

Submission to ACT Government's consultation on Royal Commission recommendations regarding reporting of child sexual abuse with implications for the confessional seal

CREATE Foundation

A PO Box 603 Civic Square

ACT 2616

T 02 6232 2409

E create@create.org.au



About CREATE Foundation

CREATE Foundation is the national consumer body for children and young people with an out-of-home care experience. We represent the voices of almost 48 000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential, in line with our mission to:

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

We achieve our mission by facilitating a variety of programs and services for children and young people in care.



Response to proposed legislative reform

CREATE Foundation welcomes the opportunity to provide commentary on the ACT Government's proposed changes to legislation that align with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).


CREATE acknowledges and commends the ACT Government's commitment to implementing the recommendations made by the Royal Commission. CREATE is broadly supportive of the proposed changes to legislation to be made in alignment with the Royal Commission's recommendations that have implications for the confessional seal. CREATE's submission focusses on the proposed changes to the mandatory reporting scheme and the introduction of a failure to report offence.

Currently, there are almost 48 000 children and young people in out-of-home care, through no fault of their own and often due to experiencing abuse and neglect. As the Royal Commission identified, these children and young people are a particularly vulnerable cohort wherein systemic failures serve to increase their risk of being abused whilst in care. Inadequate information sharing, lack of oversight of placements, and inefficient training to support foster and kinship carers to identify and recognise signs of abuse exacerbate this cohort's vulnerability (Commonwealth of Australia, 2017).

In addition, children and young people in out-of-home care face significant barriers when disclosing abuse. Placement instability, high caseworker turnover, and being separated from existing social networks (such as friends and extended family) when taken into care mean young people with a care experience may be isolated and lack a trusting relationship with an adult. Children and young people may lack understanding of what constitutes abuse, and fear potential consequences if they do disclose abuse (Commonwealth of Australia, 2017). Policy and practice changes are thus necessary to mitigate these barriers and facilitate the reporting of disclosures to ensure the safety and well-being of children and young people.

As stipulated by the United Nations (1989) Convention on Rights of the Child Article 19:

parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.



In light of the significant barriers young people in out-of-home care face when disclosing abuse, the onus is on governments to ensure that the rights of children and young people are upheld. CREATE Foundation thus broadly supports the ACT Government’s proposed legislative changes. Such changes are a step towards ensuring adults with unique access to children and young people and to information regarding abuse that otherwise would not be disclosed, is reported to relevant authorities to precipitate actions that increase the protection of children and young people. CREATE provides commentary on specific aspects of the proposed legislative changes below.

Introduction of a failure to report offence

CREATE supports the introduction of a new failure to report offence. CREATE supports the inclusion of persons in the religious ministry and other officers or personnel of religious institutions, and that the criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed on the basis of information disclosed in a religious confessional. To achieve the objectives of recommendation 35, CREATE broadly supports changes to legislation to exclude existing “excuse, protection or privilege in relation to religious confessions,” such as section 127 of the *Evidence Act 2011*. CREATE is not in a position to provide comment on specific means for addressing the barriers posed by section 127 with respect to information regarding sexual abuse divulged in religious confessional.

However, CREATE recommends departure from Recommendation 33 is warranted. Specifically, CREATE recommends that the failure to report offence should apply to individual foster and kinship carers. This departure from the recommendations is to ensure that reporting of abuse is facilitated at all levels of a young person’s social support network, to ensure the ongoing protection of children and young people. ACT Government may wish to consider the inclusion of a “reasonable excuse” clause for not reporting child sexual abuse in the event the person has reasonable grounds to believe the information has already been reported to police or child protection authorities.

Ultimately, the decision to report the disclosure or suspicion of harm should NOT be at the discretion of the individual foster or kinship carer. The application of the failure to report offence to individual foster and kinship carers ensures that the safety and protection of children and young people remains paramount.



Amendments to mandatory reporting laws

CREATE supports changes to the Children and Young People Act (2008) to include ministers of religion as mandatory reporters, and again reiterates that ministers of religion should not be exempt from being required to report knowledge or suspicions formed on the basis of information disclosed in a religious confession. CREATE further recommends that the reporting obligations of ministers of religion should align with other mandated reporters, and thus they should be mandated to report knowledge or suspicions regarding child sexual abuse and other forms of abuse. This recognises the significant detrimental impact that all forms of abuse can have on a child or young person.

CREATE Foundation thanks the ACT Government for the opportunity to provide comment on proposed changes to legislation that align with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. For further information regarding this submission, please contact Tanya Raineri, National Policy and Advocacy Manager on tanya.raineri@create.org.au or 07 3062 4860.

References

Commonwealth of Australia. (2017). Royal Commission into Institutional Responses to Child Sexual Abuse. *Final Report: Contemporary out-of-home care* (Vol. 12). Canberra: Author.

United Nations Human Rights. (1989). *Convention on the Rights of the Child*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>