representatives from support organisations, legal and psychological experts, Indigenous representatives, disability experts, institutional interest groups and those with a background in government.
Redress scheme funding			
34	For any application for redress made to a redress scheme, the cost of redress in respect of the application should be: a. a proportionate share of the cost of administration of the scheme b. if the applicant is determined to be eligible, the cost of any contribution for counselling and psychological care in respect of the applicant c. if the applicant is determined to be eligible, the cost of any monetary payment to be made to the applicant.	**Accepted**	The funding arrangements under the National Redress Scheme are based on 'responsible entity pays', including: • a contribution towards the administration of the scheme, equivalent to 7.5 per cent of the monetary payment amount paid to an eligible survivor in each case • the cost of providing eligible survivors with access to counselling and psychological care • the cost of the monetary payment.

#	Royal Commission recommendation	NSW Government response	Comment
35	The redress scheme or schemes should be funded as much as possible in accordance with the following principles: a. The institution in which the abuse is alleged or accepted to have occurred should fund the cost of redress. b. Where an applicant alleges or is accepted to have experienced abuse in more than one institution, the redress scheme or schemes should apportion the cost of funding redress between the relevant institutions, taking account of the relative severity of the abuse in each institution and any other features relevant to calculating a monetary payment. c. Where the institution in which the abuse is alleged or accepted to have occurred no longer exists but the institution was part of a larger group of institutions or where there is a successor to the institution, the group of institutions or the successor institution should fund the cost of redress.	**Accepted**	The National Redress Scheme Operator will determine each participating institution that is responsible for the abuse and therefore liable for providing redress to the person under the scheme. This will include a determination of each institution's share of the costs. A 'defunct' institution can participate in the scheme if it has a representative that acts on its behalf and assumes its obligations and liabilities under the scheme.
36	The Australian Government and state and territory governments should provide 'funder of last resort' funding for the redress scheme or schemes so that the governments will meet any shortfall in funding for the scheme or schemes.	**Accepted in principle**	Under the National Redress Scheme, a participating government institution may be the funder of last resort for a defunct non-government institution, where the government institution is equally responsible for the abuse and has agreed to be the funder of last resort.
37	Regardless of whether there is a single national redress scheme or separate state and territory redress schemes, the Australian Government and each state or territory government should negotiate and agree their respective shares of or contributions to 'funder of last resort' funding in respect of applications alleging abuse in the relevant state or territory.	**Accepted in principle**	
38	The Australian Government (if it announces that it is willing to establish a single national redress scheme) or state and territory governments should determine how best to raise the required funding for the redress scheme or schemes, including government funding and funding from non-government institutions.	**Accepted**	The Australian Government will contribute funding towards the establishment of and support services under the scheme; and participating institutions, including NSW Government institutions, responsible under the scheme will contribute funding towards the cost of settling those claims and towards the administration of the scheme.
39	The Australian Government or state and territory governments should determine whether or not to require particular non-government institutions or particular types of non-government institutions to contribute funding for redress.	**Accepted**	
Trust fund for counselling and psychological care			
40	The redress scheme, or each redress scheme, should establish a trust fund to receive the funding for counselling and psychological care paid under redress and to manage and apply that funding to meet the needs for counselling and psychological care of those eligible for redress under the relevant redress scheme.	**Accepted in principle. This is a matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme. Participating states and territories which elect to provide counselling under the scheme will receive funding for that counselling through the scheme and will utilise that funding to provide services to survivors.
41	The trust fund, or each trust fund, should be governed by a corporate trustee with a board of directors appointed by the government that establishes the relevant redress scheme. The board or each board should include: a. an independent Chair b. a representative of: government; non-government institutions; survivor advocacy and support groups; and the redress scheme c. those with any other expertise that is desired at board level to direct the trust.	**Accepted in principle. This is a matter for the Australian Government**	

#	Royal Commission recommendation	NSW Government response	Comment
42	The trustee, or each trustee, should engage actuaries to conduct regular actuarial assessments to determine a 'per head' estimate of future counselling and psychological care costs to be met through redress. The trustee, or each trustee, should determine the amount from time to time that those who fund redress, including as the funder of last resort, must pay per eligible applicant to fund the counselling and psychological care element of redress.	**Accepted in principle. This is a matter for the Australian Government**	
Redress scheme processes			
Eligibility for redress			
43	A person should be eligible to apply to a redress scheme for redress if he or she was sexually abused as a child in an institutional context and the sexual abuse occurred, or the first incidence of the sexual abuse occurred, before the cut-off date.	**Accepted**	The scope of the National Redress Scheme is consistent with this recommendation.
44	'Institution' should have the same meaning as in the Royal Commission's terms of reference.	**Accepted**	The National Redress Scheme's definition of 'institution' is consistent with that of the Royal Commission's terms of reference.
45	Child sexual abuse should be taken to have occurred in an institutional context in the following circumstances: a. it happens: i. on premises of an institution ii. where activities of an institution take place or iii. in connection with the activities of an institution in circumstances where the institution is, or should be treated as being, responsible for the contact between the abuser and the applicant that resulted in the abuse being committed b. it is engaged in by an official of an institution in circumstances (including circumstances that involve settings not directly controlled by the institution) where the institution has, or its activities have, created, facilitated, increased, or in any way contributed to (whether by act or omission) the risk of abuse or the circumstances or conditions giving rise to that risk c. it happens in any other circumstances where the institution is, or should be treated as being, responsible for the adult abuser having contact with the applicant.	**Accepted**	The National Redress Scheme sets out the circumstances relevant to determining whether an institution is primarily or equally responsible for the abuser having contact with the person as a child, including whether: • the institution was responsible for the day-to-day care or custody of the child when the abuse occurred • the institution was the legal guardian of the child when the abuse occurred • the institution was responsible for placing the child into the institution in which the abuse occurred • the abuser was an official of the institution when the abuse occurred • the abuse occurred on the premises of the institution, or where the activities of the institution took place, or in connection with the activities of the institution.
46	Those who operate the redress scheme should specify the cut-off date as being the date on which the Royal Commission's recommended reforms to civil litigation in relation to limitation periods and the duty of institutions commence.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme. The National Redress Scheme is for child sexual abuse that occurred prior to the scheme's commencement (expected on 1 July 2018).
47	An offer of redress should only be made if the applicant is alive at the time the offer is made.	**Accepted in principle**	The National Redress Scheme provides that a person must be alive in order to make an application; however, if they die after submitting a redress application, the redress payment may be made to another person (having regard to any will by the person).
Duration of a redress scheme			
48	A redress scheme should have no fixed closing date. But, when applications to the scheme reduce to a level where it would be reasonable to consider closing the scheme, those who operate the redress scheme should consider specifying a closing date for the scheme. The closing date should be at least 12 months into the future. Those who operate the redress scheme should ensure that the closing date is given widespread publicity until the scheme closes.	**Subject to further consideration**	The National Redress Scheme will operate for 10 years, but will be reviewed eight years after commencement.

#	Royal Commission recommendation	NSW Government response	Comment
Publicising and promoting the availability of the scheme			
49	Those who operate a redress scheme should ensure the availability of the scheme is widely publicised and promoted.	**Accepted**	The Australian Government is responsible for operating the National Redress Scheme.
50	The redress scheme should consider adopting particular communication strategies for people who might be more difficult to reach, including: a. Aboriginal and Torres Strait Islander communities b. people with disability c. culturally and linguistically diverse communities d. regional and remote communities e. people with mental health difficulties f. people who are experiencing homelessness g. people in correctional or detention centres h. children and young people i. people with low levels of literacy j. survivors now living overseas.	**Accepted**	The Australian Government is responsible for operating the National Redress Scheme.
Application process			
51	A redress scheme should rely primarily on completion of a written application form.	**Accepted**	This is a feature of the National Redress Scheme.
52	A redress scheme should fund support services and community legal centres to assist applicants to apply for redress.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme. Redress Support Services will be funded by the Australian Government and available to all applicants, including specialised support for Indigenous people, people with disability, and people from culturally and linguistically diverse backgrounds.
53	A redress scheme should select support services and community legal centres to cover a broad range of likely applicants, taking into account the need to cover regional and remote areas and the particular needs of different groups of survivors, including Aboriginal and Torres Strait Islander survivors.	**Accepted**	The Australian Government is responsible for operating the National Redress Scheme. See response to Recommendation 52 (*Redress and civil litigation report*).
54	Those who operate a redress scheme should determine whether the scheme will require additional material or evidence and additional procedures to determine the validity of applications. Any additional requirements should be clearly set out in scheme material that is made available to applicants, support services and others who may support or advise applicants in relation to the scheme.	**Accepted**	The Australian Government is responsible for operating the National Redress Scheme. The National Redress Scheme will not require supporting evidence (other than a statutory declaration); however, it may request further information from the applicant.
55	A redress scheme may require applicants for redress to verify their accounts of abuse by statutory declaration.	**Accepted**	Applications will be required to be verified by statutory declaration.
Institutional involvement			
56	A redress scheme should inform any institution named in an application for redress of the application and the allegations made in it and request the institution to provide any relevant information, documents or comments.	**Accepted**	Under the National Redress Scheme, if an application for redress identifies a participating institution as being involved in the abuse or if the Scheme Operator has reasonable grounds to believe a participating institution may be responsible, the Scheme Operator must request that the institution provide any information that may be relevant.
Standard of proof			
57	'Reasonable likelihood' should be the standard of proof for determining applications for redress.	**Accepted**	Reasonable likelihood is the standard of proof under the National Redress Scheme.

#	Royal Commission recommendation	NSW Government response	Comment
Decision making on a claim			
58	A redress scheme should adopt administrative decision-making processes appropriate to a large-scale redress scheme. It should make decisions based on the application of the detailed assessment procedures and guidelines for implementing the matrix for monetary payments.	**Accepted**	The enabling legislation for the National Redress Scheme includes administrative decision-making processes that fulfil this recommendation. The process for working out the amount of redress, including the application of an assessment framework, is prescribed.
Offer and acceptance of offer			
59	An offer of redress should remain open for acceptance for a period of one year.	**Accepted in principle. This is a matter for the Australian Government**	Under the National Redress Scheme, offers of redress will remain open for six months. During the six months, survivors will be able to access services including legal advice to ensure they are supported to make considered and informed decisions.
60	A period of three months should be allowed for an applicant to seek a review of an offer of redress after the offer is made.	**Accepted in principle. This is a matter for the Australian Government**	The National Redress Scheme Operator is required to nominate a period in which an application for review can be made. This must be at least 28 days but no longer than six months.
Review and appeals			
61	A redress scheme should offer an internal review process.	**Accepted**	The National Redress Scheme includes an internal review process. Internal reviews will be conducted by an Independent Decision Maker who was not involved in the initial decision.
62	A redress scheme established on an administrative basis should be made subject to oversight by the relevant ombudsman through the ombudsman's complaints mechanism.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme.
Deeds of release			
63	As a condition of making a monetary payment, a redress scheme should require an applicant to release the scheme (including the contributing government or governments) and the institution from any further liability for institutional child sexual abuse by executing a deed of release.	**Accepted**	Consistent with this recommendation, as part of the National Redress Scheme, if a person accepts an offer of redress, they must release contributing institutions from all civil liability for the abuse.
64	A redress scheme should fund, at a fixed price, a legal consultation for an applicant before the applicant decides whether or not to accept the offer of redress and grant the required releases.	**Accepted in principle**	Legal support services will be made available prior to application and through to acceptance of redress offers.
65	No confidentiality obligations should be imposed on applicants for redress.	**Accepted**	Consistent with this recommendation, under the National Redress Scheme, no confidentiality obligations will be imposed on applicants for redress.
Support for survivors			
66	A redress scheme should offer and fund counselling during the period from assisting applicants with the application, through the period when the application is being considered, to the making of the offer and the applicant's consideration of whether or not to accept the offer. This should include a session of financial counselling if the applicant is offered a monetary payment.	**Accepted**	The Australian Government will provide support services for survivors during the application process. The National Redress Scheme will support referrals for survivors to access existing Commonwealth-funded financial counsellors. NSW Victims Services will continue to provide support services, including free counselling and financial assistance, to all victims of crime.
67	A redress scheme should fund counselling provided by a therapist of the applicant's choice if it is specifically requested by the applicant and in circumstances where the applicant has an established relationship with the therapist and the cost is reasonably comparable to the cost the redress scheme is paying for these services generally.	**Accepted in principle. This is a matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.

#	Royal Commission recommendation	NSW Government response	Comment
68	A redress scheme should offer and fund a limited number of counselling sessions for family members of survivors if reasonably required.	**Accepted in principle. This is a matter for the Australian Government**	The Australian Government is responsible for operating the National Redress Scheme.
Transparency and accountability			
69	A redress scheme should take the following steps to improve transparency and accountability: a. In addition to publicising and promoting the availability of the scheme, the scheme's processes and time frames should be as transparent as possible. The scheme should provide up-to-date information on its website and through any funded counselling and support services and community legal centres, other relevant support services and relevant institutions. b. If possible, the scheme should ensure that each applicant is allocated to a particular contact officer who they can speak to if they have any queries about the status of their application or the timing of its determination and so on. c. The scheme should operate a complaints mechanism and should welcome any complaints or feedback from applicants and others involved in the scheme (for example, support services and community legal centres). d. The scheme should provide any feedback it receives about common problems that have been experienced with applications or institutions' responses to funded counselling and support services and community legal centres, other relevant support services and relevant institutions. It should include any suggestions on how to improve applications or responses or ensure more timely determinations. e. The scheme should publish data, at least annually, about: i. the number of applications received ii. the institutions to which the applications relate iii. the periods of alleged abuse iv. the number of applications determined v. the outcome of applications vi. the mean, median and spread of payments offered vii. the mean, median and spread of time taken to determine the application viii. the number and outcome of applications for review.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme.
Interaction with alleged abuser, disciplinary process and police			
70	A redress scheme should not make any 'findings' that any alleged abuser was involved in any abuse.	**Accepted**	In line with this recommendation, a determination made by the National Redress Scheme Operator is an administrative decision, not a finding of law or fact.
71	A redress scheme may defer determining an application for redress if the institution advises that it is undertaking internal disciplinary processes in respect of the abuse the subject of the application. A scheme may have the discretion to consider the outcome of the disciplinary process, it if is provided by the institution, in determining the application.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme.
72	A redress scheme should comply with any legal requirements, and make use of any permissions, to report or disclose abuse, including to oversight agencies.	**Accepted**	The enabling legislation for the National Redress Scheme includes provisions that allow for information to be shared for the purposes of criminal law enforcement and for the safety and wellbeing of children. This ensures that participating institutions will be able to meet their mandatory reporting and reportable conduct obligations.

#	Royal Commission recommendation	NSW Government response	Comment
73	A redress scheme should report any allegations to the police if it has reason to believe that there may be a current risk to children. If the relevant applicant does not consent to the allegations being reported to the police, the scheme should report the allegations to the police without disclosing the applicant's identity. Note: The issue of reporting to police, including blind reporting, will be considered further in our work in relation to criminal justice issues.	**Accepted**	The National Redress Scheme Operator will have mechanisms in place to refer allegations of child sexual abuse and related other abuse to police and child protection authorities in the relevant jurisdictions.
74	A redress scheme should seek to cooperate with any reasonable requirements of the police in terms of information sharing, subject to satisfying any privacy and consent requirements with applicants.	**Accepted**	The enabling legislation for the National Redress Scheme includes provisions that allow for information to be shared for the purposes of criminal law enforcement.
75	A redress scheme should encourage any applicants who seek advice from it about reporting to police to discuss their options directly with the police.	**Accepted in principle**	The Australian Government is responsible for operating the National Redress Scheme.
Interim arrangements			
76	Institutions should seek to achieve independence in institutional redress processes by taking the following steps: a. Institutions should provide information on the application process, including online, so that survivors do not need to approach the institution if there is an independent person with whom they can make their claim. b. If feasible, the process of receiving and determining claims should be administered independently of the institution to minimise the risk of any appearance that the institution can influence the process or decisions. c. Institutions should ensure that anyone they engage to handle or determine redress claims is appropriately trained in understanding child sexual abuse and its impacts and in any relevant cultural awareness issues. d. Institutions should ensure that any processes or interactions with survivors are respectful and empathetic, including by taking into account the factors discussed in Chapter 5 concerning meetings and meeting environments. e. Processes and interactions should not be legalistic. Any legal, medical and other relevant input should be obtained for the purposes of decision making.	**Accepted in principle**	NSW does not have an interim redress scheme. However, in the interim period, the NSW Government has implemented a new approach to responding to civil claims concerning child abuse, in accordance with the Guiding Principles for Civil Claims for Child Abuse (Guiding Principles) introduced in 2014. The Guiding Principles provide, among other things, that NSW Government agencies will finalise claims as quickly as possible and without requiring a formal Statement of Claim. The Guiding Principles seek to ensure a more caring and compassionate approach across NSW Government when dealing with civil claims for child abuse.
77	Institutions should ensure that the required independence is set out clearly in writing between the institution and any person or body the institution engages as part of its redress process.	**Accepted in principle**	
78	If a survivor alleges abuse in more than one institution, the institution to which the survivor applies for redress should adopt the following process: a. With the survivor's consent, the institution's redress process should approach the other named institutions to seek cooperation on the claim. b. If the survivor consents and the relevant institutions agree, one institutional process should assess the survivor's claim in accordance with the recommended redress elements and processes (with any necessary modifications because of the absence of a government-run scheme) and allocate contributions between the institutions. c. If any institution no longer exists and has no successor, its share should be met by the other institution or institutions.	**Accepted in principle**	
79	Institutions should adopt the elements of redress and the general principles for providing redress recommended in Chapter 4.	**Accepted in principle**	

#	Royal Commission recommendation	NSW Government response	Comment
80	Institutions should undertake, through their redress processes, to meet survivors' needs for counselling and psychological care. A survivor's need for counselling and psychological care should be assessed independently of the institution.	**Accepted in principle**	NSW offers free and confidential counselling to survivors of child sexual and physical abuse through the NSW Victims Support Scheme.
81	Institutions should adopt the purpose of monetary payments recommended in Chapter 7 and be guided by the recommended matrix for assessing monetary payments.	**Accepted in principle**	See response to Recommendation 76 (*Redress and civil litigation report*).
82	In implementing any interim arrangements for institutions to offer and provide redress, institutions should take account of our discussion of the applicability of the redress scheme processes recommended in Chapter 11.	**Accepted in principle**	
83	Institutions should ensure no deeds of release are required under interim arrangements for institutions to offer and provide redress.	**Accepted in principle**	
84	If the Australian Government or state and territory governments accept our recommendations and announce that they are working to establish a single national redress scheme or separate state and territory redress schemes, institutions may wish to offer smaller interim or emergency payments as an alternative to offering institutional redress processes as interim arrangements.	**Accepted in principle**	
Limitation periods			
85	State and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child.	**Accepted**	In response to these recommendations, the NSW Government introduced the Limitation Amendment (Child Abuse) Act 2016 to remove limitation periods in civil claims to allow survivors to bring claims regardless of the date of the alleged abuse. The Act came into effect on 17 March 2016.
86	State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.	**Accepted**	
87	State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.	**Accepted**	
88	State and territory governments should implement these recommendations to remove limitation periods as soon as possible, even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented.	**Accepted**	
Duty of institutions			
89	State and territory governments should introduce legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse despite it being the deliberate criminal act of a person associated with the institution.	**Accepted in principle**	The NSW Government will meet the intent of this recommendation by introducing legislation to codify the common law vicarious liability of employers for child abuse committed by their employees and extend vicarious liability to employment-like relationships in those circumstances. Like a non-delegable duty, vicarious liability is a strict form of liability that enables institutions to be held liable for institutional child abuse despite it being the deliberate criminal act of a person associated with the institution.
90	The non-delegable duty should apply to institutions that operate the following facilities or provide the following services and be owed to children who are in the care, supervision or control of the institution in relation to the relevant facility or service:	**Accepted in principle**	

#	Royal Commission recommendation	NSW Government response	Comment
	a. residential facilities for children, including residential out of home care facilities and juvenile detention centres but not including foster care or kinship care b. day and boarding schools and early childhood education and care services, including long day care, family day care, outside school hours services and preschool programs c. disability services for children d. health services for children e. any other facility operated for profit which provides services for children that involve the facility having the care, supervision or control of children for a period of time but not including foster care or kinship care f. any facilities or services operated or provided by religious organisations, including activities or services provided by religious leaders, officers or personnel of religious organisations but not including foster care or kinship care.		
91	Irrespective of whether state and territory parliaments legislate to impose a non-delegable duty upon institutions, state and territory governments should introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The 'reverse onus' should be imposed on all institutions, including those institutions in respect of which we do not recommend a non-delegable duty be imposed.	**Accepted**	The NSW Government will introduce legislation imposing a new statutory liability on all institutions that exercise care, supervision or authority over children, with a reverse onus of proof and a defence of reasonable precautions.
92	For the purposes of both the non-delegable duty and the imposition of liability with a reverse onus of proof, the persons associated with the institution should include the institution's officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.	**Accepted**	See responses to recommendations 89 and 91 (*Redress and civil litigation report*). Vicarious liability (implementing the intent of the non-delegable duty) will apply to employment relationships and relationships akin to employment. The statutory duty with reverse onus of proof will apply to institutions in respect of acts of individuals associated with the institution, to be defined non-exhaustively to include categories such as those recommended by the Royal Commission.
93	State and territory governments should ensure that the non-delegable duty and the imposition of liability with a reverse onus of proof apply prospectively and not retrospectively.	**Accepted**	Both the vicarious liability and the statutory duty reforms will be prospective only.
Identifying a proper defendant			
94	State and territory governments should introduce legislation to provide that, where a survivor wishes to commence proceedings for damages in respect of institutional child sexual abuse where the institution is alleged to be an institution with which a property trust is associated, then unless the institution nominates a proper defendant to sue that has sufficient assets to meet any liability arising from the proceedings: a. the property trust is a proper defendant to the litigation b. any liability of the institution with which the property trust is associated that arises from the proceedings can be met from the assets of the trust.	**Accepted**	The NSW Government will introduce legislation allowing unincorporated associations to nominate a proper defendant to child abuse claims. Where an unincorporated association does not nominate a proper defendant with sufficient assets to satisfy the claim, the court will be allowed to nominate a trustee of an associated trust as the defendant to the claim, and allow the assets of the trust to be used to satisfy the claim.
95	The Australian Government and state and territory governments should consider whether there are any unincorporated bodies that they fund directly or indirectly to provide children's services. If there are, they should consider requiring them to maintain insurance that covers their liability in respect of institutional child sexual abuse claims.	**Accepted in principle**	The NSW Government does not provide funding to unincorporated entities.

#	Royal Commission recommendation	NSW Government response	Comment
Model litigant approaches			
96	Government and non-government institutions that receive, or expect to receive, civil claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse.	**Accepted**	The NSW Government has implemented a new approach to responding to civil claims concerning child abuse, in accordance with the Guiding Principles for Civil Claims for Child Abuse (Guiding Principles) introduced in 2014. The Guiding Principles provide, among other things, that NSW Government agencies will finalise claims as quickly as possible and without requiring a formal Statement of Claim. The Guiding Principles seek to ensure a more caring and compassionate approach across NSW Government when dealing with civil claims for child abuse.
97	The guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily adversarial responses to claims.	**Accepted**	
98	The guidelines should include an obligation on the institution to provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.	**Accepted**	
99	Government and non-government institutions should publish the guidelines they adopt or otherwise make them available to claimants and their legal representatives.	**Accepted**	

Working with Children Checks report NSW Government response

The *Working with Children Checks report* was released in August 2015.

It includes 36 recommendations.

The recommendations cover:

- a national approach
- standards
- benefits, impacts and implementation.

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#	Royal Commission recommendation	NSW Government response	Comment
General			
1	State and territory governments should: a. within 12 months of the publication of this report, amend their WWCC laws to implement the standards identified in this report b. once the standards are implemented, obtain agreement from the Council of Australian Governments (COAG), or a relevant ministerial council, before deviating from or altering the standards in this report, adopting changes across all jurisdictions c. within 18 months from the publication of this report, amend their WWCC laws to enable clearances from other jurisdictions to be recognised and accepted.	**Accepted in principle**	The NSW Government is working with the Australian Government, and other states and territories to agree and implement National Standards for Working with Children Checks (the National Standards).
2	The South Australian Government should, within 12 months of the publication of this report, replace its criminal history assessments with a WWCC scheme that incorporates the standards set out in this report.	**Accepted**	Not applicable.
3	The Commonwealth Government should, within 12 months of the publication of this report: a. facilitate a national model for WWCCs by: i. establishing a centralised database, operated by CrimTrac, that is readily accessible to all jurisdictions to record WWCC decisions ii. together with state and territory governments, identifying consistent terminology to capture key WWCC decisions (for example, refusal, cancellation, suspension and grant) for recording into the centralised database iii. enhancing CrimTrac's capacity to continuously monitor WWCC cardholders' national criminal history records b. explore avenues to make international records more accessible for the purposes of WWCCs c. identify and require all Commonwealth Government personnel, including contractors, undertaking child-related work, as defined by the child-related work standards set out in this report, to obtain WWCCs.	**Accepted in principle**	The NSW Government is working with the Australian Government, and other states and territories to establish a centralised database for Working with Children Check (WWCC) decisions. The NSW Minister for Family and Community Services wrote to the Australian Government Attorney-General in January 2018, providing in-principle support to establishing a centralised database of WWCCs.
4	The Commonwealth, state and territory governments should, within 12 months of the publication of this report: a. agree on a set of standards or guidelines to enhance the accurate and timely recording of information by state and territory police into CrimTrac's system b. review the information they have agreed to exchange under the National Exchange of Criminal History Information for People Working with Children (ECHIPWC), and establish a set of definitions for the key terms used to describe the different types of criminal history records so they are consistent across the jurisdictions (these key terms include pending charges, non-conviction charges and information about the circumstances of an offence) c. take immediate action to record into CrimTrac's system historical criminal records that are in paper form or on microfilm and which are not currently identified by CrimTrac's initial database search d. once these historical criminal history records are entered into CrimTrac's system by all jurisdictions, check all WWCC cardholders against them through the expanded continuous monitoring process.	**Accepted**	The NSW Government is working with the Australian Government, and other states and territories to agree the National Standards.

#	Royal Commission recommendation	NSW Government response	Comment
Standards			
Child-related work			
5	State and territory governments should amend their WWCC laws to incorporate a consistent and simplified definition of child-related work, in line with the recommendations below.	**Accepted**	In April 2018, the NSW Government amended Section 6 of the *Child Protection (Working with Children) Act 2012* (NSW) (WWC Act) to include a simplified definition of child-related work, as recommended by the Royal Commission. The NSW Government expects the National Standards will include a consistent and simplified definition of 'child-related work'.
6	State and territory governments should amend their WWCC laws to provide that work must involve contact between an adult and one or more children to qualify as child-related work.	**Accepted**	In April 2018, the NSW Government amended Section 6(1) of the WWC Act in line with this recommendation. The NSW Government expects the National Standards will include a consistent and simplified definition of 'child-related work'.
7	State and territory governments should: a. amend their WWCC laws to provide that the phrase 'contact with children' refers to physical contact, face-to-face contact, oral communication, written communication or electronic communication b. through COAG, or a relevant ministerial council, agree on standard definitions for each kind of contact and amend their WWCC laws to incorporate those definitions.	**Accepted in principle**	NSW is partially compliant with recommendation 7(a) as it has expanded child-related roles to include roles providing ongoing children's services by way of counselling, mentoring and distance education by any form of communication, including oral, written and electronic.
8	State and territory governments should: a. amend their WWCC laws to provide that contact with children must be a usual part of, and more than incidental to, the child-related work b. through COAG, or a relevant ministerial council, agree on standard definitions for the phrases 'usual part of work' and 'more than incidental to the work', and amend their WWCC laws to incorporate those definitions.	**Accepted**	The NSW Government recently amended Section 6(1)(a) of the WWC Act to comply with this recommendation. NSW expects part (a) of this recommendation will be included in the National Standards. Part (b) will not be included because defining the term 'usual part of work' and 'more than incidental to the work' may be too restrictive and lead to negative child protection outcomes.
9	State and territory governments should amend their WWCC laws to specify that it is irrelevant whether the contact with children is supervised or unsupervised.	**Accepted**	NSW largely complies with this recommendation under Clause 20 of the Child Protection (Working with Children) Regulation 2013 (NSW) (WWC Regulation); however, there are some exemptions (i.e. Clause 20 (1) (b)). The NSW Government expects the National Standards will include a consistent and simplified definition of 'child-related work'.
10	State and territory governments should amend their WWCC laws to provide that a person is engaged in child-related work if they are engaged in the work in any capacity and whether or not for reward.	**Accepted**	The NSW WWCC system complies with this recommendation under sections 6 and 7 of the WWC Act. The NSW Government expects the National Standards will include a consistent and simplified definition of 'child-related work'.
11	State and territory governments should amend their WWCC laws to provide that work that is undertaken under an arrangement for a personal or domestic purpose is not child-related, even if it would otherwise be so considered.	**Accepted**	NSW's WWCC system complies with this recommendation under Section 20 of the WWC Regulation. The NSW Government expects the National Standards will include a consistent and simplified definition of 'child-related work', including that which is not considered child-related.
12	State and territory governments should amend their WWCC laws to: a. define the following as child-related work: i. accommodation and residential services for children, including overnight excursions or stays ii. activities or services provided by religious leaders, officers or personnel of religious organisations iii. childcare or minding services iv. child protection services, including out of home care (OOHC) v. clubs and associations with a significant membership of, or involvement by, children vi. coaching or tuition services for children	**Accepted in principle**	Section 6(2) of the WWC Act broadly complies with this recommendation. It includes categories beyond those specified in Recommendation 12a. NSW does not support removing categories, as per Recommendation 12c. NSW expects the National Standards will include consistent categories classified as 'child-related work'.

#	Royal Commission recommendation	NSW Government response	Comment
	vii. commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions viii. disability services for children ix. education services for children x. health services for children xi. justice and detention services for children, including immigration detention facilities where children are regularly detained xii. transport services for children, including school crossing services xiii. other work or roles that involve contact with children that is a usual part of, and more than incidental to, the work or roles. b. require WWCCs for adults residing in the homes of authorised carers of children c. remove all other remaining categories of work or roles.		
13	State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each category of child-related work and amend their WWCC laws to incorporate those definitions.	**Accepted in principle**	NSW supports reaching agreement on standard definitions for each category of child-related work, as long as the existing NSW framework is not weakened.
Exemptions			
14	State and territory governments should amend their WWCC laws to: a. exempt: i. children under 18 years of age, regardless of their employment status ii. employers and supervisors of children in a workplace, unless the work is child-related iii. people who engage in child-related work for seven days or fewer in a calendar year, except in respect of overnight excursions or stays iv. people who engage in child-related work in the same capacity as the child v. police officers, including members of the Australian Federal Police vi. parents or guardians who volunteer for services or activities that are usually provided to their children, in respect of that activity, except in respect of: a) overnight excursions or stays b) providing services to children with disabilities, where the services involve close, personal contact with those children b. remove all other exemptions and exclusions c. prohibit people who have been denied a WWCC, and subsequently not granted one, from relying on any exemption.	**Accepted in principle**	Section 20 of the WWC Regulation outlines those who are considered exempt from the WWC Act. The exemptions are broadly consistent with the Royal Commission's recommendations, but there are some differences. NSW expects the National Standards will specify a consistent approach to who should be exempt from obtaining a WWCC, but may not include all of the exemptions listed by the Royal Commission and may include additional exemptions already outlined in NSW legislation.
15	State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each exemption category and amend their WWCC laws to incorporate those definitions.	**Accepted in principle**	The Australian Government and other jurisdictions will consider this further when agreeing the National Standards. NSW's acceptance of this recommendation will be on the condition it does not weaken NSW's WWCC system.
Offences			
16	State and territory governments should amend their WWCC laws to incorporate a consistent and simplified list of offences, including: a. engaging in child-related work without holding, or having applied for, a WWCC b. engaging a person in child-related work without them holding, or having applied for, a WWCC	**Accepted**	NSW complies with this recommendation under sections 8, 9, 45A, 36B (new) and 45 of the WWC Act. In relation to 16(d), requiring applicants to inform about a change in criminal records is unnecessary in NSW due to our system of continuous monitoring of all relevant (NSW) offences and findings of disciplinary proceedings. However, in April 2018, NSW made legislative changes requiring applicants and holders to notify the NSW Office of the Children's Guardian about changes to personal details.

#	Royal Commission recommendation	NSW Government response	Comment
	c. providing false or misleading information in connection with a WWCC application d. applicants and/or WWCC cardholders failing to notify screening agencies of relevant changes in circumstances e. unauthorised disclosure of information gathered during the course of a WWCC.		
Criminal history information			
17	State and territory governments should amend their WWCC laws to include a standard definition of criminal history, for WWCC purposes, comprised of: a. convictions, whether or not spent b. findings of guilt that did not result in a conviction being recorded c. charges, regardless of status or outcome, including: i. pending charges – that is, charges laid but not finalised ii. charges disposed of by a court, or otherwise, other than by way of conviction (for example, withdrawn, set aside or dismissed) iii. charges that led to acquittals or convictions that were quashed or otherwise over-turned on appeal for all offences, irrespective of whether or not they concern the person's history as an adult or a child and/or relate to offences outside Australia.	**Accepted**	In April 2018, the NSW Government amended Section 5 of the WWC Act, in line with this recommendation. The WWC Act now includes the definition of 'criminal history' recommended by the Royal Commission and replaces references to 'criminal record' with 'criminal history'. NSW expects the National Standards will include a standard definition of 'criminal history' for WWCC purposes.
18	State and territory governments should amend their WWCC laws to require police services to provide screening agencies with records that meet the definition of criminal history records for WWCC purposes and any other available information relating to the circumstances of such offences.	**Accepted in principle**	NSW complies with this recommendation under sections 33 and 34 of the WWC Act. NSW expects the National Standards will include a consistent approach to requiring police services to provide records that meed the definition of criminal history records for WWCC purposes.
Disciplinary or misconduct information			
19	State and territory governments should amend their WWCC laws to: a. require that relevant disciplinary and/or misconduct information is checked for all WWCC applicants b. include a standard definition of disciplinary and/or misconduct information that encompasses disciplinary action and/or findings of misconduct where the conduct was against, or involved, a child, irrespective of whether this information arises from reportable conduct schemes or other systems or bodies responsible for disciplinary or misconduct proceedings c. require the bodies responsible for the relevant disciplinary and/or misconduct information to notify their respective screening agencies of relevant disciplinary and/ or misconduct information that meets the definition.	**Accepted**	NSW is broadly compliant with this recommendation under Section 35 and schedule 1(2) of the WWC Act, and is working with the Australian Government, and other states and territories to agree the National Standards identified in the Royal Commission's *Working with Children Checks* Report. NSW expects the National Standards will include recommendations 19(a) and 19(c), as well as a revised version of 19(b).
Response to records returned			
20	State and territory governments should amend their WWCC laws to respond to records in the same way, specifically that: a. the absence of any relevant criminal history, disciplinary or misconduct information in an applicant's history leads to an automatic grant of a WWCC b. any conviction and/or pending charge in an applicant's criminal history for the following categories of offence leads to an automatic WWCC refusal, provided the applicant was at least 18 years old at the time of the offence: i. murder of a child ii. manslaughter of a child iii. indecent or sexual assault of a child	**Accepted**	NSW complies with this recommendation under Part 3, divisions 3 and 4 and schedules 1 and 2 of the WWC Act. NSW expects the National Standards will include a consistent approach to assessing WWCC applications.

#	Royal Commission recommendation	NSW Government response	Comment
	iv. child pornography–related offences v. incest where the victim was a child vi. abduction or kidnapping of a child vii. animal-related sexual offences. c. all other relevant criminal, disciplinary or misconduct information should trigger an assessment of the person's suitability for a WWCC (consistent with the risk assessment factors set out below).		
21	State and territory governments should amend their WWCC laws to specify that relevant criminal records for the purposes of recommendation 20(c) include but are not limited to the following: a. juvenile records and/or non-conviction charges for the offence categories specified in recommendation 20(b) b. sexual offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b) c. violent offences, including assaults, arson and other fire-related offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b) d. child welfare offences e. offences involving cruelty to animals f. drug offences.	**Accepted**	NSW largely complies with this recommendation under schedule 1 of the WWC Act, and work is underway to ensure all offences listed are included. NSW expects the National Standards will include a consistent definition of 'relevant criminal records'.
22	The Commonwealth Government, through COAG, or a relevant ministerial council, should take a lead role in identifying the specific criminal offences that fall within the categories specified in recommendations 20(b) and 21.	**Accepted**	The Australian Government is taking a lead role in identifying the specific criminal offences that fall within the categories specified in recommendations 20(b) and 21.
Assessing risk			
23	State and territory governments should amend their WWCC laws to specify that the criteria for assessing risks to children include: a. the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work b. the length of time that has passed since the offence and/or misconduct occurred c. the age of the child d. the age difference between the person and the child e. the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct f. all other relevant circumstances in respect of their history and the impact on their suitability to be engaged in child-related work.	**Accepted**	NSW complies with all criteria included in Recommendation 23 under Part 3, division 3 of the WWC Act, which outlines the risk assessment process for WWCC applications in NSW. Additionally, in relation to 23(g), NSW requires authorised carers and adult household members to have a WWCC. NSW expects the National Standards will include a consistent approach to assessing risks to children.
24	State and territory governments should amend their WWCC laws to expressly provide that, in weighing up the risk assessment criteria, the paramount consideration must always be the best interests of children, having regard to their safety and protection.	**Accepted**	NSW complies with this recommendation under Section 15 of the WWC Act, which specifies that the Office of the Children's Guardian must consider the risk to the safety of children, and Section 4, which provides that paramount consideration in operation of the Act is the safety, welfare and wellbeing of children, and in particular, protecting them from abuse. NSW expects the National Standards will include a commitment to giving the best interests of children paramountcy when assessing WWCCs.
Eligibility to work while an application is assessed			
25	State and territory governments should amend their WWCC laws to permit WWCC applicants to begin child-related work before the outcome of their application is determined, provided the safeguards listed below are introduced. Applicants a. applicants must submit a WWCC application to the appropriate screening agency before beginning child-related work and not withdraw the application while engaging in child-related work	**Accepted**	NSW complies with this recommendation under sections 9A and 17 of the WWC Act. NSW expects the National Standards will include consistent safeguards for the period in which an application is being assessed.

#	Royal Commission recommendation	NSW Government response	Comment
	b. applicants must provide a WWCC application receipt to their employers before beginning child-related work **Other safeguards** c. employers must cite application receipts, record application numbers and verify applications with the relevant screening agency d. there must be capacity to impose interim bars on applicants where records are identified that may indicate a risk and require further assessment.		
26	State and territory governments that do not have an online WWCC processing system should establish one.	**Accepted**	NSW has an online processing system for WWCCs which is legislated in Section 25 of the WWC Act. NSW expects the National Standards will include an expectation that jurisdictions establish online WWCC processing systems.
27	State and territory governments should process WWCC applications within five working days, and no longer than 21 working days for more complex cases.	**Accepted in principle**	NSW expects the National Standards will include a standard processing time which will account for more complex cases that rely on other agencies' and individuals' cooperation in order to conduct the assessment.
Clearance types			
28	All state and territory governments should amend their WWCC laws to specify that: a. WWCC decisions are based on the circumstances of the individual and are detached from the employer the person is seeking to work for, or the role or organisation the person is seeking to work in b. the outcome of a WWCC is either that a clearance is issued or it is not; there should be no conditional or different types of clearances c. volunteers and employees are issued with the same type of clearance.	**Accepted**	NSW complies with this recommendation under sections 12, 15 and 20 of the WWC Act. NSW expects the National Standards will include a consistent approach to clearance types.
Appeals			
29	All state and territory governments should ensure that any person the subject of an adverse WWCC decision can appeal to a body independent of the WWCC screening agency, but within the same jurisdiction, for a review of the decision, except persons who have been convicted of one of the following categories of offences: • murder of a child • indecent or sexual assault of a child • child pornography-related offences • incest where the victim was a child and a. received a sentence of full time custody for the conviction, such persons being permanently excluded from an appeal or b. by virtue of that conviction, the person is subject to an order that imposes any control on the person's conduct or movement, or excludes the person from working with children, such persons being excluded from an appeal for the duration of that order. Notwithstanding the above any person may bring an appeal in which they allege that offences have been mistakenly recorded as applying to that person.	**Accepted in principle**	NSW is broadly compliant with this recommendation under Part 4 of the WWC Act, and has gone further to limit appeal rights and by restricting appeal rights for individuals convicted of murder, regardless of the victim's age. NSW expects the National Standards will include a consistent approach to appeals, and may specify that appeals about alleged offences which a person considers mistaken should occur outside of the WWCC system.
Portability			
30	Subject to the implementation of the standards set out in this report, all state and territory governments should amend their WWCC laws to enable WWCCs from other jurisdictions to be recognised and accepted.	**Accepted in principle**	NSW has recently inserted Section 36A into the WWC Act to exchange WWCC information between the Office of the Children's Guardian and other WWCC interjurisdictional bodies subject to a Ministerial protocol. NSW is encouraging jurisdictions to consider exchanging information subject to the protocol

#	Royal Commission recommendation	NSW Government response	Comment
			as an interim measure before a database is established. Portability of WWCCs requires further consideration while other jurisdictions have less comprehensive checking schemes.
Duration and continuous monitoring			
31	Subject to the commencement of continuous monitoring of national criminal history records, state and territory governments should amend their WWCC laws to specify that: a. WWCCs are valid for five years b. employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work c. screening agencies are required to notify a person's employer of any change in the person's WWCC status.	**Accepted**	NSW complies with this recommendation under sections 20, 22, 23 and 24 of the WWC Act. NSW expects the National Standards will include measures about the duration of WWCCs and continuous monitoring.
Monitoring compliance			
32	All state and territory governments should grant screening agencies, or another suitable regulatory body, the statutory power to monitor compliance with WWCC laws.	**Accepted**	NSW complies with this recommendation under Section 39 of the WWC Act. NSW expects the National Standards will include a consistent approach to screening agencies, or a suitable regulation body, exercising powers to monitor compliance with WWCC laws.
33	All state and territory governments should ensure their WWCC laws include powers to compel the production of relevant information for the purposes of compliance monitoring.	**Accepted**	NSW complies with this recommendation under Section 40 of the WWC Act. NSW expects the National Standards will include a consistent approach to compelling the production of relevant information for the purposes of compliance monitoring.
Governance			
34	The Commonwealth, state and territory governments should: a. through COAG, or a relevant ministerial council, adopt the standards and set a timeframe within which all jurisdictions must report back to COAG, or a relevant ministerial council, on implementation b. establish a process whereby changes to the standards or to state and territory schemes need to be agreed to by COAG, or a relevant ministerial council, and must be adopted across all jurisdictions.	**Accepted in principle**	NSW is working with other jurisdictions through the Interjurisdictional Working Group for WWCCs to agree the National Standards. Once a position is agreed, the National Standards will be considered by Social Services and Attorney General Ministerial Councils.
35	The Commonwealth, state and territory governments should provide an annual report to COAG, or a relevant ministerial council, for three years following the publication of this report, to be tabled in the parliaments of all nine jurisdictions, detailing their progress in implementing the recommendations in this report and achieving a nationally consistent approach to WWCCs.	**Accepted in principle**	NSW is working with other jurisdictions through the Interjurisdictional Working Group for WWCCs to agree National Standards. Once a position is agreed, the National Standards will be considered by Social Services and Attorney General Ministerial Councils.
36	COAG, or a relevant ministerial council, should ensure a review is made after three years of the publication of this report, of the state and territory governments' progress in achieving consistency across the WWCC schemes, with a view to assessing whether they have implemented the Royal Commission's recommendations.	**Accepted in principle**	Not applicable.

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