



TASMANIAN ABORIGINAL  
LEGAL SERVICE



**SiS** Support  
Information +  
Strength

Holistic family violence support for  
Aboriginal + Torres Strait Islander people

National Office for Child safety

Via email: [NationalOfficeforChildSafety@ag.gov.au](mailto:NationalOfficeforChildSafety@ag.gov.au)

### **Re: Understanding sexual behaviours displayed by children and young people - National Principles and Key Terminology**

The Tasmanian Aboriginal Legal Service (“TALS”) and its specialised Family Violence Prevention Legal Service (called SiS Tasmania), welcomes the opportunity to provide feedback in relation to *Understanding sexual behaviours displayed by children and young people - National Principles and Key Terminology*.

TALS is an Aboriginal legal service that specialises in criminal, civil, and family legal matters for Aboriginal people in Tasmania. SiS provides holistic legal and non-legal services to victims/survivors of family violence and sexual harm.

TALS is committed to closing the gap and improving life outcomes for all Aboriginal people. TALS is an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations. TALS goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade.

#### **Overview:**

The national principles serve as a valuable foundation for addressing harmful sexual behaviours exhibited by children and young people, however they require greater refinement and clarity to ensure their effective implementation and alignment with the needs of Aboriginal and Torres Strait Islander people.

TALS/SiS strongly advocates for deep and meaningful consultation with Aboriginal and Torres Strait Islander people around these principles, and the upcoming associated phases, in particular victim/survivors, including children and young people who have exhibited harmful sexual behaviour and received therapeutic support. The formulating of principles and their operationalisation within organisations and systems, especially in a multi-agency context must be done in a decolonising way.

There is a need for more explicit and consistent incorporation of the experiences, cultural values and knowledge of First Nations children and young people across all principles. Each principle should have a clear link to the rights and needs of First Nations people.

Alongside principles, advocacy and law reform needs to be undertaken to ensure a family violence lens is applied in relevant contexts, and to align child safety and criminal justice responses. Clear guidelines need to be developed that can be adapted to various contexts and community-specific needs. This requires organisational resourcing, government funding, educational campaigns and training across sectors.

## **Key feedback questions:**

### **1. How would the national principles be used in your work? How would the national principles inform programs relevant in your area?**

SiS works with victim/survivors (and their families/communities) that have experienced family violence and/or sexual harm and have legal matters. These legal matters can fall under the categories of criminal, child safety (protection), family law or family violence. SiS' activities involve working alongside victim/survivors in navigating the often-complex legal system and its processes, and works towards providing clients with a decolonised experience even when operating within the colonised systems of child safety and justice. SiS meets clients where they are at and makes required adjustments on where, how and when services are delivered to meet individual and family needs; consequently, reducing barriers people often feel when engaging with services.

Much of the work SiS undertakes aims to hold systems accountable and work with various authorities and stakeholders to ensure they have a better understanding of family violence, trauma, child development, etc. It is envisaged that SiS will be able to rely on and utilise the national principles to hold stakeholders and systems (including the criminal justice system and child safety systems) accountable for behaviour that falls outside these principles.

Additionally, as a key provider of early intervention, prevention and community legal education, including delivering workshops to individuals, parents, communities, children and young persons around healthy relationships and sexual health, SiS will be able to use consistent language and messaging that reflects the national principles and key terminology. It is anticipated that the use of this consistent language and messaging will enhance stakeholder, community and individual understanding of sexual behaviours displayed by children and young people. A key focus when working with young people will be working with children and young people in an educational paradigm that expands beyond the often-used approach of 'consent' education or 'free from violence' but rather to encompass wider principles of positivity, confidence, safety, bodily autonomy and sexual wellbeing 'far from violence'.

### **2. Are the national principles understandable and practical? Would they translate well into your organisational context?**

Overall, the principles are understandable, however it must be ensured that they are able to be operationalised within individual organisations, as well as within systems and in a multi-agency response.

Furthermore, whilst principle five (5) is 'First Nations led Approaches for First Nations children and young people'; there is a deficit in incorporating experiences of First Nations children and young people, and these cultural values, approaches and systems of knowledge throughout the other principles. It is our position *that each and every* principle must have an explicit and clear link to the rights, experiences and needs of First Nations people. Please see answers within other questions, in particular question 5 herein for further details around this.

### **3. Do the national principles adequately capture the entire public health response (primary, secondary and tertiary)?**

It is recognised and accepted that the focus should be an entire public health response, however there should be a greater link to justice in tertiary responses and prevention of harmful sexual behaviour. There needs to be recognition that in the lives of individuals and communities, an inappropriate justice response is a public health issue. An example of this includes where a justice response and the age of criminal responsibility are not aligned with developmentally expected sexual behaviours.

### **4. Do the national principles meet their intended purpose (i.e. to provide guidance on how to talk about sexual behaviours displayed by children and young people and to provide an adequate foundation for all people to support developmentally expected sexual behaviours and prevent and respond to concerning or harmful sexual behaviours)?**

The national principles could be strengthened to provide guidance on how to talk about sexual behaviours displayed by children and young people, in order to provide a more adequate foundation for all people to support developmentally expected sexual behaviours that prevent and respond to concerning or harmful sexual behaviour. These could be strengthened in the following ways:

- 1) It should be ensured that the principles or associated documents link to an appendix or similar that outlines what developmentally expected sexual behaviours by age look like (for instance the 'traffic light system', an example of which can be found here: [Traffic light system to assess sexual behaviour - Education \(act.gov.au\)](#)). Any reference to this 'developmentally expected sexual behaviour' must encompass and take into account the differences for children and young people who have a disability.
- 2) More emphasis should be put on sexually healthy behaviours; the guidelines in their current form focus primarily on sexually harmful behaviours but more focus should be placed around sexual wellbeing, in order to ensure that the entrenched taboo around sex in society does not negatively contribute to safeguarding all young people as it historically has. Sexual wellbeing should extend beyond the absence of consent and also include positive feelings of confidence, safety, bodily autonomy, sexuality and choices. Although, this should not detract from the position that discussion of sexual wellbeing is not suitable in the first instance when considering the therapeutic recovery of young people exhibiting harmful sexual behaviours.
- 3) Principle three (3) *prevention and early intervention*, should be grounded in the rights of children and young people to access information and education around sexual wellbeing and healthy relationships.
- 4) Prevention and education activities should be victim/survivor designed and led, with those who have history of exhibiting harmful sexual behaviours sharing what is needed, and what works.

### **5. Are there any elements missing from the national principles? Are there any existing elements that should be removed? If so, which ones and why?**

The following considerations should be embedded throughout principles:

- **Aboriginal and Torres Strait Islander:** Every principle must have an explicit and clear link to the rights, experiences and needs of First Nations people.

- **Intersectionality:** There should be greater emphasis placed on the intersectionality of stigma including but not limited to in the contexts of gender, LGBTQI, Indigenous peoples.
- **Victim/survivor informed/led:** The principles overall need to be drafted and grounded in the experiences of victim/survivors. The importance of engaging with victim/survivors, including those who have used harmful sexual behaviours, engaged in therapeutic supports and drawing upon their experiences must be encompassed throughout.
- **Abuse/Family Violence lenses:** Whilst principle nine (9) addresses family and community connection, it is crucial that this (and other principles) continue to highlight the importance of upholding relational, family and community connection(s). This should be informed by the connection and relational needs that victim/survivors have identified.

Specific consideration should be given to expanding the following principle descriptions to encapsulate:

- Principle 1 – Human Rights:
  - Children should not be speaking with police without legal representation.
  - Intersectionality of age of criminal responsibility and harmful sexual behaviours, and a need to take a restorative approach rather than criminal approach including the long-term impacts of institutionalisation and inadequate and/or avoidable criminal justice responses which fail to address the therapeutic needs of children and young people who have exhibited harmful sexual behaviour.
  - It is a right for children and young people to have education around sex beyond an absence of violence or harm but instead to sexual wellbeing (see principle 3 for more information).
- Principle 2 – Safety and wellbeing:
  - We must ensure that safeguarding is never undertaken in a manner that punishes or stigmatises a child or young person who has exhibited harmful sexual behaviour (see further information under headings of multi-agency response, trauma-informed and family and community connected).
  - Cultural safety for First Nations children and young people, families and communities must be explicitly addressed in safety planning.
- Principle 3 – Prevention and early intervention:
  - Ensuring that these approaches are culturally relevant and designed with First Nations people.
  - This principle should be grounded in the rights of children and young people to access information, education around sexual wellbeing, and healthy relationships (linked to principle one (1)).
  - Prevention and education activities should be victim/survivor designed and led, with those who have used harmful sexual behaviours sharing what is needed, and what works.
  - The important role prevention and early intervention education have in reducing stigma and inappropriate responses to harmful sexual behaviour should be emphasised.
- Principle 4 – Approaches are knowledge-based:

- A greater obligation in working with First Nations peoples should be placed here – the wording *'In particular, the traditional knowledge and cultural expressions and expertise of First Nations people, known as Indigenous Knowledge, needs to be valued and safeguarded'* fails to impose an obligation on actors and to impart understanding of 'how' this value/safeguarding should look.
- Principle 5 – First Nations led:
  - SiS would welcome the opportunity to be involved in greater development of this principle.
  - This principle is very general and could be strengthened by more specific examples and with clear links to the decision-making mechanism referenced in the document.
  - Further considerations should be included about the way that mainstream organisations work with First Nations people to provide support to Aboriginal and Torres Strait Islander children, young people their families and communities.
- Principle 6 – Inclusive and accessible:
  - This principle does not demonstrate *how* this would be done.
- Principle 7 – Trauma informed:
  - There needs to be a clear link to the trauma that Aboriginal and Torres Strait Islander people face and its applicability to the principles and responses.
  - It needs to be explicit that a person's trauma history is not an excuse to further victimise or stigmatise them, but rather viewed through the lens of understanding how it impacts a person's presentation, the assistance they need and guides interactions.
- Principle 8 - Child-centred:
  - Guidelines will be needed to demonstrate what child-centred is and the significance of the participation of children and young people in decisions made. This could be further reinforced throughout this and each principle.
- Principle 9 – Family and community connected:
  - The importance of relationship maintenance, in the recovery for children and young people who have used harmful sexual behaviour, must be highlighted with input from victim/survivors about the impact and importance of this. This relationship maintenance must be upheld with appropriate safety-planning to address risks.
- Principle 10 – Multi-agency:
  - Consideration should be given to how specialist organisations respond to situations where those involved in case management (or similar) are stigmatising, biased, not skilled or lacking in knowledge.
  - Greater emphasis should be placed on the need for multi-agency cooperation to facilitate information sharing.
  - Recognition must be given to the value and crucial importance of organisations providing individuals, families and communities support when the justice system is not responding well.
  - Stigma in criminal justice and child safety systems needs to be addressed.

- Principle 11 - Skilled and well supported workforce:
  - Whilst cultural safety is mentioned, it is imperative that training guidelines are developed and implemented with First Nations people.
- Principle 12 - Non-stigmatising language:
  - reference is made to ensuring language is culturally safe – but what makes language culturally safe? Deep consultation should occur to more clearly define this and/or reflect clear guidelines developed by First Nation people.
  - Language should always be person first.

## **6. What would assist you or your organisation with the implementation of the national principles?**

As outlined in question two, it has been identified that the operationalisation of the national principles is needed. Operationalisation should be reflected in clear guidelines through a social work lens, that can apply to a multitude of settings, that support different operational contexts, and differing community specific needs.

Deep understanding, training, implementation and monitoring of new principles requires organisational resourcing, this should be considered by the Government and funded appropriately.

Further, greater guidance and input regarding multi-agency and system accountability to the principles is required to support organisations such as TALS/SiS in holding actors and systems accountable in their responses to harmful sexual behaviour.

Yours faithfully,

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