

Victorian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse

Content warning

This document may contain material that is confronting and disturbing, and which may cause sadness or distress.

Further support for survivors of past abuse, violence or childhood trauma is available at Find and Connect Support Services (free call) on 1800 16 11 09 (Monday-Friday, 9am – 5pm), or call Lifeline on 13 11 14 (anytime) for confidential telephone crisis support.

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Introduction

The Royal Commission into Institutional Responses to Child Sexual Abuse uncovered tragic and widespread abuse of children who were in the care of government and non-government institutions. Children reporting abuse were not believed and their allegations were ignored.

We acknowledge the findings of historical abuse within Victorian Government institutions and the ongoing psychological and physical harm suffered by survivors.

As part of the inquiry, survivors shared stories of the profound trauma they suffered while in the care of government and non-government institutions and spoke of the extent to which this trauma impacted their lives as children and into adulthood. We acknowledge your strength, resilience and courage and we thank you for your bravery in coming forward to make sure the abuse of children was brought to light.

It is thanks to the courage of survivors of historical child sexual abuse that the Royal Commission was able to do its important work and we acknowledge your vital contribution.

The Victorian Government is taking responsibility to make sure no child is failed again and the wrongs of the past are never repeated. We are also making sure the needs of survivors are treated with the priority and importance they deserve.

As well as making important recommendations for governments and institutions, the Royal Commission provided essential support for survivors of abuse in Australia so their voices could be heard. We welcome the release of the Final Report and thank the Royal Commission for its commitment and dedication in these important tasks.

We are continually working to improve the ways we protect children, and the recommendations of the Royal Commission will be instrumental in guiding laws and practice to better protect children from abuse.

This includes building cultures across the community that give children and young people a voice, empower them to raise concerns, and making sure that our responses to their concerns are effective and appropriate.

We are committed to working with other jurisdictions to protect all children from abuse and implement more than 50 recommendations requiring intergovernmental collaboration. The Victorian Government is consulting with the Australian Government and state and territory governments to progress these recommendations.

The Victorian Government is determined to make sure these failures to protect children never happen again and survivors are given the care and support they need. Our response to the Royal Commission reflects these commitments.

For the next five years, the Victorian Government will report annually on its progress in building better protections for children.

Victoria's work to protect children

Victoria has taken strong action to prevent and respond to child sexual abuse, and will continue to do so in responding to the Royal Commission.

In particular, the Victorian Government has introduced a suite of significant reforms since the handing down of the landmark Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, *Betrayal of Trust*, on 13 November 2013. In its response, the Victorian Government supported or supported in principle all 15 of its recommendations.

Many of the Royal Commission's recommendations have already been fully or partially implemented in Victoria by reforms introduced to respond to the *Betrayal of Trust* report, including new criminal offences, measures to create child safe organisations, and civil law reforms to provide better access to justice for survivors of institutional child abuse.

Victoria is finalising its implementation of all the recommendations of *Betrayal of Trust*, as described in detail below.

New criminal offences

The Victorian Government has introduced three new criminal offences to further protect children from abuse, including:

- a grooming offence that targets communication, including online communication, with a child or their parents with the intent of committing child sexual abuse
- a failure to disclose offence that requires adults to report to police a reasonable belief that a sexual offence has been committed against a child (unless they have a reasonable excuse for not doing so, such as fear for their safety)
- a failure to protect offence that applies to people within organisations who knew of a risk of child sexual abuse by someone in the organisation and had the authority to reduce or remove the risk, but negligently failed to do so.

Child safe organisations

The Victorian Government has implemented a range of measures to create child safe organisations by strengthening the capacity of organisations to prevent and respond to the risks of child abuse. These measures include:

- the introduction of Victorian Child Safe Standards that aim to drive cultural change in organisations, so that protecting children from the risks of abuse is embedded in everyday thinking and practice. The Victorian Child Safe Standards are compulsory for all organisations that provide services to children.
- the introduction of a reportable conduct scheme, commencing in stages from 1 July 2017. This scheme requires organisations with a high level of responsibility for children to respond to allegations of child-related misconduct made against their workers and volunteers, and report those allegations to the Commissioner for Children and Young People, ensuring independent scrutiny in preventing and responding to allegations of abuse.

Civil law reforms

The Victorian Government is continuing to implement a range of civil law reforms to provide justice for survivors of institutional child abuse.

On 1 July 2017, the *Wrongs Amendment (Organisational Child Abuse) Act 2017* commenced. The Act created a new duty of care that will allow an organisation to be held responsible for child abuse that occurred in their organisation, unless the organisation proves that it took reasonable precautions to prevent the abuse.

On 1 July 2015, the *Limitation of Actions Amendment (Child Abuse) Act 2015* commenced. The Act completely removed the limitation periods that applied to civil actions founded upon child abuse, with both retrospective and prospective effect. The reforms also removed the 12-year long-stop limitation period for wrongful death actions in relation to child abuse brought by dependants of a deceased victim.

On 5 June 2018, the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* received Royal Assent. The Act provides that where an institutional child abuse plaintiff wishes to pursue damages against an unincorporated non-government organisation (NGO) that controls one or more associated trusts, that NGO must nominate an entity that is capable of being sued to act as a proper defendant. If the NGO does not do so, the Act provides that the trustees of the associated trust or trusts are the proper defendants in the proceedings (on behalf of the NGO) and will incur any liability arising from the proceeding.

The Victorian Government is undertaking the detailed policy work and consultation to implement the proposal that organisations that receive government funding to provide services to children must be incorporated and have adequate insurance, in order to ensure proper access to justice for child abuse plaintiffs, which was another recommendation of Betrayal of Trust.

On 9 March 2018, Victoria was one of the first states in the country to sign up to the National Redress Scheme. On 8 May 2018, the Victorian Government introduced legislation to refer powers to the Commonwealth Parliament to allow Victorian institutions to participate in the Scheme. This will also respond to key recommendations of the Royal Commission.

Overview of Victorian Government Response to the recommendations of the Royal Commission

The Royal Commission made 409 recommendations in total, including more than 50 recommendations requiring governments to work together:

- the Final Report (2017) contained 189 recommendations
- the Working with Children Checks Report (2015) contained 36 recommendations
- the Redress and Civil Litigation Report (2015) contained 99 recommendations
- the Criminal Justice Report (2017) contained 85 recommendations.

The Victorian Government Response includes a response to all 409 recommendations and does not reject any recommendations.

In summary, the Victorian Government:

- accepts 128 recommendations where all elements of the recommendation are supported
- accepts in principle 165 recommendations, with further work to be done to determine how these recommendations best apply in Victoria
- states that Victoria will give further consideration to 24 recommendations where further analysis is required for the Victorian Government to determine its approach
- notes 92 recommendations where responsibility for the recommendation does not sit with the Victorian Government.

The Findings of the Royal Commission

Understanding child sexual abuse in institutional contexts

Volumes 1 to 5 describe the findings of the Royal Commission regarding child sexual abuse. These volumes contain one recommendation: that the Australian Government should conduct and publish a study on a regular basis to establish the extent of child maltreatment in Australia. The Victorian Government Response notes this recommendation, which is a matter for the Australian Government.

Making institutions child safe through prevention

Volume 6 contains 24 recommendations to improve institutional safety for children.

The Victorian Government accepts three recommendations in Volume 6, accepts in principle 13 recommendations, and notes eight recommendations.

The Victorian Government has already implemented significant reforms to make institutions child safe, including the implementation of the Keeping Children Safe from Child Sexual Exploitation Strategy.

The Victorian Government accepts the following key recommendations:

- that an independent oversight body should have the ability to provide advice and information to institutions and the community on the Child Safe Standards and coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards. The Commissioner for Children and Young People (Victoria's independent oversight body) already fulfils this recommendation.
- that the Child Safe Standards recommended by the Royal Commission should be adopted as part of the new National Statement of Principles for Child Safe Organisations.

The Victorian Government accepts in principle the following key recommendations:

- that all institutions must meet ten Child Safe Standards identified by the Royal Commission. Victoria already has Child Safe Standards that are mandatory for all organisations delivering services to children. To ensure our state's standards remain as strong as possible, the Victorian Child Safe Standards will be reviewed in 2018–19, and adjustments to better align with the Royal Commission's recommendations will be considered during that review.
- that measures to prevent online child sexual abuse should be implemented.

Victoria will continue to work with the Australian Government and other states and territories to progress recommendations that require national cooperation.

Improving institutional responding and reporting

Volume 7 contains 12 recommendations regarding how government and non-government institutions should handle complaints, and the need for independent oversight of complaint handling and reporting by institutions.

The Victorian Government accepts five recommendations in Volume 7, accepts in principle six recommendations and will give further consideration to one recommendation.

The Victorian Government accepts the following key recommendations:

- that child protection legislation should be amended to provide adequate protection for individuals who make complaints or reports in good faith about child sexual abuse to any institution engaged in child-related work
- that periodic review of the operation of reportable conduct schemes should be undertaken (a review of the Victorian Reportable Conduct Scheme is already required after the first five years of operation).

The Victorian Government accepts in principle the key recommendation that laws concerning mandatory reporting to child protection authorities should be expanded, including to people in religious ministries.

The Victorian Government will give further consideration to the key recommendation that mandatory reporting laws should not exempt people in religious ministry from being required to report information disclosed in a religious confession.

Recordkeeping and information sharing

Volume 8 contains 23 recommendations regarding recordkeeping and information sharing between institutions in order to improve the identification, prevention and response to incidents and risks of child sexual abuse.

The Victorian Government accepts three recommendations in Volume 8, and accepts in principle 20 recommendations.

The Victorian Government has introduced a Child Information Sharing Scheme which will begin on 3 September 2018 for the first phase of organisations. It is designed to help authorised professionals working with children and families across key services share information to promote the wellbeing and safety of children, consistent with recommendations made by the Royal Commission.

The Victorian Government accepts the following key recommendations:

- that public records authorities should ensure that records relating to child sexual abuse that has occurred or is alleged to have occurred are retained for at least 45 years
- that public records authorities should provide guidance to government and non-government institutions on identifying records which may reasonably become relevant to an actual or alleged incident of child sexual abuse, and on the retention and disposal of such records.

The Victorian Government accepts in principle the following key recommendations, which require collaboration with other jurisdictions:

- that governments should enable national sharing of information in relation to teachers and students
- that government should introduce nationally consistent legislation to allow for the sharing of information related to the safety and wellbeing of children.

Advocacy, support and therapeutic treatment services

Volume 9 makes nine recommendations for improved advocacy, support and therapeutic services for victims and survivors.

The Victorian Government accepts in principle seven recommendations in Volume 9 and notes two recommendations that are matters for the Australian Government.

The Victorian Government accepts in principle the following key recommendations:

- that governments should fund specialist support services, including services for Aboriginal and Torres Strait Islander people, and people with disability
- that governments should establish and fund a national centre to raise awareness, support and guide therapeutic treatments for survivors of child sexual abuse.

Children with harmful sexual behaviours

Volume 10 makes seven recommendations about improving prevention and increasing the range of interventions available for children with harmful sexual behaviours.

The Victorian Government accepts two recommendations in Volume 10 and accepts in principle five recommendations.

The Victorian Government has introduced reforms to intervene early with children and young people who display problem sexual behaviours as part of the government's response to the recommendations of the Royal Commission into Family Violence. This included investment in the Sexually Abusive Behaviour Treatment Service.

The Victorian Government accepts the following key recommendations that already exist in Victoria:

- that there should be clear referral pathways for children with harmful sexual behaviours to access expert assessment and therapeutic intervention
- that therapeutic intervention for children with harmful sexual behaviours should be based on principles recommended by the Royal Commission.

The Victorian Government accepts in principle the recommendation that harmful sexual behaviours by children should be addressed through primary prevention strategies to educate families, community members, carers and professionals (including mandatory reporters) about preventing harmful sexual behaviours.

Historical residential institutions

Volume 11 discusses the Royal Commission's examination of institutional responses to child sexual abuse in residential institutions such as children's homes, missions, reformatories and hospitals between the Second World War and 1990. Volume 11 contains no recommendations.

Contemporary out-of-home care

Volume 12 makes 22 recommendations to prevent child sexual abuse from occurring in out-of-home care and, where it does occur, to help ensure effective responses.

The Victorian Government accepts six recommendations in Volume 12, accepts in principle 15 recommendations, and will give further consideration to recommendation 12.6, which, although partially implemented in Victoria, requires further review.

The Victorian Government accepts the following key recommendations, which are already fully or partially implemented in Victoria:

- that an improved model of assessment appropriately tailored for kinship/relative care should be adopted
- that resources should be developed to assist service providers to provide additional support for children, carers and caseworkers, along with regular consultation with children in out-of-home care
- that training for foster and relative/kinship carers, residential care staff and child protection workers should include an understanding of trauma and abuse.

The Victorian Government has implemented significant reform to the children, youth and family services system via implementation of the Roadmap for Reform: Strong Families, Safe Children. Launched in April 2016, the Roadmap for Reform: Strong Families, Safe Children sets out the Victorian Government's commitment to build a better future for children, young people and families and details the Victorian Government's strategy to deliver a system focused on:

- strengthening communities to better prevent neglect and abuse
- delivering early support to children and families at risk
- keeping more families together through crisis
- securing a better future for children who cannot live at home.

Schools

Volume 13 makes eight recommendations to prevent child sexual abuse from occurring in schools and, where it does occur, to help ensure effective responses.

The Victorian Government accepts in principle seven recommendations in Volume 13 and notes one recommendation that is a matter for the Australian Government.

To support schools to implement the Victorian Child Safe Standards the Department of Education and Training provides detailed guidance, tools and resources on the PROTECT portal. This guidance has been developed in consultation with the government and non-government school sectors and the Victorian Registration and Qualifications Authority.

The Victorian Government accepts in principle the following key recommendations, which require further review of Victoria's existing approaches in light of the Royal Commission's recommendations:

- that complaint handling policies should include effective procedures for managing complaints about children with harmful sexual behaviours

- that nationally consistent and easily accessible guidance to teachers and principals should be provided on preventing and responding to child sexual abuse in all government and non-government schools
- that teacher registration requirements should be strengthened to better protect children from sexual abuse in schools.

Victoria will work with the Australian Government and state and territory governments regarding recommendations relating to national consistency.

Sport, recreation, arts, culture, community and hobby groups

Volume 14 makes four recommendations to prevent child sexual abuse from occurring in sport and recreation and, where it does occur, to help ensure effective responses.

The Victorian Government accepts one recommendation in Volume 14, accepts in principle one recommendation, and notes two recommendations that are matters for the Australian Government.

The Victorian Government accepts the recommendation that the oversight body that implements 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. The Victorian Commissioner for Children and Young People already performs this function.

The Victorian Government accepts in principle the recommendation that all sport and recreation institutions, including arts, culture, community and hobby groups, should implement the ten Child Safe Standards recommended by the Royal Commission. In Victoria, since January 2017, sport and recreation institutions have been required to comply with the Victorian Child Safe Standards. A review of the Victorian Child Safe Standards will be undertaken in 2018–19 and will consider adjustments to better align with the Royal Commission's recommendations during that review.

Contemporary detention environments

Volume 15 makes 15 recommendations to prevent child sexual abuse from occurring in detention environments and, where it does occur, to help ensure effective responses.

The Victorian Government accepts five recommendations in Volume 15, accepts in principle five recommendations, and notes five recommendations that are matters for the Australian Government.

The Victorian Government accepts the following key recommendations:

- that internal and external complaint handling systems concerning youth detention should be reviewed to ensure they are capable of effectively dealing with complaints of child sexual abuse
- that building and design features of youth detention should be reviewed to identify and address elements that may place children at risk
- that all staff in youth detention should be 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.

Religious institutions

Volume 16 makes 58 recommendations directed at all religious institutions in Australia. It also makes recommendations directed at specific religious institutions.

The Victorian Government notes all recommendations in Volume 16, which are matters for religious institutions.

Beyond the Royal Commission

Volume 17 makes six recommendations regarding monitoring and reporting on the implementation of recommendations.

The Victorian Government accepts two recommendations in Volume 17, and notes four recommendations that are matters for the Australian Government or institutions.

The Victorian Government accepts the key recommendations that governments should:

- issue a formal response to the Final Report within six months
- report on implementation annually for five years.

Working with Children Checks Report (2015)

In its *Working with Children Checks Report*, the Royal Commission recommended the Australian Government facilitate and manage a 'national model' for Working With Children Checks (WWCC), and that jurisdictions amend their WWCC laws to implement common minimum standards. The WWCC Report contains 36 recommendations.

The Victorian Government accepts 14 recommendations, which Victoria has already implemented, including the following key recommendations:

- that WWCC laws should be amended to provide that work must involve contact between an adult and one or more children to qualify as 'child-related work'
- that legislation should be introduced to specify that it is irrelevant whether direct contact with children is supervised or unsupervised for the purposes of requiring a WWCC
- that WWCC laws should be amended to incorporate a consistent and simplified list of offences.

The other recommendations in the *Working with Children Checks Report* require coordinated national action. Victoria is working with the Australian Government and state and territory governments to progress these recommendations. The Victorian Government accepts in principle 16 of those recommendations, and will give further consideration to five of those recommendations.

As recommendation 2 is directed solely at South Australia, the Victorian Government notes this recommendation.

Redress and Civil Litigation Report (2015)

Fifteen recommendations in the *Redress and Civil Litigation Report* relate to reforms to civil litigation. The Victorian Government has implemented all of these recommendations. Many of these reforms were introduced in response to *Betrayal of Trust*. The Victorian Government accepts the recommendations, which are already implemented in Victoria, including:

- the introduction of legislation to remove of the limitation period in child abuse cases
- the introduction of legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse
- the introduction of legislation to assist a child abuse plaintiff to identify a proper defendant
- the adoption of guidelines for responding to claims for compensation concerning allegations of child sexual abuse.

The *Redress and Civil Litigation Report* contains a further 84 recommendations related to redress.

The Victorian Government accepts 42 of the recommendations related to redress and accepts in principle 41 recommendations.

On 9 March 2018, Victoria was one of the first states in the country to sign up to the National Redress Scheme. On 7 June 2018, the Victorian Government passed legislation to refer powers to the Commonwealth Parliament to allow Victorian institutions to participate in the Scheme. This will respond to key recommendations of *Betrayal of Trust* and the Royal Commission.

The Victorian Government will give further consideration to recommendation 48, which recommends that the National Redress Scheme have no fixed closing date. This question will be further considered and agreed by participating institutions when the National Redress Scheme is reviewed.

Criminal Justice Report (2017)

The *Criminal Justice Report* makes 85 recommendations that address a broad range of issues, including the reporting, investigation and prosecution of child sexual abuse offences, and criminal and evidence law.

The recommendations made by the Royal Commission will be instrumental as the Victorian Government continues to reform the criminal justice system to support victims of crime and strengthen laws to better protect children from abuse.

The Victorian Government accepts 30 recommendations in the *Criminal Justice Report*, accepts in principle 29 recommendations, will give further consideration to 16 recommendations and notes 10 recommendations that are directed at states other than Victoria, institutions or survivor advocacy groups, or are otherwise not relevant to Victoria.

The Victorian Government accepts the following key recommendations which are already implemented in Victoria, including:

- the introduction of a broad grooming offence which captures any communication or conduct with a child with the intent of committing child sexual abuse
- the introduction of position of authority offences
- the repeal of limitation periods for the prosecution of sexual offences

- the introduction of ground rules hearings
- the introduction of reforms to judicial directions, expert evidence, reducing delay, evidence of good character, and sentencing standards
- the adoption of guiding principles for prosecution responses to child sexual abuse
- the introduction of alternative arrangements for giving evidence for witnesses in sexual offence or family violence cases.

The Victorian Government accepts in principle 29 recommendations that are already partially implemented in Victoria, but where the recommendation varies slightly from the existing Victorian model or changes to practice are required.

The Victorian Government will give further consideration to 16 recommendations where the recommendation raises complex legal and policy issues that require further examination, including:

- that religious confessions should not be excepted from the offence for failure to report child sexual abuse. The current Victorian 'failure to disclose' offence does contain such an exception, consistent with the recommendations of *Betrayal of Trust*.
- recommendations relating to tendency and coincidence evidence, which are currently under consideration by a working group of the Council of Attorneys General.

For more information and to read the full Victorian Government Response, visit www.justice.vic.gov.au