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Reference
Child Safe Institutions

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Royal Commission into Institutional Responses to Child Sexual Abuse
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Dear Commissioners

Re Child Safe Institutions

Thank you for your invitation to make a submission and comment on the Issues Paper developed as part of the Royal Commission into Institutional Responses to Child Sexual Abuse.

By way of brief introduction, his Excellency the Governor for South Australia appointed me as Commissioner for Victims' Rights. My role is likened to a crime victim ombudsman, although my functions are broader than traditionally associated with an ombudsman. I make this submission as an independent statutory officer who is tasked with monitoring and reviewing the effect of the law on victims and with a keen interest in preventing victimisation.

Over the last thirty to forty years child abuse and neglect have become recognised as significant social issues throughout most of the western world (James, 2000). During the 1960s and 1970s "Australia, like other western countries began to acknowledge the existence and extent of the physical abuse of children" (James, 2000, p.1). In the 1980s the focus of concern extended to children as victims of sexual assault (James, 2000).

This coincided with and was supported by a "renewed recognition" of victims' needs and interests and efforts to reinstate victims as active participants in criminal justice processes (Parsonage, 1979, p.8).

Rights-based approach

A rights-based approach underpinned the rediscovery of the victim, including the child-victim. All people have the core right of security of the person, for instance; and, all assaults are a violation of that right. Rights are intended to put all people such as children and other vulnerable people on an 'equal footing' by defining fundamental entitlements for them and imposing obligations on others. In order for a rights-based approach to be effective, it is necessary, among other factors, to inculcate a 'culture' of respect for the dignity of children and vulnerable people; indeed, a safe place for children, for example, is likely to be one staffed by people (employed, volunteer or other) who are look up on children's rights as compelling and mandatory. Further, a rights-based approach is also intolerant of poor

choices that result in the victimisation of others. Regarding child abuse there should be zero-tolerance, which requires purposeful intervention whenever there is risk to a child's security of person or any other right.

The United Nations *Convention on the Rights of the Child* gives international recognition to the concept that children as individuals have certain distinctive rights. Australia is a signatory to this convention (James, 2000). The United Nations has also promulgated *Guidelines for Action on Children in the Criminal Justice System* (1997) and *Operational Protocol on the sale of children, child prostitution and child pornography* (2000); as well, the Office on Drugs and Crime (UNODC) published *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Commentary* (2009). Collectively these instruments and supporting documents provide for a rights-based approach.

Definition

There appears to be neither a national, legal definition of child abuse and neglect in Australia nor a consistent definition that is used in all jurisdictions and by all professions. Child abuse and maltreatment however, can be broadly understood to be any action or inaction by a person in a position of trust or power (either formal or informal), which entails a substantial risk of causing physical or emotional harm to a child or young person (Charpentier & Soulieres, 2005 & Australian Institute of Family Studies no date). Child abuse and maltreatment includes acts of omission (i.e., neglect) and commission (i.e., abuse) (The Australian Institute of Family Studies no date)

It is generally accepted that the terms child abuse and maltreatment are interchangeable and include physical abuse, sexual abuse or child exploitation, emotional and psychological abuse, neglect and exposure to family violence.

In more recent times attention has turned to the abuse of children in institutional settings. Gil as early as the mid 1970's proposed that child abuse occurs on three levels: intra-familial, institutional and societal. (Wolfe, Jaffe, Jette & Poisson, 2001)

Institutional abuse can be understood to be the maltreatment of a person, most often a child or vulnerable adult, by an institution or organisation responsible for providing him/her with a service. Thus institutional abuse/maltreatment may occur within residential and education facilities, community organisations, religious institutions or any other established social institution.

Gil (1982) made a further distinction, identifying three forms of institutional abuse - overt abuse, program abuse and system abuse. Overt abuse is perpetrated by individuals and includes acts of physical, sexual or emotional abuse. Program abuse is evident when agency's programs operate below acceptable standards or rely up harsh or unacceptable methods to control behaviour. Finally system abuse occurs when an entire system, such as a childcare system, is stretched beyond its limits. (Wolfe et al, 2001)

The incident of child sexual abuse and neglect is a source of ongoing debate and controversy. Statistics only capture the prevalence of reported child sexual abuse and it is widely accepted that the majority of child sexual assault cases fail to reach the attention of authorities. This is equally true for vulnerable adults including adults with a disability and the elderly within institutional settings.

A number of inquiries have been established at the state and national levels to ascertain the extent of institutional abuse, recognise the harm to victims and establish best practice guidelines to prevent victimisation. In South Australia, for instance, the Layton Enquiry (2003), the Mullighan Commission (2008) and the Debelle Commission (2013) identify many

allegations regarding sexual abuse of students in both government and non-government institutions in South Australia.

The prevention of child abuse and maltreatment must be seen as a societal imperative and as such government, public agencies and officials have a responsibility to create safe environments and institutions that nurture, protect and care for children and vulnerable adults.

Effects of Child Abuse and Maltreatment

The effects of child abuse and maltreatment are far reaching and well documented, thus I will not detail them in this submission. I wish however, to briefly discuss the additional and unique impact on victims when the abuse or maltreatment happens within an institution or organisation. Wolfe et al (2001) states that victims of institutional abuse experience unique trauma-related symptoms that highlight not only the devastating impact of the abuse but the "betrayal by the valued social institution and loss or impairment of its role in their lives". For example, a victim of abuse within an educational institution may become fearful of or disinterested in learning, sending their own children to school or entering any academic setting.

Furthermore, the sense of betrayal often extends beyond the original source to a more global lack of trust of many social institutions. This is particularly evident where a victim, on disclosure, has been disbelieved and/or the disclosure poorly dealt with by the original institution and/or other institutions such as the criminal justice system.

Wolfe et al (2001) identify five variables that influence the effect of institutional abuse

- the significance of the institution to society
- the role of the perpetrator within the institution
- the extent of child involvement with the institution
- the degree of voluntary or mandatory involvement with the institution, and
- abuse and post-abuse events.

1. The essential elements of establishing a 'child safe organisation' that protects children from sexual abuse in an institutional context. In particular, are there core strategies that should be present and others that are less critical?

I understand that this inquiry is concerned with the prevention of child sexual abuse within organisations and institutions. I do however, also believe that attention must be directed to creating safe environments for vulnerable adults such as adults with cognitive impairment. Furthermore, I believe that keeping children safe from sexual abuse in institutions is only one aspect of what should be an overarching goal - to create safe environments for children and vulnerable adults that are free from abuse in all its forms. All abuse and maltreatment must be considered unacceptable. The shared aim should be as a society to promote the creation of environments which maximise an individual's opportunities to reach his/her full potential.

Many policies and strategies have been implemented over the last 30 to 40 years to eliminate physical and sexual abuse from social institutions dealing with children. It would seem that less consideration has been directed towards emotional abuse of children and vulnerable adults in institutional settings. Tomison & Tucci (1997) state that emotional abuse is the "most hidden and underestimated form of child maltreatment". Emotional abuse while difficult to define, identify, investigate and substantiate must nevertheless be addressed in any comprehensive strategy aimed at creating child safe environments. While emotional abuse may occur as a distinct form of abuse it often accompanies other types of maltreatment and must therefore be considered particularly insidious (Tomison & Tucci (1997).

Any policies and procedures designed to create child safe institutions must include clear definitions, including a clear definition of 'institution'. Wolfe et al (2001) note that social institutions and their roles have changed significantly in recent years with many residential and total institutions replaced by community-based programmes and services. Thus institutions can be considered "systems or organisations that are an important part of a particularly culture or society" that do not necessarily exist within the confines of a physical structure. This definition therefore encompasses community institutions such as churches, non-residential schools, and sports and recreation programs.

The philosophical foundation of creating child safe institutions must be that child abuse is a breach of a child's inalienable right to innocence rather than a desire by institutions to avoid civil litigation. While the latter is a likely by-product it must not be the motivating force.

The creation of child safe institutions requires careful planning and commitment. Situational crime prevention is a useful theoretical foundation for such planning (Beyer, Higgins & Bromfield 2005, p.48). Situational crime prevention is based on the premise that "crime and criminal involvement is often a function of the existence of a practical or attractive opportunity to commit a crime" (AIC, 2003). Research demonstrates that perpetrators of child sex abuse create or take advantage of opportunities to offend. Many perpetrators will actively place themselves in occupations, sporting or service activities that are likely to yield such opportunities (Irenyi, Bromfield, Beyer & Higgins, 2006).

The central points of situational crime prevention theory are:

- Each individual is a rational actor whose decision-making involves a cost : benefit analysis and an end : means calculation; and,
- Each individual chooses behaviour, both conforming and deviant, that is he or she calculates should be the least costly but also maximise his or her pleasure.

Thus, individual choice can be influenced (even controlled) through the perception and understanding of the potential pain (that is punishment) verses pleasure that he or she associates with an act or judges will follow an act (for example, abusing a child) or omission (for example, failing to report abuse). Importantly the certainty of detection and the swiftness of apprehension as well as the severity of the sanction are key elements in individual's decision-making or choices. Leading proponents of situational crime prevention, acknowledge that factors such as morality, inaccurate information and fear "might distort" the rationality of the decision-making and/or choices (Lilly, Cullen and Ball, 1995:216).

Situational crime prevention is directed at stopping crime such as child abuse before it happens. In practice, situational prevention comprises opportunity reducing measures that are directed at specific forms of crime and seek to make crime, from the potential offender's perspective, more difficult; or more risky; or less rewarding; and, to remove the provocations or remove the excuses as judged by the 'potential' offender(s) (Clarke 1997; AIC 2003). Often situational prevention involves the management, design or manipulation of the immediate environment (for instance, crime prevention through environmental design) (Clarke, Brantingham, Brantingham, Eck, & Felson 1998).

Figure 1 outlines a situational crime prevention approach to preventing child abuse. The Figure shows that due to life style or routine activity potential child-victim and potential offender might come into contact. If there is no suitable guardianship then a 'child abuse' opportunity might arise, which the potential offender might be motivated to exploit. Further, such contact happens in a physical environment that also might contribute to the 'opportunity' as well as the potential offender's sense of impunity. The potential victim's perceptions in addition impact on the likelihood of the potential offender perpetrating abuse. There are

therefore many preventive points of intervention, which are suggested by example in Figure 2. These interventions focus on potential offenders to avoid suggestion that victims are to blame for the abuse that happens — victims should not be blamed. I acknowledge that as child-related organisations become harder for potential abusers of children and actual child-abusers (e.g. paedophiles) to enter and harder for their activities to remain undetected, displacement may become an issue (Charpentier & Soulieres, 2005); however, there is little sound evidence regarding this possibility but rather much sound evidence that situational crime prevention works.

This said, institutions should also aim to be emotionally safe environments and as such should facilitate disclosure of abuse when it happens, respond appropriately to such disclosures, and provide access to support and /therapeutic services for victim/survivors.

I will now address three key elements to creating child safe institutions; recruitment, selection and screening procedures, risk management strategies and responding to abuse.

Recruitment, selection and screening procedures.

Careful recruitment and screening of staff and volunteers is vital in ensuring that they are suitable to care for and work with children and vulnerable adults. I have previously addressed the issue of screening in my submission to the Royal Commission into Institutional Responses to Child Sexual Abuse on 'Working With Children Checks'.

In that submission I stated that national Working With Children Checks (WWCC) are an important element of any prevention strategy. I propose that WWCC must be comprehensive and multi-faceted incorporating education checks, workplace checks and if necessary door-to-door knocking of people's neighbourhoods so that we can check on their involvement with local community. If that means we have to intrude on some of the other rights, such as the presumption of innocence, then I feel that's an obligation that we owe to children and other vulnerable people, so long as there's an appeal process so that those people who are wrongly accused have the opportunity to challenge those accusations.

If WWCC are to be effective institutions must fully understand their obligations. Furthermore, employing institutions should understand the scope of WWCC and recognise the limitations of such checks. WWCC are not a panacea, they must be "augmented by ongoing attention to policies and procedures and a positive organisational environment and culture in order to manage the risk of child maltreatment" (Irenyi et al 2006). It would be dangerous for institutions to become complacent simply because WWCC were completed. It is also important that any WWCC be monitored and updated on a regular basis.

Risk management strategies

It is widely acknowledged that rigorous screening and selection processes, while necessary, do not alone guarantee the exclusion of all individuals who pose a risk to children and vulnerable adults. Notably, a report prepared by the Australian Research Alliance for Children & Youth (2008, p.107) noted that child protection systems in Australia are heavily focused on statutory responses, which, "although necessary, simply do not address the problems early enough to protect children from abuse and neglect". (Charpentier & Soulieres 2005) support this stating that legal rules and regulations too are largely ineffective with regard to the prevention of institutional abuse unless supported by internal management strategies and processes.

The systems for protecting children and vulnerable adults, shifting the focus to prevention and early intervention must be enhanced. It is essential that organisations prevent abuse and protect the well being of children and vulnerable adults through the development of risk

management strategies including policy and practice guidelines and adequately qualified, trained and supervised staff.

It is not my intention to provide a detailed outline of the type of risk management strategies that should be included in a comprehensive child safe environment plan; rather I will list some aspects that must be included

- induction programs for staff and families that clearly defines acceptable/unacceptable behaviour
- induction for all staff members with regard to mandatory and other relevant reporting obligations
- training and clear guidelines on how to work with and care for children and vulnerable adults
- supervision, mentoring and ongoing professional development for staff
- clearly articulated policies and procedures to encourage disclosure of inappropriate behaviour and/or suspect abuse
- clearly articulated grievance policy and procedures
- community education campaigns highlighting the fact that abuse may be perpetrated by trusted adults not just strangers, strategies for assessing risk and reporting suspected abuse.

Risk management strategies however, will only be effective if there is a commitment to full and comprehensive implementation (Beyer, Higgins & Bromfield, 2005). Such philosophical commitment must be supported by adequate resourcing (Charpentier & Soulieres, 2005). For example, if a child care centre is required to have two people present when changing a child's clothes/nappy the centre must be adequately resourced to ensure they have sufficient staff to meet this requirement.

Furthermore, I believe there should be a simple and perhaps anonymous mechanism by which staff can report an organisation's non-compliance with policies and procedures without fear that such reporting will negatively impact on the security of his/her position within that organisation.

Finally there must be consistency, collaboration and coordinated delivery of services across all organisations and systems that provide services to children and vulnerable adults (ARACY). Having said this there is a need to avoid overly rigid infrastructure and excessively onerous bureaucratic process that likely to disengage those working with children and vulnerable adults (Charpentier & Soulieres 2005)

Responding to abuse

Risk management strategies can and will reduce the incident of institutional abuse but it must be acknowledged that these strategies sadly, are unlikely to eliminate the abuse of children and vulnerable adults. Thus any risk management strategies must be augmented with a comprehensive strategy for responding to allegations of abuse and dealing with the consequences of abuse.

Wolfe et al (2001) state that dealing with institutional abuse (including abuse in institutional settings) is complex issue that may be hampered by the power structures within an organisation that make it difficult for both children and adults to report abuse (Wolfe et al, 2001). "When the abuse is reported, administrators are forced to balance the competing interests of the child, the alleged perpetrator, and the institution (Wolfe et al, 2001, p.21). All too often the rights and well-being of the child are eclipsed by the broad ramifications of the allegations on the institution such as being regarded an undesirable institution (Charpentier & Soulieres, 2005, Wolfe et al, 2001).

We must counteract the dynamics that stop people from reporting incidents of suspected abuse or concerns about inappropriate behaviour within organisations. These dynamics include poor knowledge of complaints procedures, fear of retaliation, fear of being labelled as 'disruptive' and/or concern that a person's employment may be terminated.

In order to ensure that institutions respond appropriate there should be

- Clear policies and procedures for responding to disclosures that are victim-centre
- Statement of consequences of offending
- Transparent disciplinary procedures for staff who are deemed to have behaved inappropriately but not necessarily illegally
- Support for those making disclosures including referral to appropriate counselling and other support agencies
- Regular staff training for responding to disclosures including education on the long-term impacts of abuse and sexual assault

2. The evidence base for the range of strategies associated with making an organisation 'child safe'. Does this evidence base extend to the physical environment?

Please see above; although I concede that, relatively speaking when compared to evaluations of preventive efforts with respect to property crime and public violence, there is less known about what works in preventing child abuse in the context of child safe organisations.

3. How should the effectiveness of 'child safe' strategies be tested?

Respectfully, I suggest that practical guides such as that offered 'free' by the problem-oriented policing centre are useful.

4. How 'child safe' policies and procedures work in practice.

Unclear as in recent decades not enough has been invested in evaluation; and much of the investment has been by vested interests, sometimes to protect such interests from rigorous scrutiny.

5. Should there be a universal framework for a 'child safe organisation' or should strategies be specifically tailored to particular types of institutional settings?

Yes, and I respectfully suggest that the Handbooks and Guidelines produced for the United Nations Office on Drugs and Crime provide useful examples.

6. The role of staff performance management systems and disciplinary processes in a 'child safe organisation'

A critical element in fostering a culture that strongly opposes child abuse and does not tolerate child abuse in institutional settings.

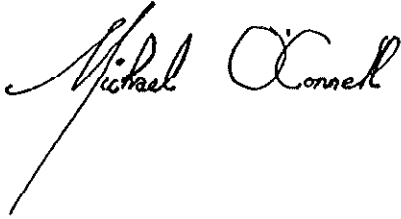
7. The role and characteristics of governance and management leadership in creating and maintaining a 'child safe' organisational culture.

Likewise, a critical element for the purpose of prevention and detection, as outlined above and reiterated in Figures 1 and 2.

8. Should there be any additional enforceable requirements for institutions or particular institutions to maintain a 'child safe' environment

Mandatory reporting should be extended to vulnerable people, especially people with cognitive disability in government / non-government care. The law should reflect the 'seriousness' of the violation of the child-victim's right to innocence.

Yours faithfully

A handwritten signature in black ink that reads "Michael O'Connell". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Michael O'Connell | Commissioner
Commissioner for Victims' Rights

Figure 1 - A Situational Crime Prevention Approach to Preventing Child Abuse
(Adapted from Clark 1995)

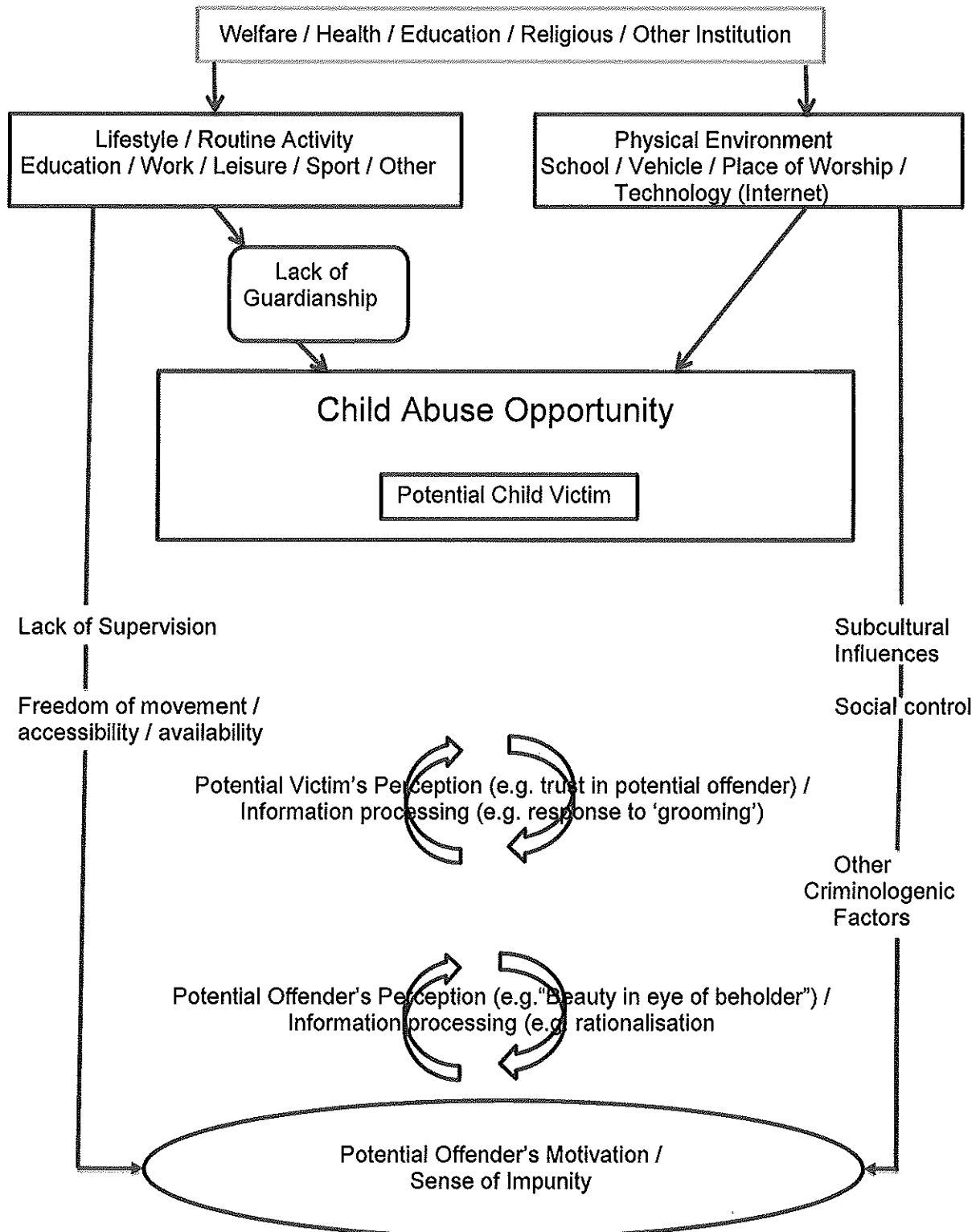


Figure 2 - Situational Crime Prevention In Practice

Increase Effort (for potential offender)	Increase Risk (as perceived by potential offender)	Reduce Rewards Risk (as perceived by potential offender)	Reduce Provocations (for potential offender)	Remove Excuses (for potential offender)
Target harden physical environment in which potential child victim and potential offender might come in contact	Extend guardianship over potential child victim (e.g. mandatory reporting)	Act on reports / do not ignore victims	Zero tolerance to 'rule' / policy violations	Set rules - have clear policies on the prevention of child abuse & protection of children; enact laws that denounce child abuse
Control potential offender's access to potential child victims	Assist 'natural surveillance' (e.g. improve ways staff & citizens can 'keep watch' over children)			Actively promote safe practices (including raising potential offenders' awareness of the inappropriateness / illegality of child abuse)
Screen potential offenders (e.g. pre-employment checks)	Reduce anonymity (e.g. tackle factors that cause potential offenders to believe they can offend with impunity)		Reduce 'elements' that arouse potential offenders	Alert conscience (e.g. arouse sense of guilty / mitigate sense of impunity)
Deflect potential offenders (e.g. prohibit employment in child related employment)	Raise potential child victims' awareness of potential offenders' methods	Disrupt offenders' access to potential child victims (e.g. child sex offender registers)	Foster a culture intolerant of child abuse - strong commitment by responsible agency / organisation to implement policies & practices	Assist compliance - believe victims & act on their reports; reward proper, respectful behaviour (e.g. compliance)
Control 'tools' (e.g. access to internet)	Strengthen 'formal' surveillance (e.g. trained wardens / security staff); facilitate observation (e.g. CCTV)	Consequences for offenders (e.g. certain & relevant punishment)	Discourage imitation (e.g. certainty of and swiftness of detection & certainty of punishment)	Control access to 'disinhibitors' (e.g. drugs & alcohol) or other items that potential offenders might use to excuse their acts

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