# SUBMISSION – ISSUES PAPER 4:

## Preventing Sexual Abuse of Children in Out of Home Care

## Royal Commission into Institutional Responses to Child Sexual Abuse

Centre for Excellence in Child and Family Welfare Inc.

100 Years 1912–2012

# Contents

# Introduction

## The Centre for Excellence in Child and Family Welfare

The Centre for Excellence in Child and Family Welfare is the peak body for child and family welfare in Victoria, providing independent analysis, dialogue and cross-sectoral engagement to break down multi-causal factors that perpetuate disadvantage and vulnerability. Working alongside our 90 member organisations, the role of the Centre is to build capacity through research, evidence and innovation to influence change. The Centre and its member organisations collectively represent a range of early childhood, child, youth and family support services, and out of home care services, including kinship care, foster care and residential care.

The objects of the Centre include:

- To contribute to the wellbeing of children and young people and the support and strengthening of family life particularly where there is poverty and disadvantage.
- To promote leadership and excellence in child, youth and family services.
- To actively represent the interests of members to government and to the
- community, and to influence community expectations of support available to children and families.
- To develop and influence policies in child, youth and family welfare, including providing policy advice to government in respect of child, youth and family welfare.
- To promote ongoing research and evaluation in child, youth and family welfare.

In making a response to Issues Paper 4, the Centre has consulted with a number of its member organisations who are significant providers of funded out of home care. A number of our member organisations will submit their own responses to this Issues Paper.  We have also consulted with the British child welfare authority

David Lane, whose work on standards in child welfare is extensive and currently includes working with the Northern Ireland Inquiry into Child Sexual Exploitation

We start with the presumption that, while safety for children can never be guaranteed, out of home care should provide significantly safer care than the care from which children have been removed. The current situation is such that this cannot be said with any certainty.

We submit that an appropriate response for the present and future needs to take into account a very different landscape of out of home care in the present from what has existed in previous decades. Because of this change, in this document we frequently employ the term 'care arrangements' in preference to 'out of home care.' In addition, for ease of reading, the term 'children' is often used to describe children and young people under the age of 18 years.

## Out of Home Care in Australia – the current context

The term 'out of home care' came into being in the late 20th century to describe protective care arrangements for children who are unable to live at home with their parents. Recent years have seen change in the range of services known as 'out of home care' in Victoria and across Australia so radical that they challenge this terminology.

> The last 50 years have seen significant changes in the state's approach to the provision of out of home care. Between the 1960s and 1980s, the out of home care system in Victoria was dominated by large, state-run institutions housing groups of children who had criminally offended or whose parents were unable to care for them. A move towards community based residential care and 'de-institutionalisation' saw these larger institutions progressively closed throughout the 1980s. …Throughout the 1990s, the preferred model of care became home based arrangements such as foster care or kinship placements. Today, kinship care is the preferred placement model  (Ombudsman Victoria, 2010, p.26).

The Victorian Ombudsman further commented on this change:

> The decreasing number of foster care placements is primarily caused by a lack of supply. The department advised that over the past 12 months regions have reported an increasing difficulty in securing suitable foster care placements for children. This is particularly so in relation to adolescent placements and placements in rural regions (Ombudsman Victoria, 2010, p.9).

In recent years, there has been an increase in the rate of apprehension of children due to protective issues in all Australian jurisdictions.  This has led to a significant increase in the number of children in out of home care nationwide.  Based upon current trends, the rate of children in out of home care in Australia is expected to rise from 7.7 per 1000 children in 2012 to 9.5 per 1000 children in 2017.  Managing this increased demand appears to have been a major driver of the growth in protective kinship care arrangements.  Increased demand also directly impacts on the quality of care arrangements, challenging the capacity of the service system both to find and ensure scrupulous assessment of a sufficient number of care arrangements.

Across Australia, 39,621 children were in out-of-home care at 30 June 2012.  In 2010, kinship care overtook foster care nationally as the predominant mode of providing statutory protective care arrangements for children (Figure 1).  Of the total number of children in out of home care, 44% were in foster care, 47% were living with relatives/kin and 5% were in residential care (AIHW, 2013).  Thus, 91% of children in 'out of home care' are now being cared for in what is known programmatically as 'home-based care' (that is, care in foster homes or the homes of children's extended family or friends).
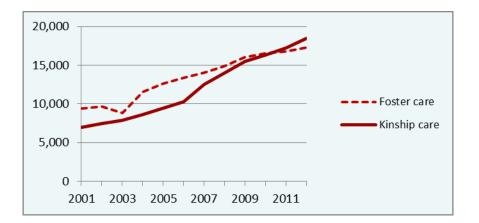
Figure 1 Australian children in foster care & kinship care (AIHW figures)

The following quotation provides an alert to the risks associated with out of home care:

> Evidence emerging from research into outcomes for children in care has eroded the assumption that simply removing children at risk of harm from their homes and placing them in care will improve their well-being. International studies have consistently found that children in out of home care achieve poorer outcomes than those in the broader community (Wise and Egger 2007, cited in Ombudsman Victoria, 2010, p.26).

Largely due to the under-development of kinship care programmatic support and monitoring, the contemporary predominance of home based-care provides no evidence to allay this concern.

An effective approach to protecting children from sexual abuse will need to be responsive to this change in the nature of care arrangements. This will necessitate a stronger community approach to abuse prevention, vigorous and sustained efforts to maintain aware and open cultures in organisations providing protective care to children, and high standards of program governance, including assessment, support and monitoring of care arrangements.

Current government directions nationally and in Victoria are for smaller government; the public service at both levels is undergoing downsizing; and policy developments regarding funded services appear to be consistent with this approach. This will also impact on the capacity of government to exercise oversight

of quality of care.  In this context, it may be reasonable to expect that the most available response may involve a redirection of existing resources to where they stand to effect the greatest protection for the greatest number of children, possibly including further outsourcing of protective activities to the community sector.

## The National Framework for Protecting Australia's Children 2009–2020

The National Framework for Protecting Australia's Children 2009–2020 (Council of Australian Governments, 2009) is a long-term collaborative approach to ensuring the safety and wellbeing of Australia's children and aims to deliver a substantial and sustained reduction in levels of child abuse and neglect over time.  Under the National Framework, protecting children is everyone's business.

> The National Framework is underpinned by the principles of the United Nations Convention on the Rights of the Child, endorsed by the Council of Australian Governments (COAG), and has the aim of ensuring Australia's children are safe and well.  As a measure of this outcome, a target of 'a substantial and sustained reduction in child abuse and neglect in Australia' has been set.  There are six broad supporting outcome areas under the National Framework:
>
> - Children live in safe and supportive communities.
> - Children and families access adequate support to promote safety and intervene early.
> - Risk factors for child abuse and neglect are addressed.
> - Children who have been abused or neglected receive the support and care they need for their safety and wellbeing.
> - Indigenous children are supported and safe in their families and communities.
> - Child sexual abuse and exploitation is prevented and survivors receive adequate support (AIHW, 2013, p.4).
>
> The National Framework also advocates a 'public health model', which focuses on providing early intervention and support to families to prevent abuse and neglect from occurring.  Specialist support services,

however, remain essential for the most vulnerable families and children (AIHW, 2013, p.138).

## The National Framework Second Action Plan: 2012–2015

The critical focus of the Second Action Plan is 'working together' across governments and non-government sectors to improve the safety and wellbeing of Australia's children. This will be achieved by strengthening families, early intervention, prevention and collaboration through joining child protection service delivery with mental health, domestic and family violence, drug and alcohol, education and health. The Second Action Plan will also emphasise the development of local partnerships for local solutions, recognising that a 'one-size-fits-all' approach does not work across Australia's diverse communities and that Indigenous and culturally and linguistically diverse families and communities need strategies that are sensitive to their needs and circumstances.

The Second Action Plan will build on and strengthen delivery of six significant National Priorities from the First Action Plan:

- National Standards for Out-of-Home Care
- Transitioning to Independence
- Joining up Service Delivery
- Closing the Gap
- Improving Support for Carers
- Responding to Sexual Abuse (AIHW, 2013, p.139).

The National Priorities outlined above are all central to the prevention of child sexual abuse in out of home care.  We are particularly keen to see a focus on strategies that prevent rather than simply respond to sexual abuse of vulnerable children.

Our responses below reflect the tenor of the National Framework with its Second Action Plan.

## Standards for Out of Home Care

The National Standards for Out-of-Home Care (FaHCSIA, 2011) was a Priority Project under the National Framework. The National Standards seek to drive improvements in the quality of care so that children and young people in out of home care have the same opportunities as other children and young people to reach their potential in life wherever they live in Australia. They are designed to improve the outcomes and experiences for children and young people by focusing on the key areas that directly influence positive outcomes. These are: health; education; care planning; connection to family; culture and community; transition from care; training and support for carers; belonging and identity, and safety, stability and security.

National measurement and reporting arrangements for the National Standards will be progressively introduced so that by 2015, there will be 22 measures reported against the full set of National Standards. States and Territories will be expected to comply with these Standards in the ongoing development and monitoring of registration standards and best interests principles for the care of children.

Our responses below reflect the tenor of the National Framework with its Second Action Plan.

In 2007, the European Parliament launched the Quality4Children Standards for Out-of-Home Child Care in Europe (FICE  IFCO and SOS Children's Villages, 2007) www.quality4children.info. These are strongly child-centred standards that place significant emphasis on the active engagement of the child in decision-making and detailed attention to the needs of each child.

# Relationships as the golden thread in protecting children

> The weight of evidence, from all quarters, convinces us that the relationships with people who care for and about children are the golden thread in children's lives, and that the quality of a child's relationships is the lens through which we should view what we do and plan to do (The Care Inquiry, 2013, p.2).

A focus on positive relationships for children necessitates careful assessment and planning of alternative care, attention to sustaining relationships for the long term by assistance and support, and focusing on quality.  This focus should underpin all responses to the protection of children from sexual and other forms of abuse.

A focus on relationships also implies attention to the issue of stability and continuity of care in out of home care – an issue that has been of great concern at least since the move away from institutional care.  Modes of 'out of home care' that can promote stability and continuity of relationships should be the arrangements of choice wherever possible.

Wherever possible, safe and supportive permanent care arrangements should be the goal for children who are unable to return to the care of their mother and/or father.  The Care Inquiry (2013, p.7) asserts that 'kinship care should be seen as equal to adoption in its ability to provide attachment, continuity and identity for babies and young children.' Nevertheless, the optimal permanent care option for individual children of all ages needs careful assessment: it may or may not be kinship care.  A barrier to confirming permanent care arrangements has sometimes been a lack of continuing specialist support, especially needed as children grow into adolescents and caregivers age.  Protracted court proceedings and appeal processes are another factor influencing the resolution of permanency for some Australian children.

## Early intervention and placement prevention

> In recent years there has been increasing national focus on early intervention and family support services to help prevent families entering or re-entering the child protection system and to help minimise the need for more intrusive interventions (Bromfield and Holzer 2008a, cited in AIHW, 2013, p.3).

Given an over-extended care system and identified issues with safety in care, measures to support vulnerable families and to prevent the necessity of placing children in care should receive urgent priority for augmentation to the greatest extent possible.  An obvious priority should be to redouble efforts to support

vulnerable families who may, with assistance, be able to keep their children safe at home.

A range of community programs are available to strengthen vulnerable families; these operate at a significantly lower cost than out of home care programs. Ongoing assessment of children's safety is a feature of such programs. With appropriate safeguards, such programs stand to provide for children's best interests by avoiding family disruption, disruption to schooling, and the associated risks of placement and placement disruptions within a stressed out of home care system.

## A community approach to child protection

With over 90% of 'out of home care' placements now being in the community (foster care or kinship care), together with children who are being supported within vulnerable families, the community is now shouldering much of the responsibility of protecting children from sexual abuse. Lohoar, Price-Robertson and Nair (2013) have provided an overview of community capacity-building approaches to child welfare practice and policy that stand to improve the safety and welfare of children living in Australian communities; Quadara and Wall (2012) discuss primary prevention strategies for preventing sexual assault in communities.

Investment in communities is important if they are to contribute effectively to protecting children from sexual abuse. Such investment should include:

- Public awareness campaigns to promote awareness of risks to children and appropriate responses, and a culture of openness to supporting vulnerable families. This needs to include moderating community expectations of total risk prevention.
- Significant investment in training and support of early childhood educators and school teachers to provide appropriate responses to children at risk of sexual abuse.
- Protective behaviours training for children.

- Significantly improved support to foster carers and kinship carers including respite care and access to identified services as needed; improved monitoring of kinship care arrangements.
- Parental contact for children placed away from home is now recognised as important to children, and is frequently mandated by court orders. However, it is a two-edged sword. Usually wanted and needed by both child and parent, it may nevertheless bring risks of re-abuse or traumatic reminders. Contact arrangements need to be made with the utmost consideration for children's wishes and best interests, and supported in individualised ways.
- In order to improve the chance of safe family reunification, continued family support to parents of children who have been placed in alternative care.

## Open and responsive institutional culture

At the heart of the prevention of sexual abuse in out of home care is the inculcation of a culture of awareness of the risk of abuse, and responsiveness to children's rights and needs.

RWA – Child Protection Services http://www.rwauk.co.uk/ was formed in the UK in 1999 by Ray Wyre and Associates. It provides a consultation and training to a wide range of Professionals involved in the safeguarding of children and vulnerable adults with particular expertise in sexual abuse. Their work includes risk assessment of perpetrators of child sexual abuse, including adolescents; court attendance as Expert Witnesses; Intervention programmes for adults deemed to be a risk, adolescents with sexually abusive behaviour and victim/survivors of abuse; specialists in the provision of Child Protection Policies and Protocols to Organisations and the development and maintenance of safe organisations; and training and consultancy services to the statutory, voluntary and commercial sectors, both nationally and internationally.

Ray Wyre developed key concepts of 'the aware culture' and 'the arena of safety' (Green, Wyre, & Wyre, undated). A culture of awareness includes training staff to

identify the risk of sexual abuse in care, to discuss it openly, and to include prevention strategies throughout selection of carers, training programs, team meetings and development of daily practice as a staff team. The 'arena of safety' is a concept that includes gradations of 'safe behaviour'. Where staff need to operate in areas of greater risk, such as being alone with children, bathing or toileting children etc, practice protocols govern the way such activities are conducted and ways to offer protection to both children and carers. The work of RWA is internationally available and is recommended as a model for mandatory training for staff of care programs and placement prevention or family support programs in awareness of sexual abuse prevention strategies.

Victorian out of home care services are required to have in place procedures for responding to allegations of sexual abuse; however while built on similar principles, these lack uniformity. There may be benefit in mandating a national standard for such procedures.

# A child-centred response

## Enabling children to speak out about their needs, wishes and fears

No environment is able to guarantee that a child will be safe: therefore children's awareness of their own needs and right to safety and wellbeing is essential. Children must be able to speak out when they are unhappy with confidence that they will receive an appropriate response. Promoting children's capacity to protect themselves includes:

- Early education for all Australian children about child safety, sexual health and protective behaviours. This assists children to understand that sexual approaches by adults are wrong, and provide them with ways to speak up should they fear that this is happening, or may happen.
- A focus on ensuring continuing, trusted relationships for children placed away from home. This includes promoting continuity in family relationships including extended family, schooling, and with support workers.

- Attention by adults to 'weak signals' of concern from children may prevent sexual abuse, or prevent false allegations of sexual abuse made as a cry for help.
- Leaflets about protective behaviours, including telephone numbers of people who will respond, should be made available to every child entering protective care, including kinship care and foster care.

The nationwide CREATE Foundation http://www.create.org.au plays a pivotal role in promoting the rights of children and young people in and ex care, and works with organisations providing out of home care to promote the voice of children. This is an example of good practice in abuse prevention that deserves support by both Commonwealth and State Governments.

The newly inaugurated National Children's Commissioner is a welcome initiative that stands to allow for an active national approach to promoting the safety of children across Australian communities, with particular attention to the most vulnerable.

## Assessment of the child

Prior to placement, the individual needs of a child should be assessed. Comprehensive assessment of a child's needs requires a high level of skill and may need to be understood as an iterative process as the childs' needs change. However urgent protective requirements may preclude full immediate assessment and may necessitate placement in a pre-approved temporary care arrangement.

The question of how care is to be provided while an initial assessment is done can present a challenge, given that foster care cannot always meet such demand, and some jurisdictions including Victoria have more recently elected not to provide facility based reception care. If placements are to be safe and appropriate to a child's needs, the question of safe temporary care may need to be addressed.

To prevent difficulties where there are urgent protective requirements, assessment of children's care needs could be delegated to community organisations with appropriate resourcing.

# High standards of out of home care

We contend that most abuse in care can be avoided by straightforward good practice. This includes thorough assessment of carers, including foster carers, kinship carers and residential carers; an open style of management; regular supervision; comprehensive training programs; and good recording. Poor practice leaves openings for abusers. ChildWise www.childwise.net has developed a range of materials that document good practice in the prevention of child sexual abuse.

Where problems develop, it may be disaffected people who provide alerts, whether ex-staff, children, relatives of children. However presenting, such people need to be given a timely hearing.

## Assessment and matching of children to care arrangements

The need for emergency placements for children in an environment where demand for approved out of home care exceeds supply is necessitating an environment where we cannot be confident of safety in care.

Key threats to children's safety in out of home care are now a lack of sufficient safe, pre-assessed care options for children removed from their home, and a lack of careful monitoring of many kinship care arrangements.

If children are to be safe from sexual abuse in out of home care, it is necessary that the out of home care system provides that children are only placed in arrangements that are fully pre-assessed and approved prior to a child being placed. The standard of assessment needs to be tailored to different care types; however an agreed standard should be met in each case.

A range of placement options needs to be available, each with adequate support to provide the best chance of safety for vulnerable children.

Historically in Victoria, the out of home care system frequently included an initial residential reception care placement that provided an opportunity for assessment of suitability of a particular longer-term placement. An unintended consequence was that reception care often continued for far longer than was good for children. The Victorian child protection system sought to address this by progressively removing

reception residential care facilities in order to allow, wherever possible, for a child to be placed at the outset into a home based care arrangement that might be continuing.

While solving one problem, this approach has sometimes created others. Where care arrangements are in short supply, a lack of alternatives may mean that there is little capacity to consider children's individual characteristics and needs. In a unique arrangement for out of home care, a lack of thorough assessment prior to placement in kinship care applies not only to children's needs, but also to the carers and the caregiving environment. This leaves openings for child sexual abuse.

## Recruitment and selection of staff and volunteers

Good recruitment and selection practice in out of home care continues to be a challenge, as continuing incidents of abuse frequently reveal.

Recruitment and selection practices have been highlighted periodically. In 1992, following a paedophile scandal the UK Department of Health conducted an inquiry into the selection and management of staff in children's homes(the Warner Report) (UK Department of Health, 1992). In part based upon the work of the Warner Inquiry, Choose With Care: A Recruitment Guide for Organisations Working With Children (Kiraly, 1999) was published in Australia in 1999 by ECPAT (now ChildWise) and MacKillop Family Services. This short publication stresses meticulous and thorough standards of selection based upon the best available research in personnel selection and child welfare at that time, together with recruitment practices that alert applicants to the presence of an 'aware culture' Ref in the recruiting organisation. We submit that the principles of Choose with Care staff recruitment and selection remain relevant today, and that conscientious application of this approach would go a long way to deterring and de-selecting people who are likely to abuse children sexually. While out of print, a copy can be made available upon request. A previous article still readily available encapsulates many of the same concepts: *The problem of the paedophile: How to avoid recruiting a paedophile in positions of responsibility in child and youth care.* (Kiraly, 1996).

Please also see the section on recruitment and selection of staff and volunteers in our response to Issues Paper No.3.

## Staff and volunteer training

The out of home care field and placement prevention services involve working with issues that are complex and challenging both professionally and personally. In order to ensure services of a high standard, staff and volunteers require comprehensive training. Such programs play a key part in setting standards of care that will militate against opportunities for sexual abuse of children. Training in prevention of child sexual abuse and appropriate responses to indications of sexual abuse should be mandatory for all staff and volunteers caring for children or working in support roles to care arrangements.

The Centre for Excellence in Child and Family Welfare provides training to its member organisations. Over the past year, residential care staff have been provided with 56 training courses to nearly 1,500 participants on a range of issues including Mental health, conflict management, management of sexually abusive behaviours, supervisor training, working with Aboriginal communities, autism spectrum disorders and critical incident debriefing. The broader training program has provided another 65 training courses to over 1,000 participants on a wide range of topics.

# A range of high quality care options

## Kinship care

Kinship care in Australia appears to have largely grown by default as a result of rising rates of apprehension of children at risk, and a lack of commensurate capacity for care arrangements in foster care and residential care. As outlined earlier, kinship care is now the main element of 'out of home care', providing nearly half of all 'out of home care' placements. It is, however, the care type that has been least developed programmatically, and thus provides care arrangements that are the least well assessed, supported and monitored. Legislative changes have progressively mandated the examination of family placement options as a first

choice before stranger placements are considered, but the development of policy frameworks, standards and funding for kinship support programs are at an early stage.

The Aboriginal Child Placement Principle, now in effect in all States and Territories, also mandates placement of Indigenous children within extended family as first preference, followed by placement in the child's Indigenous community as a second option.  This approach has been a more considered policy development arising from the Bringing Them Home Report (Human Rights and Equal Opportunity Commission, 1997).  Nevertheless, Aboriginal kinship care programs in Victoria and possibly in other states are also at an early stage of development.

Kinship care provides for greater stability of care (Connolly, 2003; Cuddeback, 2004; Farmer, 2010) maintains children's wider family connections (Cuddeback, 2004) and improves the chances of brothers and sisters being kept together (Patton, 2003).  Recent research has indicated that kinship care is likely to be at least as safe as other placements (Connolly, 2003). However it has been noted that lower rates of reporting of abuse may occur because statutory kinship care is less monitored than foster care, or because different standards are applied (Connolly, 2003; Paxman, 2006).

Notwithstanding their relative stability, many kinship care arrangements entail significant vulnerabilities.  Kinship carers as a cohort are older, poorer, in poorer health, and more likely to be single than foster carers.  They take on larger groups of children and for longer intervals of time.  The carers have unique challenges in interpersonal relationships with the children's parents, being in most instances close relatives.  Close connection to children's parents may also leave open opportunities for further sexual or physical abuse.  Evidence of great strain in these arrangements is widespread in the kinship care research literature and in every forum for kinship carers.

Given that across the board most sexual abuse occurs in families, there is a strong argument for careful assessment of kinship care arrangements.

**Given the predominance of kinship care in the out of home care spectrum and indications that kinship care provides greater continuity of children's important relationships, we contend that this should be the major focus of attention for the protection of children in out of home care from sexual abuse.**

## Assessment of kinship carers and care arrangements

Kinship care in Victoria is unique in the out of home care spectrum, in that a thorough carer assessment is not done prior to placement.  Such care arrangements are predicated on a presumption of a strong pre-existing relationship between the carer and, and that this relationship will protect the child.

However, some nuclear families in which abuse has taken place are part of a larger family network that has experienced trauma and abuse across generations and in other parts of the family.  In some extended families, a child may be exposed to the original abuser or other abusive individuals.  Not all extended families can thus provide safe care for children.  This level of risk should necessitate careful assessment of all prospective family carers before a child is placed with them.

The need for emergency placements for children in an environment where demand for approved care exceeds supply has generated this practice.  Placement guidelines in Victoria provide for an early brief assessment (within one week) and a later, more thorough assessment (within six weeks).  This is out of touch with out of home care standards in which all carers are expected to meet stringent standards of safety and nurturing before a child is placed with them.  We understand that standards are similar in other States and Territories.

**Since other alternatives such as foster care and residential care involve pre-assessed care arrangements, it may be argued that risk of abuse in out of home care is now concentrated within this 'placement type'.**

Protection lies in investing significant support into pre-placement assessment.  Given demands on child protection teams, this function may need to be separated from the work of child protection and placed under home-based care programs in community organisations.

We further note that increasing numbers of kinship care arrangements are being made with people who are not part of a child's family, but regarded as 'family friends'. International evidence cautions that such care arrangements are less stable than familial kinship care (Perry, Daly, & Kotler, 2012; Sallnas, Vinnerljung, & Westermark, 2004). If assessment of such care arrangements is not thorough, non-familial kinship care may be at risk of simulating a form of under-regulated foster care.

The standard of care accepted in post facto assessments is also compromised by:

- A lack of an appropriate model of kinship care. In its absence, conflicting beliefs and partial truths may determine practice. These beliefs are characterised by two opposing aphorisms: 'They are safe because they are with family', and 'The apple doesn't fall far from the tree'.
- The reluctance to disrupt a child's living arrangement if standards are not met.
- Workload issues within child protection teams and urgent demands which provide a barrier to timely and thorough assessments.
- A lack of available reception care arrangements within foster care.

A lack of thorough pre-placement assessment raises obvious issues regarding the protection of children in out of home care from sexual abuse.

## Support for care arrangements

In Victoria, support services have been provided since 2010 for up to 750 children in kinship care in any one year. Given that there were 2,832 children in statutory kinship care on 30 June 2012, many have apparently been left with what support busy child protection officers can provide among competing demands. Anecdotally, we know that many are 'unallocated cases'. Given that in Victoria children are being placed into kinship care at a greater rate than they are leaving kinship care, and there has been a increase in the rate of children being taken into care, we anticipate that the number of unsupported care arrangements will continue to rise. We understand that these circumstances are being replicated across much of Australia.

Resources need to be deployed into supervision and support to care arrangements in line with the growth in such arrangements. Given the private nature of the family, this is the only way that the risk of sexual abuse may be discerned.

Statutory kinship care needs to be subject to the same governance arrangements as other forms of out of home care, with associated high standards of pre-assessment of care arrangements, support and monitoring. The experience in Victoria of kinship care programs being devolved to community service organisations in the same way as other forms of out of home care is a positive one. We contend that until such arrangements are in place for all kinship care arrangements, children in kinship care will remain exposed to risk of sexual and other abuse.

### Funding

Until kinship care funding and support reaches parity with foster care, children in kinship care arrangements will remain particularly vulnerable to sexual and other forms of abuse by dint of insufficient protection and monitoring.

Given the characteristics of kinship carers described above, there is an argument that funding and support should be greater than foster care.

## Foster care

### Program standards

Foster care in Australia has well-established standards of recruitment, compulsory pre-assessment training and assessment. The accredited programs Step by Step (training) and Shared Stories, Shared Lives (assessment) are now being rolled out nationwide. These standards have gone a long way towards providing safer care arrangements for children, such that indications are that sexual abuse in foster care is less prevalent than in the past, and predators are less likely to be approved as foster carers.

A consequence of these standards however, is that a foster care assessment can now take many months. A barrier to completion of assessment is timely availability of pre-assessment training programs in local areas. While foster care standards are protective of children's safety and well-being, they are generating some unintended

consequences.  The length of time for approval is contributing to difficulties in maintaining a sufficient pool of foster carers; placing pressure for placements upon existing foster carers, including pressure to place children whose care needs do not fall within their skill-set or preferences; and consequently,  contributing to carer burnout and attrition.  Another unintended consequence is that pressure is brought to bear on other forms of out of home care.  Consistent with pressure to place in foster care, this may lead at times to less than optimal care arrangements being struck out of the necessity to find a care arrangement at short notice.  It may be contributing to the ongoing rise in kinship care arrangements, with associated risks of poor pre-placement assessment.

A current challenge for foster care is thus to maintain a suitable level of program standards with regard to carer assessment and pre-service training, while reducing the length of time taken to accredit suitable caregivers.

### Funding

Foster care allowances in Victoria are the lowest in Australia.  A national standard needs to be struck in order to achieve parity and ensure that carers are not out of pocket for the costs of care.

## Residential care

In 2012, residential care comprised 5% of out of home care placements in Australia (AIHW, 2013).  It has now become a 'placement of last resort' for adolescents for whom community placements are unavailable, or are deemed to be inappropriate.  Much work has been done in Victoria over decades to improve models of residential care, including reducing numbers of young people in residential facilities, increasing funding and progressive developments in standards, staff training and the implementation of a regulatory framework.

Nevertheless, the grouping together of troubled adolescents continues to generate its own risks, and the prevention of further abuse and risk-taking behaviour remains challenging.  Young people's histories of abuse, care disruption and multiple placements frequently predispose them to further sexual abuse and targeting by abusers in the community in which they are free to move.  The

management of risk-taking behaviour including sexual exploitation is dependent upon the development of effective influencing relationships between staff and young people. However, difficulty in attracting and retaining skilled staff and a rostered model of staffing challenge the development of ongoing relationships. Periodic staff shortages frequently lead to the engagement of agency (labor hire) staff with ensuing issues of quality of care, consistency, commitment and accountability. All these issues make containment of young people's risk-taking behaviours an ongoing struggle. Legislation protects freedom of movement for young people except in the most extreme circumstances.

As in other forms of out of home care, the demand for placements in residential care is high, and threatens the capacity of the service system to place young people according to their assessed needs and the needs of adolescents with whom they may be placed. The capacity of residential care staff to keep young people safe is frequently compromised by the mix of other young people in residence.

Paedophilia poses increasing risks to young people in residential units: locations of residential units often become known to paedophile rings. Predators are aware of the vulnerability of young residents with past experiences of abuse, and the ease with which they may be bribed into further sexual exploitation. Sexual abuse of residents by other residents is a concern that has been raised with increasing frequency both locally and internationally.

Secure residential facilities are bound by regulation to provide only for very short periods of secure care. The physical environments of such containment do not allow for time in the outdoors, limiting normalised and therapeutic activities.

Concerns about residential care in Victoria are reflected in the current audit of Residential Care Services for Children by the Office of the Victorian Auditor-General (VAGO):

> This audit will examine the effectiveness of the Department of Human Service's residential care services program. In particular, it will focus on whether:

- children and young people are in appropriate residential care services that meet their needs
- the residential care service system is subject to effective oversight and review.

This audit is scheduled to table in March 2014.

http://www.audit.vic.gov.au/audits_in_progress/audit_details.aspx

The findings of the VAGO review should be important considerations for the Royal Commission in terms of prevention of abuse in care.

## Funding

In 2011-12, there were 478 children and young people in residential care services in Victoria.  The Department of Human Services (DHS) allocates over $100 million per year to 22 Community Service Organisations (CSO) to deliver residential care services throughout the state.'

http://www.audit.vic.gov.au/audits_in_progress/audit_details.aspx

These figures indicate that residential care costs the State of Victoria over $200,000 per child per year.  Some member organisations have advised of deficits of up to $50,000 per year per residential placement.  Despite frequent calls for an improved funding model for residential care, progressive increases in funding appear not to have let to financial security for organisations providing residential care.

Funding increases also do not appear to have been able to ensure safe outcomes for young people.

## Issues for consideration

Given costs and risks endemic to current residential care models, and persistent efforts to improve quality in residential care, the question needs to be asked as to what are the chances of creating a residential care response that can offer an acceptable level of safety to adolescents with histories of trauma.

A different investment of these resources might offer better options for this group of challenging young people.  These might include:

- A mainstream model of residential care for less challenging young people, with continuous, well supported caregivers and well-developed staff training programs.
- Further development of therapeutic models of residential care to support young people's recovery from trauma.
- Reception residential care to allow for assessment of the needs of children and young people prior to longer term care arrangements to augment reception foster care.
- Consideration of a capacity for secure therapeutic residential care for young people who cannot be kept safe in open community residential setting, including extended stays where needed. Secure facilities would require both secure indoor and outdoor space.  Such a development might require amendment to regulations governing limitation of freedom of movement.

## Specific attention to the care needs of Aboriginal and Torres Strait Islander children

> To tackle the over-representation of Indigenous children in the child protection system, the National Framework outlines specific strategies to support Indigenous children, families and communities.  These strategies aim to promote safe, strong, and thriving Indigenous families and communities and culturally appropriate support for those children and families in child protection systems (AIHW, 2013, p.138).

In 2012, one-third (34%) of all children in care in Australia were Indigenous.  The rate of Indigenous children in out-of-home care was 10 times the rate for non-Indigenous children, with the highest rate ratio (15.8) being in Victoria (AIHW, 2013).  Just over half (52%) of Indigenous children are in kinship care, with approximately one-quarter of these children (14% of Indigenous children in care) in

non-Indigenous kinship care.  Thirty-one percent of Indigenous children were not placed in care according to the priorities of the Aboriginal Child Placement Principle (ACCP).  The birth rate amongst Indigenous families is rising, contributing to greater numbers of Indigenous children coming into out of home care.

As the predominant form of care for Indigenous children and the care type preferred under the ACCP, kinship care is of particular importance.  However, specific challenges pertain to Indigenous kinship care.  Indigenous kinship carers as a group are older, poorer, more likely to be single and in poorer health than non-Indigenous kinship carers.  They experience more crowded housing, and take on the care of larger numbers of children.  Significantly lower life expectancy and morbidities threaten care arrangements for children.  Some live in communities where there is a culture of violence or substance abuse.  Nevertheless, the imperative to provide care is extremely strong for traditional cultural reasons that are intensified by the history of the Stolen Generations.  Where families are of mixed heritage, non-Indigenous family members are recognised as suitable kinship carers depending upon their commitment to maintaining cultural connections for Indigenous children.

Kinship care will not always be an appropriate choice.  Indigenous foster care needs strengthening to take undue pressure to provide care off vulnerable family members.  Where possible, this should be provided by well-assessed and supported Indigenous foster carers.  Where other options do not exist, non-Indigenous foster carers may also provide good care to Indigenous children if properly assessed and trained in cultural awareness.

The newly-appointed Victorian Aboriginal Children's Commissioner has expressed concern about inadequate assessment and support of Indigenous kinship carers – usually grandmothers. The imperative to provide care may sometimes make it difficult for Indigenous people to speak up about the barriers they may face to providing adequate care for additional children.  Indigenous carers may also be in particular need of financial and non-financial support if they are to provide adequate care.

The *Little Children are Sacred* (NT Government, 2007) report highlighted the issue of sexual abuse of Indigenous children. If Indigenous children are to be placed in accordance with the ACCP and receive safe care, specific attention to the assessment and support needs of their kinship carers will be essential. Assessment and support of Indigenous kinship carers needs to be undertaken by Indigenous services adequately resourced for the task.

## A workable level of internal and external monitoring

In Victoria, auditing of standards of funded service provision is undertaken by approved external standards organisations which audit registered services every three years. We support auditing that is at arms' length from the funding body or child protection services. Noting that in New South Wales accreditation activities are undertaken by the Children's Guardian, we see benefit in such a model being utilised nationally. There may be a place for 'spot checks' of paperwork in such a process, and unannounced visits to residential facilities may be considered. However, 'spot checks' will not be applicable to the majority of children who are in home-based care.

In addition to the registration auditing requirements, the Victorian Children's Commissioner has specialist oversight powers and maintains a register of approved foster carers. Foster carers are approved by Panels convened by community service organisations. However, no such mechanism exists for the approval of kinship carers, again reflecting a low standard of approval for kinship care arrangements. Residential carers are approved by community service organisations through the staff recruitment and selection process.

Nevertheless, we are not confident of external bureaucratic auditing as a primary means of identifying risk of sexual or other abuse. Increasing levels of accountability auditing may have unintended consequences of increasing attention to paperwork rather than sound practice. This may also at times focus service providers and governments unduly on risk management in ways that do not contribute to improving services.

The identified benefits of existing Community Visitors Programs for residential care may merit further examination.  The Victorian Commission for Children and Young People is currently developing such a program for residential care facilities.  However, this is also unlikely to be a practicable approach for the 91% of children in home-based care.

While sensitively conducted exit interviews for children leaving care may be beneficial in some circumstances, we are not confident that these would constitute a reliable means of revealing incidents of sexual abuse, or areas of vulnerability for the perpetration of abuse.  The relationship between the person conducting the interview and the child may be too distant or alternatively, too close for the child to feel free to speak about such troubling matters.  Once again, exit interviews may be more difficult to implement for children in home-based care.

## Protecting young people ex-care from sexual exploitation in the transition to adulthood

While legal childhood ends at the age of 18, the risk of sexual exploitation does not.  Risks are heightened for young people who have experienced trauma in earlier years when they no longer have caregivers.  The greatest protection for these young people is to provide ongoing supportive relationships and a constructive pathway into adulthood.  In contemporary Australia, a protective pathway will usually involve post-secondary education or pre-employment training to prepare young people for participation in adult society.  This presupposes secure accommodation with adults who can provide support, commensurate with current Australian community norms.

Where kinship care is safe and supportive, it is likely to offer such support into young adulthood, as young people are not required to move out of their home at age 18.  However, young people who have been in other forms of out of home care are required to move out at 18 and subsequently receive generally low levels of support (termed 'leaving care' support).  The discrepancy between norms of support for young adults ex care and other young Australian adults are arguably a

major contributor to generally poor outcomes in education and employment for care leavers.

Without effective social support into young adulthood, there is a much greater risk of sexual exploitation and associated mental illness and substance abuse – and for a few, the risk of becoming perpetrators of sexual abuse.

# Effective use of existing data on sexual abuse in out of home care

Victoria has extensive data sets relating to adverse incidents in out of home care. There are two components:

Critical Incident Reporting has been in place in Victoria for many years. Reports are rated in three categories, with Category 1 being the most serious. Category 1 and 2 reports are submitted to the Department of Human Services for immediate review. Reports require an action plan to respond to the incident, and prevention measures. Reports are made available for monitoring purposes to the Victorian Commission for Children and Young People.

A more recent Victorian initiative is the reporting of events where the quality of care provided to a child has allegedly fallen below an acceptable level. These reports are known as Quality of Care Reports. Such incidents trigger an assessment that may include a formal review of care. A decision is formulated with an action plan to ensure children's safety and wellbeing. Prompt investigation of concerns is essential for both children and carers. Victorian services are aware of many examples of protracted investigations that cause further distress, and sometimes unnecessarily disrupt care arrangements.

These two reporting systems have the capacity to yield a wealth of data about the rate of reported sexual abuse in out of home care. However, to date there has been no public reporting of aggregated data or analysis of these data sets.

Annual analysis and fulsome reporting of this data by the State Children's Commissioners to the National Children's Commissioner would be one means of identifying movements in the rate of reported sexual abuse in out of home care.

# Record keeping and access to records

Through sector projects and program developments, the Centre for Excellence has experience with record-keeping and its impact on former residents of children's homes and other forms of care, including the Forgotten Australians and British Child Migrants.  Their experience bears witness to the fact that many people do not disclose sexual abuse until adulthood.  Poor or non-existent record-keeping has added another layer of trauma to many individuals returning to seek their records or records of immediate family, whether to seek redress, to better understand their identity, or for other reasons.

Good record keeping may contribute to the capacity of individuals to seek redress for sexual abuse in care at a later stage.  The Australia-wide Find and Connect project has been working to improve standards of record-keeping into the future; their staff are submitting a response to this Issues Paper.  Consultation with the Find and Connect program may be desirable.

Our member organisation MacKillop Family Services has developed a well-developed archival access service, the Heritage and Information Service.  This is a user-friendly and proactive service from which past residents and their families can receive case file and historical information with personal support as desired. This service may be a standout model of good practice and is recommended for specific attention in the search to establish standards for future record-keeping. MacKillop Family Services is also submitting a response to this Issues Paper which will include further information about the Heritage and Information Service.

While good record-keeping is important for myriad reasons, we contend that organisational culture has a stronger place in the prevention of sexual abuse than record-keeping per se.  Where the organisational culture is open and aware, records may be useful means of recording and reporting both 'weak signals' and stronger concerns about a child's wellbeing and safety, prompting a timely response.  In the absence of such a culture, record-keeping is unlikely to reflect signals of concern.

# Recommendations

The following recommendations are seen as a way forward to providing a comprehensive response to the prevention of sexual abuse in out of home care, and to creating an environment in which organisations can better prevent and respond to risks of sexual abuse in care.

1. An effective approach to protecting children from sexual abuse will need to be aligned to the current nature of Australian protective care arrangements which are overwhelmingly community-based (kinship care and foster care).

2. A concerted focus on early intervention, including respite care and support programs for vulnerable families should be a priority for Federal and State Governments.

3. A community focus including national public awareness campaigns; resourcing of people working with children to recognise the signs and respond to children at risk of sexual abuse; support to caregivers of children; and support to parents with children in alternative care arrangements.

4. A focus on the development of open and responsive institutional cultures; promotion of the 'aware culture' and practices that draw on the concept of 'working within the arena of safety'.

5. Training programs for staff and volunteer carers working with children should include mandatory units relating to the prevention of sexual abuse by teaching children about sexual health and protective behaviours, appropriate work practices, and responding to indications that sexual abuse may have occurred.

6. Consideration of mandating a national standard for procedures for responding to allegations of sexual abuse.

7. Promotion of children's rights and capacity to speak out about matters that affect them, not only when they have been abused.  This includes promotion of attention to 'weak signals' of concern about children's wellbeing as a means of abuse prevention.

8. Strengthening of the capacity of government and non-government organisations to assess children's care needs prior to care arrangements being put in place, such that their needs can be matched to suitable care arrangements.

9. A focus on stringent standards of recruitment and selection of staff and volunteers who work with children based upon existing research knowledge.

10. The establishment of national standards and mechanisms for the adequate funding of foster care and kinship care. This to include a requirement that States reimburse statutory kinship carers at the same rate as foster carers, or higher.

11. Given its predominant place in the spectrum of 'out of home care', the development of national standards for kinship care, with a pre-eminent focus on establishing stringent standards of assessment and support in kinship care and a regulatory mechanism for kinship care programs.

12. Ongoing review of current residential care models until safety of children in residential care reaches an acceptable level, including promotion of therapeutic models of care, consideration of reception residential care, and reconsideration of models for the secure care of children who cannot be otherwise be kept safe.

13. Development of appropriate models of kinship care for Indigenous children, including a key focus on the development of fully assessed and supported kinship carers.

14. Attention to the social support and legal barriers preventing confirmation of permanent care arrangements for children in long term protective care.

15. Creation of national standards for external regulation and auditing of organisations providing out of home care to ensure that preventative mechanisms are in place, with a focus on workable auditing arrangements rather than additional layers of requirements. This should include either a national mechanism, or uniform state and territory mechanisms, for regulation and auditing.

16. Development of solid support programs for young people ex-care that include ongoing effective relationships with supportive adults in secure accommodation to promote resilience that will promote the development of self-protection from sexual exploitation.

17.  Ongoing collaboration with State Governments to develop annual reports from existing data sets of reported sexual abuse to inform policy, practice and service planning to prevent sexual abuse.

18. Continuation of support programs such as the national Find and Connect program to develop standards for case file recording and archiving. This will promote the availability of records to care leavers into the future for personal reasons, including the possibility of seeking redress where sexual abuse has occurred.

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# Appendix A: Questions of particular interest to the Royal Commission

1. An essential element of OOHC is for a child to be safe and secure. Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?

2. Is there evidence for having different strategies to keep children in OOHC safe from sexual abuse depending upon whether a child is in relative or kinship care, foster care or one of the forms of residential care?

3. What are the strengths and weaknesses of models that check OOHC practices by an audit approach, a regular supervisory visit, or an irregular visit by someone like a community visitor?

4. What are the strengths and weaknesses of having OOHC providers regulated by the child protection department, or regulated by a body separate from the child protection department?

5. What are the core components of the training needs of those working with children who might be sexually abused including carers, caseworkers and staff of regulatory bodies? What priority should be given to training in relation to sexual abuse compared to other training needs?

6. Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?

7. How should the rate of sexual abuse of children in OOHC be determined, noting that the National Standards for Out-of-Home Care require reporting of substantiated claims of all types of abuse? Would a form of exit interview assist in capturing information? What should be introduced to ascertain whether information on child sexual abuse in OOHC is resulting in changed OOHC practices?

8. What is the usefulness and validity of different ways to address allegations of sexual abuse brought against carers? In particular, which approaches enhance participation by the child particularly approaches best suited to seeking possible disclosures of abuse (including disclosures that might be inferred from

behavioural changes) from children? Are the current processes fair? What appeal processes should be available for carers?

9. What measures could be used to assess whether the safety of children from sexual abuse in OOHC is enhanced by independent oversight of the handling of allegations of sexual abuse?

10. What are the strengths and weaknesses of different oversight mechanisms in keeping children safe from sexual abuse in OOHC?

11. What implications exist for record keeping and access to records, from delayed reporting of child sexual abuse?