

**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE**

**ACTIONS TAKEN / PROPOSED TO BE TAKEN
BY THE STATE OF NSW IN RESPONSE TO THE
WORK OF THE ROYAL COMMISSION**

- 16 November 2016

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Introduction

1. On 6 July 2016, Justice Peter McClellan AM wrote to the NSW Premier, Mike Baird MP advising him that it is the intention of the Royal Commission into Institutional Responses to Child Abuse ('the Royal Commission') to conduct follow up hearings to examine the response of institutions, including governments, to the work of the Royal Commission to date and requesting a response to key policy reports and case studies affecting NSW.
2. The NSW Government welcomes the opportunity to outline the work it has carried out to date in response to the following reports and case studies identified in the Royal Commission's letter of request:
 - Working with Children Checks Report
 - Redress and Civil Litigation Report
 - Case studies – Parramatta Girls and Hay Institution (Case Study 7); Bethcar Children's Home (Case Study 19); Out of Home Care (Case Study 24); and Healthcare providers (Case Study 27).
3. The NSW Government is continuing to pursue opportunities for further improvement and reform on issues of relevance to the Royal Commission including in relation to Out of Home Care; and Redress and Civil Litigation. Further updates on work in these areas can be provided in the lead up to the follow up hearings in March 2017.

Questions 1-2: Working with Children Checks Report

1. This section contains the response of the State of New South Wales to the Royal Commission's request seeking an outline as to:

“1 *The consideration the New South Wales Government has given to the Royal Commission's Report on working with children checks.*

2 *The steps, if any, the New South Wales Government has taken in relation to the recommendations concerning:*

a. general matters (recommendations 1 and 4); and

b. standards (recommendations 5 to 36).”

Overview of consideration by NSW Government of *Working with Children Checks Report*

2. NSW provided detailed comments to the Royal Commission in relation to the NSW Working with Children Check (**WWCC**) framework prior to the release of the Royal Commission's final report. The Standards recommended by the Royal Commission are closely aligned with the WWCC framework that is in place in NSW under the *Child Protection (Working with Children) Act 2012 (the WWC Act)* and the *Child Protection (Working with Children) Regulation 2013 (the WWC Regulation)*. Therefore minimal changes in this jurisdiction were required.
3. NSW Parliament has passed the *Child Protection Legislation Amendment Act 2015* which, among other reforms, implements the Royal Commission's key recommendation to exclude appeal rights for people who have adult convictions for murder of a child, indecent or sexual assault of a child, child pornography related offences and incest where the victim is a child. The NSW limitation on appeal rights goes further and applies to murder regardless of the age of the victim. As a result of the amending Act, and in response to the Royal Commission's recommendations, NSW law now:
 - requires employers to not only ensure employees have a current WWCC application or clearance but also to verify the employee's status via the WWCC Register;
 - requires a person appointed on a permanent basis to a key position that involves child-related work to have a WWCC clearance or current application for a clearance. Key positions are defined as: the chief executive officer; the principal officer of either a statutory or voluntary out-of-home care non-government agency or an accredited adoption provider; and any other position that may be prescribed by regulation;
 - makes interim bars enforceable against adult household members of authorised carers or home-based education and care services or where a family day care service is provided. The amending Act also changed the terminology from “reside at home” to “reside at property” with respect to adult household members, to provide greater protection for children.

4. The NSW Government will be undertaking a statutory review of the WWCC Act in early 2017. The purpose of the review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. This will include addressing issues which the NSW Office of the Children's Guardian (OCG) has experienced in administering the new check since it commenced in 2013 and issues arising from consultation with relevant stakeholders. A consultation paper to support the statutory review will be released in early 2017.
5. The areas of departure and alignment between NSW law and the recommendations made by the Royal Commission are detailed in the table set out below.
6. Given that the Standards recommended by the Royal Commission were largely consistent with the existing NSW legislation and practice, NSW has, since the release of the Royal Commission's report in August 2015, primarily focussed on advancing discussions with other State and Territory governments with a view to achieving national consistency in the implementation of the standards identified by the Royal Commission. Interjurisdictional discussions have taken place through two national forums, namely the WWCC National Operators Forums (**NOFS**) and the Children and Families Secretaries forum (**CAFS**). The NOFS is a voluntary network of national screening agencies (primarily Children's Commissioners). The Commonwealth is represented on CAFS, which comprises heads of Commonwealth, State and Territory departments responsible for children and families.
7. NOFS and CAFS members have recognised the benefits of a nationally consistent approach and the opportunity to align policy settings; however the work to bring about a national model is ongoing. Importantly, a national model for WWCCs, including a centralised database that is readily accessible to all jurisdictions, requires the Commonwealth Government to assume responsibility for administering and implementing the scheme. Crimtrac had previously indicated that the development and hosting of the proposed centralised database would be problematic for Crimtrac, due to its amalgamation with the Australian Crime Commission to become the Australian Criminal Intelligence Commission (**ACIC**). ACIC commenced operations on 1 July 2016. There has been agreement in CAFS that streamlined access to child protection information for the WWCC service providers would be considered a priority activity.
8. The implementation of recommendation 4 also relies on national engagement. NSW continues to work with all jurisdictions towards improving the effectiveness of WWCCs across Australia and supports the inter-jurisdictional exchange of expanded criminal history information that currently occurs under the Exchange of Criminal History Information for People Working with Children.
9. Continuous monitoring of NSW criminal and disciplinary records is a key feature of the NSW WWCC framework. The NSW Police Force and the NSW **OCG** have a process in place to check applicants for WWCCs and to monitor individuals cleared to undertake child-related work. This involves regular use of the databases held and maintained by the ACIC.
10. The names and dates of birth of charged persons held on microfilm by the NSW Police Force are already available in the ACIC systems for initial matching and further digitisation work to enhance the dataset is underway.
11. Additional information received by way of Chapter 16A information sharing (under the

Children and Young Persons (Care and Protection) Act 1998) and via notifications of concern from the Ombudsman are also considered, where relevant, for continuous monitoring purposes.

Steps taken in relation to recommendations concerning standards (recommendations 5 to 36)

Recommendation	NSW Government action / comment
<p>5. State and territory governments should amend their WWCC laws to incorporate a consistent and simplified definition of child-related work, in line with the recommendations below.</p>	<p>This recommendation is supported in principle with the current NSW model being the preferred approach and subject to the comments below.</p> <p>The WWC Act defines child-related work as work that involves direct contact i.e. face-to-face and physical contact with children in a specific sector or work in a specified role. In addition, a non child-related role can be classified as child-related for the purposes of the WWCC where certain criteria are satisfied.</p> <p>The current NSW model is the preferred approach as it offers a well-balanced framework that is user-friendly and lends itself to efficient compliance work.</p> <p>In addition to work that involves direct contact with children, the NSW approach also identifies specific roles as falling within the definition of child related work regardless of whether there is direct contact and deems as additional child related work where workers have access to confidential and sensitive information about children.</p>
<p>6. State and territory governments should amend their WWCC laws to provide that work must involve contact between an adult and one or more children to qualify as child-related work.</p>	<p>This recommendation is supported.</p> <p>Section 6(1) of the WWC Act currently refers to “children”; however the proposed wording “between an adult and one or more children” is supported and will be considered as part of the statutory review of the WWC Act.</p>
<p>7. State and territory governments should:</p> <p>a) amend their WWCC laws to provide that the phrase ‘contact with children’ refers to physical contact, face-to-face contact, oral communication, written communication or electronic communication</p> <p>b) through COAG, or a relevant ministerial council, agree on standard definitions for each kind of contact and amend their WWCC laws to</p>	<p>This recommendation is currently being considered.</p> <p>The WWC Act defines “direct contact” with children in s 6(4) to mean physical contact or face to face contact.</p> <p>NSW is currently considering the viability of expanding the definition of direct contact to give effect to the Royal Commission’s recommendation but</p>

Recommendation	NSW Government action / comment
incorporate those definitions.	in a more targeted manner, i.e. by expanding child related roles (by amending the Regulation) to include roles of those providing ongoing children's services by way of counselling, mentoring and distance education by any form of communication including oral, written or electronic communication.
<p>8. State and territory governments should:</p> <p>a) amend their WWCC laws to provide that contact with children must be a usual part of, and more than incidental to, the child-related work</p> <p>b) through COAG, or a relevant ministerial council, agree on standard definitions for the phrases 'usual part of work' and 'more than incidental to the work', and amend their WWCC laws to incorporate those definitions.</p>	<p>This recommendation is supported as it is consistent with the policy underpinnings and current interpretation by the OCG. It will be further considered in the statutory review.</p> <p>The current framework in NSW is based on the premise that contact with children must be a usual part of, and more than incidental to, the child-related work. This is reflected in the exemption at cl 20(1)(a) of the WWC Regulation which specifies that workers who provide ancillary services (other than school cleaners), if the work does not ordinarily involve contact with children for extended periods, are exempt.</p>
<p>9. State and territory governments should amend their WWCC laws to specify that it is irrelevant whether the contact with children is supervised or unsupervised.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>In NSW, the WWCC legislation is consistent with this proposal because no distinction is made between workers on this basis.</p>
<p>10. State and territory governments should amend their WWCC laws to provide that a person is engaged in child-related work if they are engaged in the work in any capacity and whether or not for reward.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>The legislative definitions include both paid work and unpaid work. Section 12 of the WWC Act specifies classes of clearance.</p>
<p>11. State and territory governments should amend their WWCC laws to provide that work that is undertaken under an arrangement for a personal or domestic purpose is not child-related, even if it would otherwise be so considered.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>An exemption applies to workers who carry out the work in the course of an</p>

Recommendation	NSW Government action / comment
	informal domestic arrangement that is not carried out on a professional or commercial basis (cl 20(1)(c)). A number of other exemptions apply to parents and close relatives.
<p>12. State and territory governments should amend their WWCC laws to:</p> <p>a) define the following as child-related work:</p> <p>i) accommodation and residential services for children, including overnight excursions or stays</p> <p>ii) activities or services provided by religious leaders, officers or personnel of religious organisations</p> <p>iii) childcare or minding services</p> <p>iv) child protection services, including out-of-home care (OOHC)</p> <p>v) clubs and associations with a significant membership of, or involvement by, children</p> <p>vi) coaching or tuition services for children</p> <p>vii) commercial services for children, including entertainment or party services, gym or play facilities, photography services, and talent or beauty competitions</p> <p>viii) disability services for children</p> <p>ix) education services for children</p> <p>x) health services for children</p> <p>xi) justice and detention services for children, including immigration detention facilities where children are regularly detained</p>	<p>This recommendation is largely supported subject to the comments below.</p> <p>The Commission's focus on 'contact' may affect current coverage of roles in NSW such as principal officers and board members who may not always have direct contact with children, but nevertheless should have WWCCs because of the nature of their roles.</p> <p>The current approach in NSW is preferred, as noted in the State's response to the Royal Commission's WWCC Consultation Paper and Issues Paper 1.</p> <p>NSW law identifies relevant sectors where workers have direct contact with children and specific roles as being child-related work (cf s 6 WWC Act).</p> <p>The services proposed by the Royal Commission to define child-related work are largely consistent with NSW legislation except as follows:</p> <p>i) parents on overnight camps are currently exempted under NSW law (cf cl 20(1)(e) and (f) of the WWC Regulation) – noting this will be reconsidered as part of the statutory review of the WWC Act in 2017 ;</p> <p>v) the NSW approach is to define child-related work as work for or in connection with clubs, associations, movements, societies or other bodies that provide programs or services for children. The wording of the provision therefore focuses on the provision of services to children rather than the membership or involvement of children. The State considers that this covers clubs that have significant membership of or involvement by children;</p> <p>vii) photography services are not currently captured in NSW but there is no opposition to including these in the relevant sectors. Where a photography service is contracted by a school for example, the service is usually</p>

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<p>xii) transport services for children, including school crossing services</p> <p>xiii) other work or roles that involve contact with children that is a usual part of, and more than incidental to, the work or roles."</p> <p>b) require WWCCs for adults residing in the homes of authorised carers of children</p> <p>c) remove all other remaining categories of work or roles</p>	<p>required to be WWCC compliant.</p> <p>An additional sector specified in the WWC Act and WWC Regulation is child development and family welfare services, including mentoring and counselling services (cf cl 4 of the WWC Regulation).</p> <p>As stated above, specific roles are listed in s 6(3) of the WWC Act and prescribed in the WWC Regulation. These include youth workers, school cleaners (who would otherwise be ruled out as ancillary) (cl 16A), members of governing bodies (cl 16B) and principal officers of registered agencies (cl16C)). NSW does not support removing the categories of work or roles that are not listed in the Commission's standards.</p>
<p>13. State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each category of child-related work and amend their WWCC laws to incorporate those definitions.</p>	<p>NSW supports reaching agreement on standard definitions as long as the existing NSW framework is not weakened.</p> <p>At this stage, discussions through CAFS and NOFS have not progressed to standard definitions for each category of child-related work.</p> <p>In July 2016, FACS, as the outgoing Secretariat for the CAFS, facilitated an officer-level interjurisdictional teleconference to discuss a number of national priorities and opportunities bringing together a broad range of stakeholders from across agencies as well as representatives of the NOFS. Many representatives expressed the view that the role of the Commonwealth is central to progressing work towards addressing the Royal Commission's recommendations.</p>
<p>14. State and territory governments should amend their WWCC laws to:</p> <p>a) exempt:</p> <p>i. children under 18 years of age, regardless of their employment status</p> <p>ii. employers and supervisors of children in a workplace, unless the work is</p>	<p>This recommendation is supported with the exception of 14(a) vi) a) which will be considered as part of the statutory review of the WWC Act.</p> <p>The specified exemptions are largely consistent with existing NSW law. NSW has some additional exemptions which are provided for in the WWC Regulation at cll 20 - 22D.</p>

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<p>child-related</p> <p>iii. people who engage in child-related work for seven days or fewer in a calendar year, except in respect of overnight excursions or stays</p> <p>iv. people who engage in child-related work in the same capacity as the child</p> <p>v. police officers, including members of the Australian Federal Police</p> <p>vi. parents or guardians who volunteer for services or activities that are usually provided to their children, in respect of that activity, except in respect of:</p> <p style="padding-left: 40px;">a. overnight excursions or stays</p> <p style="padding-left: 40px;">b. providing services to children with disabilities, where the services involve close, personal contact with those children"</p> <p>b) remove all other exemptions and exclusions</p> <p>c) prohibit people who have been denied a WWCC, and subsequently not granted one, from relying on any exemption.</p>	<p>In relation to 14(a) vi) a), parents on overnight excursions or stays are exempt in NSW (cll 20(1)(e) and (f) of the WWC Regulation). This issue will be reconsidered as part of the statutory review of the WWC Act in 2017.</p> <p>In relation to 14(b), NSW requires parents/close relatives providing mentoring services as part of formal mentoring program provided by government or non-government agency to have a WWCC.</p> <p>In relation to 14(c) - NSW is likely to consider this exemption as part of its statutory review upcoming in early 2017. The purpose of the five year statutory review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. This will include addressing issues which the OCG has experienced in administering the new check since it commenced in 2013, consultations with relevant stakeholders and submissions received in response to a consultation paper to be made available in early 2017.</p>
<p>15. State and territory governments, through COAG, or a relevant ministerial council, should agree on standard definitions for each exemption category and amend their WWCC laws to incorporate those definitions.</p>	<p>NSW supports reaching agreement on standard definitions for exemption categories as long as the overall framework continues to offer a balanced system and is not weakened.</p>
<p>16. State and territory governments should amend their WWCC laws to incorporate a consistent and simplified list of offences, including:</p> <p>a) engaging in child-related work without holding, or having applied for, a WWCC</p> <p>b) engaging a person in child-related work without them holding, or having</p>	<p>This recommendation is supported.</p> <p>The recommendations at 16(a), (b) and (e) are consistent with existing NSW legislation.</p> <p>In relation to 16(c), an amending Bill containing an offence provision for providing false or misleading information in connection with a WWCC</p>

Recommendation	NSW Government action / comment
<p>applied for, a WWCC</p> <p>c) providing false or misleading information in connection with a WWCC application</p> <p>d) applicants and/or WWCC cardholders failing to notify screening agencies of relevant changes in circumstances</p> <p>e) unauthorised disclosure of information gathered during the course of a WWCC.</p>	<p>application is currently in draft stage.</p> <p>In relation to 16(d), this matter is not yet covered in the NSW framework but will be considered as part of the statutory review.</p>
<p>17. State and territory governments should amend their WWCC laws to include a standard definition of criminal history, for WWCC purposes, comprised of:</p> <p>a) convictions, whether or not spent</p> <p>b) findings of guilt that did not result in a conviction being recorded</p> <p>c) charges, regardless of status or outcome, including:</p> <p>i) pending charges – that is, charges laid but not finalised</p> <p>ii) charges disposed of by a court, or otherwise, other than by way of conviction (for example, withdrawn, set aside or dismissed)</p> <p>iii) charges that led to acquittals or convictions that were quashed or otherwise over-turned on appeal for all offences, irrespective of whether or not they concern the person's history as an adult or a child and/or relate to offences outside Australia.</p>	<p>This recommendation is supported.</p> <p>NSW law already contains this definition of criminal history for WWCC purposes and supports the need for clarification and standardisation of the definition Australia-wide.</p>
<p>18. State and territory governments should amend their WWCC laws to require police services to provide screening agencies with records that meet the definition of criminal history records for WWCC purposes and any other available information relating to the circumstances of such offences.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p>

Recommendation	NSW Government action / comment
<p>19. State and territory governments should amend their WWCC laws to:</p> <p>a) require that relevant disciplinary and/or misconduct information is checked for all WWCC applicants</p> <p>b) include a standard definition of disciplinary and/or misconduct information that encompasses disciplinary action and/or findings of misconduct where the conduct was against, or involved, a child, irrespective of whether this information arises from reportable conduct schemes or other systems or bodies responsible for disciplinary or misconduct proceedings</p> <p>c) require the bodies responsible for the relevant disciplinary and/or misconduct information to notify their respective screening agencies of relevant disciplinary and/ or misconduct information that meets the definition.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>Clause 2 of Schedule 1 of the WWC Act specifies findings by certain reporting bodies of sexual misconduct involving children (including grooming) or any serious physical assault. Section 35 of the WWC Act compels reporting bodies to inform the Children’s Guardian of findings captured by cl 2 of Sch 1 of the WWC Act. The Children’s Guardian can issue an enforcement notice if a reporting body does not comply (s 36 WWC Act).</p>
<p>20. State and territory governments should amend their WWCC laws to respond to records in the same way, specifically that:</p> <p>a) the absence of any relevant criminal history, disciplinary or misconduct information in an applicant’s history leads to an automatic grant of a WWCC</p> <p>b) any conviction and/or pending charge in an applicant’s criminal history for the following categories of offence leads to an automatic WWCC refusal, provided the applicant was at least 18 years old at the time of the offence:</p> <p>i. murder of a child</p> <p>ii. manslaughter of a child</p> <p>iii. indecent or sexual assault of a child</p> <p>iv. child pornography–related offences</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>Section 18(3) of the WWC Act requires the Children’s Guardian to clear persons who are not disqualified or who are not subject to an assessment requirement.</p> <p>Disqualifying offences are set out in Schedule 2 to the WWC Act and include the offence categories referred to in recommendation 20. Abduction or kidnapping apply except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child (Sch 2, cl 1(m)).</p>

Recommendation	NSW Government action / comment
<p>v. incest where the victim was a child</p> <p>vi. abduction or kidnapping of a child</p> <p>vii. animal-related sexual offences</p> <p>c) all other relevant criminal, disciplinary or misconduct information should trigger an assessment of the person's suitability for a WWCC (consistent with the risk assessment factors set out below).</p>	
<p>21. State and territory governments should amend their WWCC laws to specify that relevant criminal records for the purposes of recommendation 20(c) include but are not limited to the following:</p> <p>a) juvenile records and/or non-conviction charges for the offence categories specified in recommendation 20(b)</p> <p>b) sexual offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)</p> <p>c) violent offences, including assaults, arson and other fire-related offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b)</p> <p>d) child welfare offences</p> <p>e) offences involving cruelty to animals</p> <p>f) drug offences.</p>	<p>This recommendation is supported noting 21 c) is supported in principle and will be considered as part of the statutory review of the WWC Act.</p> <p>The Children's Guardian must conduct a risk assessment of an applicant for a working with children check clearance, or the holder of a clearance, based on information including:</p> <p>a) juvenile records and/or non-conviction charges for the offence categories specified in recommendation 20(b): Sch 1 cl 1(1) of the WWC Act</p> <p>b) sexual offences, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b): Sch 1 cl 1(6)</p> <p>c) violent offences, including assaults, regardless of whether the victim was a child and including offences not already covered in recommendation 20(b): Sch 1 cl 1(6)</p> <p>d) child welfare offences: Sch 1 cl 1(3)(c)</p> <p>e) offences involving cruelty to animals: Sch 1 cl 1(2)(g)</p> <p>f) drug offences: Sch 1 cl 1(3)(e)</p>

Recommendation	NSW Government action / comment
	<p>Arson (crimes against property) is not covered in its own right.</p> <p>The experience of the OCG when risk assessing WWCC applications is that where an individual has a serious drug offending history, it is difficult to establish that they pose a risk to children in the absence of child-related offences or a violent pattern of offending.</p>
<p>22. The Commonwealth Government, through COAG, or a relevant ministerial council, should take a lead role in identifying the specific criminal offences that fall within the categories specified in recommendations 20(b) and 21.</p>	<p>This recommendation is supported.</p> <p>NSW expressed concern at the CAFS about the lack of direction from the Commonwealth and noted it has been slow to engage with the Royal Commission's timetable.</p>
<p>23. State and territory governments should amend their WWCC laws to specify that the criteria for assessing risk to children include:</p> <ul style="list-style-type: none"> a) the nature, gravity and circumstances of the offence and/or misconduct, and how this is relevant to children or child-related work b) the length of time that has passed since the offence and/or misconduct occurred c) the age of the child d) the age difference between the person and the child e) the person's criminal and/or disciplinary history, including whether there is a pattern of concerning conduct f) all other relevant circumstances in respect of their history and the impact on their suitability to be engaged in child-related work. 	<p>This recommendation is supported and it is noted that the NSW framework is broader than the proposed standard.</p> <p>Section 15(4) of the WWC Act provides factors that the Children's Guardian may consider and s 15(4)(k) includes any other matters the Children's Guardian thinks is necessary in making an assessment.</p> <p>With effect from 2 November 2015, all risk assessments of WWCC applications made after that date also apply a reasonable person/public interest test (new s 15(4A)). This test will also be applied by the NCAT in relation to matters where the WWCC application was made after 2 November 2015. These tests allow the OCG and NCAT to apply community and public interest standards to their respective decision making processes.</p>
<p>24. State and territory governments should amend their WWCC laws to expressly provide that, in weighing up the risk assessment criteria, the paramount consideration must always be the best interests of children, having regard to their safety and protection</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>Section 4 of the WWC Act provides that "[t]he safety, welfare and wellbeing</p>

Recommendation	NSW Government action / comment
	of children and, in particular, protecting them from child abuse, is the paramount consideration in the operation of" the WWCC Act. This provision has been in force since the inception of the Act.
<p>25. State and territory governments should amend their WWCC laws to permit WWCC applicants to begin child-related work before the outcome of their application is determined, provided the safeguards listed below are introduced.</p> <p>Applicants</p> <p>a) applicants must submit a WWCC application to the appropriate screening agency before beginning child-related work and not withdraw the application while engaging in child-related work</p> <p>b) applicants must provide a WWCC application receipt to their employers before beginning child-related work</p> <p>Other safeguards</p> <p>c) employers must cite application receipts, record application numbers and verify applications with the relevant screening agency</p> <p>d) there must be capacity to impose interim bars on applicants where records are identified that may indicate a risk and require further assessment.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>It is also noted that the NSW framework includes online employer verification which is a key component of the framework. Employers are required to verify their employees online after the employee has provided them with their WWCC application number (or clearance number). This allows the OCG to provide up to date information about WWCC status as soon as there is a change, for example, where the OCG becomes aware of a relevant record resulting in the employee being interim barred or barred. NSW considers that online employer verification is a necessary adjunct to this standard to ensure that employers are kept informed of any changes in status.</p>
<p>26. State and territory governments that do not have an online WWCC processing system should establish one.</p>	<p>This recommendation is supported. No change is required as NSW already has an online processing system.</p>
<p>27. State and territory governments should process WWCC applications within five working days, and no longer than 21 working days for more complex cases.</p>	<p>NSW supports processing applications within five working days where there are no relevant records that require consideration. Those applications requiring comprehensive risk assessment require significantly longer to complete, on average six months which is currently reflected in the NSW</p>

Recommendation	NSW Government action / comment
	<p>legislation.</p> <p>Currently approximately 81% of applications where there were no relevant records or name matching issues are finalised within 48 hours. 19% took longer because there was a record of some type or a name matching or other issue which resulted in ACIC taking longer to complete the background checking process.</p> <p>However the experience of the OCG since the WWCC has been in operation in NSW is that more complex applications which require comprehensive assessment take on average 6 months to complete. This is reflected in the NSW legislation by restricting appeals on interim bars to those where the interim bar has been in place for at least six months, reflecting the expected processing time for these much more complex applications.</p> <p>The process of risk assessing an applicant requires information to be obtained from a range of government departments, courts and private service providers. This may include from other jurisdictions. Matters referred to risk assessment represent a small proportion of overall applications (2,631 out of a total of 393,031 processed applications in 2015-2016).</p>
<p>28. All state and territory governments should amend their WWCC laws to specify that:</p> <p>a) WWCC decisions are based on the circumstances of the individual and are detached from the employer the person is seeking to work for, or the role or organisation the person is seeking to work in</p> <p>b) the outcome of a WWCC is either that a clearance is issued or it is not; there should be no conditional or different types of clearances</p> <p>c) volunteers and employees are issued with the same type of clearance.</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>Section 20 of the WWC Act provides that there are only two outcomes to a WWCC application which are to either grant or refuse a clearance, irrespective of type of work or application, whether volunteer or employer. No conditional clearances are issued.</p>
<p>29. All state and territory governments should ensure that any person the</p>	<p>This recommendation is supported with the exception of the final part which</p>

Recommendation	NSW Government action / comment
<p>subject of an adverse WWCC decision can appeal to a body independent of the WWCC screening agency, but within the same jurisdiction, for a review of the decision, except persons who have been convicted of one of the following categories of offences:</p> <ul style="list-style-type: none"> • murder of a child • indecent or sexual assault of a child • child pornography-related offences • incest where the victim was a child <p>and</p> <p>a) received a sentence of full time custody for the conviction, such persons being permanently excluded from an appeal</p> <p>or</p> <p>b) by virtue of that conviction, the person is subject to an order that imposes any control on the person's conduct or movement, or excludes the person from working with children, such persons being excluded from an appeal for the duration of that order.</p> <p>Notwithstanding the above any person may bring an appeal in which they allege that offences have been mistakenly recorded as applying to that person.</p>	<p>recommends that any person may bring an appeal in which they allege that offences have been mistakenly recorded as applying to that person. Where a person alleges that a charge or conviction has been made in error, this should be addressed separately to the WWCC process.</p> <p>The WWCC framework in NSW provides appeal rights to the NSW Civil and Administrative Tribunal in relation to WWCC outcomes.</p> <p>Limiting appeal rights for certain individuals as specified in the proposed standard was considered by Cabinet in June 2015 and approved.</p> <p>The amendments were introduced by the <i>Child Protection Legislation Amendment Act 2015</i>, with the relevant provisions commencing on 2 November 2015. The amendments are summarised at the beginning of this document.</p> <p>It is noted that NSW has gone further than the Royal Commission's recommendation on limitation of appeal rights by restricting appeal rights for individuals convicted of murder, regardless of the victim's age.</p>
<p>30. Subject to the implementation of the standards set out in this report, all state and territory governments should amend their WWCC laws to enable WWCCs from other jurisdictions to be recognised and accepted.</p>	<p>This recommendation is being considered.</p> <p>NSW supports information sharing but not portability until or unless the schemes in other states and territories are consistent with NSW law.</p> <p>An amending Bill containing provisions which enable the Children's Guardian to recognise and accept WWCCs from interstate agencies is</p>

Recommendation	NSW Government action / comment
	<p>currently being finalised.</p> <p>Currently, recognition of interstate WWCCs is time limited to accommodate people who are only working for a limited time in NSW (cll 20(l)-(n) and 22B of the WWC Regulation).</p> <p>However, section 15(4)(k) of the WWC Act allows for information such as WWCC decisions from other jurisdictions to be considered as part of the risk assessment process.</p>
<p>31. Subject to the commencement of continuous monitoring of national criminal history records, state and territory governments should amend their WWCC laws to specify that:</p> <p>a) WWCCs are valid for five years</p> <p>b) employers and WWCC cardholders engaged in child-related work must inform the screening agency when a person commences or ceases being engaged in specific child-related work</p> <p>c) screening agencies are required to notify a person's employer of any change in the person's WWCC status.</p>	<p>Recommendations 31 a) and c) are supported. No changes are required as they are consistent with the existing NSW framework.</p> <p>Recommendation 31 b) will be considered as part of the statutory review of the WWC Act. Employers are required in NSW to verify an employee's WWC or APP number at the commencement of their employment, however, there is no requirement for an employer to inform the screening agency of an employee ceasing work unless there is an adverse finding where an employer is required to inform the OCG as to the steps taken to remove a person from child-related work. In NSW there are a range of regulatory schemes focused on child protection in the workplace such as NSW Ombudsman providing oversight for the reportable conduct scheme and sector specific licensing bodies (e.g. early education and child care centres etc.) and whilst this may be of benefit to States/ Territories who do not have these complementary schemes this has the potential to result in imposing an administrative burden on employers that would be an increase in "red tape" compliance with limited benefits to children.</p>
<p>32. All state and territory governments should grant screening agencies, or another suitable regulatory body, the statutory power to monitor compliance with WWCC laws</p>	<p>This recommendation is supported. No change is required as it is consistent with the existing NSW framework.</p> <p>The Children's Guardian also supports child safe policies as a necessary adjunct to the WWCC and compliance functions. The WWCC, while it is</p>

Recommendation	NSW Government action / comment
	effective in excluding known offenders from child-related work, cannot protect children from individuals who have no formal record or are yet to offend. Several WWC schemes, including in NSW, are complemented by child safe standards and the inclusion of a child safe scheme in national law would be desirable.
33. All state and territory governments should ensure their WWCC laws include powers to compel the production of relevant information for the purposes of compliance monitoring.	<p>This recommendation is supported. No changes are required as it is consistent with the existing NSW framework.</p> <p>Section 31 of the WWC Act which provides the Children's Guardian with powers to compel production of information from government agencies and to request information from other agencies.</p>
<p>34. The Commonwealth, state and territory governments should:</p> <p>a) through COAG, or a relevant ministerial council, adopt the standards and set a timeframe within which all jurisdictions must report back to COAG, or a relevant ministerial council, on implementation</p> <p>b) establish a process whereby changes to the standards or to state and territory schemes need to be agreed to by COAG, or a relevant ministerial council, and must be adopted across all jurisdictions.</p>	<p>This recommendation is being considered.</p> <p>Recommendation 34a) is being considered through CAFS-NOFS joint discussions as outlined above.</p> <p>Recommendation 34b) is not supported. Requiring any proposed change to be agreed by COAG or the relevant ministerial council would be a cumbersome approach to responding to jurisdictional needs.</p> <p>Since the new WWCC was introduced in NSW in June 2013, there have been numerous changes to directly respond to gaps and local issues and the proposed approach is considered to be inconsistent with allowing timely responses to these types of issues as well as transferring what are essentially state responsibilities to the Commonwealth.</p>
35. The Commonwealth, state and territory governments should provide an annual report to COAG, or a relevant ministerial council, for three years following the publication of this report, to be tabled in the parliaments of all nine jurisdictions, detailing their progress in implementing the recommendations in this report and achieving a nationally consistent approach to WWCCs.	<p>This recommendation is being considered.</p> <p>The Children's Guardian is required under s 187 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> to prepare annual reports of its operations and to furnish these to the Presiding Officer of each House of Parliament. This includes reporting on any recommendations for changes in</p>

Recommendation	NSW Government action / comment
	<p>the laws of the State, or for administrative action, that the Children's Guardian considers should be made as a result of the exercise of the functions of the Children's Guardian.</p> <p>While this would be the preferred mechanism for reporting on progress to achieving national consistency, NSW is not opposed to providing this information to the Commonwealth or a relevant ministerial council for similar reporting to occur.</p>
<p>36. COAG, or a relevant ministerial council, should ensure a review is made after three years of the publication of this report, of the state and territory governments' progress in achieving consistency across the WWCC schemes, with a view to assessing whether they have implemented the Royal Commission's recommendations.</p>	<p>This recommendation is supported.</p>

Questions 3-7: Redress and Civil Litigation Report

1. This section contains the response of the State of New South Wales to the Royal Commission's request seeking an outline as to:
 - “3 *The consideration the New South Wales Government has given to the Royal Commission's Report on redress and civil litigation.*
 - 4 *The steps, if any, the New South Wales Government has taken in relation to the recommendations concerning:*
 - a. *redress scheme structure (recommendations 26 to 33); and*
 - b. *redress scheme funding (recommendations 34 to 39).*
 - 5 *The steps, if any, the New South Wales Government and / or New South Wales Government-run institutions have taken in relation to the recommendations concerning:*
 - a. *direct personal response (recommendations 5 to 8); and*
 - b. *interim arrangements (recommendations 76 to 84).*
 - 6 *The steps, if any, the New South Wales Government has taken in relation to the recommendations concerning:*
 - a. *limitation periods (recommendations 85 to 88);*
 - b. *duty of institutions (recommendations 89 to 93); and*
 - c. *identifying a proper defendant (recommendations 94 and 95).*
 - 7 *The steps, if any, the New South Wales Government and / or New South Wales Government-run institutions have taken in relation to the recommendations concerning model litigant approaches (recommendations 96 to 99).”*

Overview of consideration by NSW Government of *Redress and Civil Litigation report*

2. The NSW Government has taken three major steps in response to the Royal Commission's recommendations by:
 - *Reforming limitation periods* – The NSW Government introduced the *Limitation Amendment (Child Abuse) Act 2016* to remove limitation periods in civil claims to allow survivors to bring claims regardless of the date of the alleged abuse. The Act came into effect on 17 March 2016.
 - *Reforming the approach by Government agencies to civil claims* – The NSW Government has implemented a new approach to responding to civil claims concerning child abuse, in accordance with *Guiding Principles for Civil Claims for Child Abuse* introduced in 2014. The *Guiding Principles* provide, amongst other things, that NSW Government agencies will finalise claims as quickly as possible and without requiring a formal Statement of Claim. The *Guiding Principles* seek to ensure a more caring and compassionate approach across NSW Government when dealing with civil claims for child abuse.
 - *Reforming model litigant approaches* – The NSW Government has recently

issued a Premier's Memorandum on the Model Litigant Policy for Civil Litigation, which incorporates the *Guiding Principles*, to assist in maintaining a model approach to civil claims (including but not limited to child sexual abuse claims) involving the State Government.

3. The Government is also in the process of:
 - Considering the Royal Commission's redress recommendations in the context of the Commonwealth Government's announcement to establish a national redress scheme for survivors of institutional child sexual abuse – NSW maintains its support for a national scheme including contributions from Commonwealth, state and territory governments and non-government organisations (**NGOs**); and
 - Preparing a consultation paper on the Royal Commission's recommendations relating to the 'proper defendant' and insurance – timing for the consultation will be considered in the context of any consultation undertaken to inform the design and establishment of a national redress scheme.

Response to recommendations concerning redress scheme structure and redress scheme funding

A national redress scheme

4. In March 2015, the NSW Government advised the following in response to the Royal Commission's Redress and Civil Litigation consultation paper:
 - That it is examining options for a redress scheme;
 - That it is open to discussing with other jurisdictions the potential for a national scheme, including contributions from Commonwealth, state and territory governments and NGOs;
 - That it acknowledges the potential benefits for survivors of a national scheme, including consistency of approach and less complexity for survivors; and
 - That it is committed to working with survivor groups in developing any redress scheme.
5. On 25 September 2015, following the release of the Royal Commission's Redress Report, State and Territory Attorney's-General wrote to the federal Attorney General asking for an indication whether the Commonwealth will establish and fund a national scheme.
6. In November 2015, the NSW Government announced its support for the establishment of a single, national redress scheme for survivors, as recommended by the Royal Commission. NSW considers a national scheme to be the best means to ensure the equal and fair treatment of survivors.
7. On 29 January 2016, the Commonwealth Government announced that it would lead the development of a 'national approach to redress' by requiring jurisdictions to commit to an agreed set of national principles and processes for the assessment and payment of redress to be applied to state-based schemes.
8. On 8 February 2016, the Commonwealth Attorney-General wrote to the NSW Attorney-General stating that *"the Australian Government would like to begin*

discussions with state and territory governments to develop a state and territory-based, nationally consistent approach to redress". Letters were also sent to other state and territory Attorneys-General.

9. Limited discussion about the establishment and operation of consistent redress schemes have occurred through the Law, Crime and Community Safety Council (LCCSC) consisting of Attorneys-General and Police Ministers from the Commonwealth, states and territories. No decisions were reached through LCCSC.
10. On 4 November 2016, the Commonwealth Government announced a national redress scheme for survivors of institutional child sexual abuse will be established which will be open to states, territories and NGOs to participate in.

A NSW redress scheme

11. Prior to the Commonwealth Government's announcement regarding the establishment of a national redress scheme, the NSW Government was actively considering its position regarding the establishment of a state-based redress scheme and associated funding.
12. To inform this work, the NSW Government engaged in preliminary consultations with the four NGOs believed to have the largest liability for redress: the Catholic Church (represented by the Truth Justice Healing Council), the Anglican Church (the Sydney Diocese and Anglicare Sydney), the Salvation Army (the Australia Eastern Territory) and the Uniting Church (the Synod of NSW & ACT). The main issues discussed in consultations with the four NGOs were:
 - The nature of existing redress schemes operated by the NGOs;
 - The need for consistency in the provision of redress to survivors;
 - The manner in which formal consultations with the NGOs should be conducted; and
 - The design of a redress scheme.
13. In addition, the NSW Government had held preliminary discussions at officer-level about what contributions the Commonwealth Government would be willing to make to a NSW state-based scheme, should one be established. This included in relation to:
 - Contributions towards 'funder of last resort': The Royal Commission estimated the total cost of last resort funding is \$613 million or some 15.3 per cent of the \$4.01 billion total cost of funding redress. Of the \$613 million, NSW's funder of last resort share is estimated to be \$237 million.
 - Enhanced Medicare entitlements: The Royal Commission recommended removing restrictions on the number of sessions available and expanding the range of therapies covered.
 - Tax levers: Introduce tax incentives and disincentives to encourage large charities and churches to participate in a redress scheme.
 - No impact on social security entitlements: Seek assurance that receipt of a redress payment would not adversely impact other government benefits or entitlements.

- Ongoing truth telling: Provide ongoing ‘truth telling’ sessions given the closing of registration for private hearings on 30 September 2017.
14. The NSW Government will work with the Commonwealth Government to better understand the principles and parameters of the national redress scheme which has now been announced and will continue to provide the Royal Commission with updates on developments related to NSW’s participation.

Response to recommendations concerning direct personal response and interim arrangements

Elements of redress

15. The NSW Government supports the Royal Commission’s recommendation that redress should include elements of direct personal response, counselling and psychological care and monetary payments. The NSW Government considers these elements essential to any future redress scheme.

Interim arrangements

16. In November 2015, the NSW Government announced interim measures as a first step in responding to the issues raised by the Royal Commission. The interim measures included:

- Unlimited access to free and confidential counselling for child victims of physical or sexual assault through the NSW Victims Support Scheme. Applying for counselling has been made as simple as possible. Applicants are only required to complete a two page application form to provide their details and a description of the incident which has led to counselling being sought. Approval then occurs within two working days.

The Victims Support Scheme has over 600 approved counsellors across NSW. Survivors are able to nominate a counsellor, or can ask for one to be allocated to them. A total of 4,156 counselling applications have been received by survivors of child abuse, in respect of abuse perpetrated on children under the age of 12 (2,561 survivors) and between the ages of 13 and 17 (1595 survivors).

- The establishment of an active place of recognition for victims of child sexual and physical abuse at Parramatta Girls Home, to acknowledge past wrongs and give victims the recognition they deserve. This initiative is described in the section of this response which addresses the NSW Government’s response to Case Study 7 (Parramatta Girls and Hay Institution) (see page 33). There will be ongoing consultation with survivors and advocacy groups to determine whether other places of recognition should be established.
- Doubling the resources allocated to the NSW Department of Family and Community Services for processing care leavers’ applications for their care records – the average time it took in 2015/16 for an application to be processed was less than one month compared to over six months before 2014.
- The introduction in November 2014 of *Guiding Principles* to guide the response of NSW Government agencies to civil claims made against them involving allegations of child sexual abuse (discussed further below).

Response to recommendations concerning limitation periods, duty of institutions and identifying a proper defendant

Limitation periods

17. In February 2016 the NSW Government introduced the *Limitation Amendment (Child Abuse) Act 2016 (LACA Act)* into NSW Parliament in order to remove limitation periods for civil child abuse claims. The LACA Act, which commenced on 17 March 2016, adopted all four of the Royal Commission's recommendations for limitation period reform.
18. The LACA Act amended the *Limitation Act 1969 (NSW)* to remove limitation periods for all actions for damages that relate to death or personal injury from child abuse, including actions against a perpetrator of the abuse or a negligent institution. Limitation periods were removed because of their disproportionate effect on victims of child abuse, who on average do not disclose their experiences, or act on them, until decades after the abuse occurs. As noted in the Royal Commission's report, in many cases child sexual abuse is disclosed a significant length of time after it occurred.
19. The LACA Act applies retrospectively, meaning there will be no limitation period for claims regardless of when the abuse occurred and applies to child abuse whether or not it occurred in an institution. The LACA Act also covers actions that are continued by a victim's estate after their death, as well as actions brought by the dependants of a deceased victim. It extends to wrongful death actions brought by the dependants of a deceased survivor under the *Compensation to Relatives Act 1897*.
20. The LACA Act defines child abuse as sexual abuse, serious physical abuse, or other abuse ('connected abuse') perpetrated in connection with sexual abuse or serious physical abuse. Where there is sexual or serious physical abuse of a child, the limitation periods no longer apply and it is open to the Court to consider any 'connected abuse', such as minor physical abuse and / or psychological abuse, whether or not the 'connected abuse' is perpetrated by the same person or by another person.
21. NSW is the only jurisdiction other than Victoria to have introduced a wide exception to limitation periods for child abuse claims. This broad approach recognises that children may experience multiple forms of abuse and enables the courts to consider the whole context of abuse when determining a claim.

Duty of institutions and identifying a proper defendant

22. The NSW Government is closely considering the Royal Commission's recommendations to increase the civil liability of institutions for child abuse, and to ensure that organisations are adequately insured and able to be sued in civil claims.
23. The NSW Government is proposing to consult on the issue with key stakeholders in the coming months. It is anticipated that this consultation will cover:
 - Civil liability recommendations, including whether a non-delegable duty or a reverse onus of proof should be considered.
 - Definition of child abuse, including whether the impact of non-sexual (physical and psychological) abuse should be included within the scope of any legislative reform.

- Extent of civil liability reform, including how close the association must be between an institution and the abuse in order to establish liability.
 - Deterrence, including consideration of the effectiveness of civil liability reform on individual deterrence.
 - Insurance, including the potential impact on the future liability of institutions and the affordability and availability of insurance, and thus their ability or willingness to provide services.
 - Potential impacts on services, including issues touching on the risk of providing child-related services and the potential for a reduction in services to children, including by those services who are particularly 'at risk'.
 - Trust law implications: The Royal Commission's 'proper defendant' recommendation is not restricted to statutory property trusts, so may have wide ranging implications for the law of private trusts.
24. Extensive consultation will be necessary due to the complexity of the issues, and the diverse interests of the stakeholder groups involved. It is expected that following the completion of consultation, the NSW Government will identify options for further consideration.

Response to recommendations concerning model litigant approaches

25. In November 2014, the NSW Government released the *Guiding Principles*.
26. All NSW Government agencies are required to comply with the *Guiding Principles* when responding to civil claims for child sexual abuse. The *Guiding Principles* seek to make litigation a less traumatic experience for victims and ensure a compassionate and consistent approach across NSW Government when dealing with civil claims for child abuse. The *Guiding Principles* include that all claims will be finalised as quickly as possible, with the majority of claims being resolved within two years. The *Guiding Principles* require agencies to assist claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.
27. The *Guiding Principles* are made available to claimants and their legal representatives and are published on the NSW Department of Justice website.
28. On 4 February 2016, the NSW Government approved amendments to the *Guiding Principles* responding to civil claims for child sexual abuse in a Premier's Memorandum to (1) cover claims for sexual and/or serious physical abuse of a child and connected abuse and (2) require government agencies to assist claimants in identifying the proper defendant, where possible.
29. On 30 June 2016, the NSW Government issued a Premier's Memorandum to incorporate the *Guiding Principles* into the NSW Government Model Litigant Policy for Civil Litigation, which was introduced in 1997 to assist in maintaining a model approach to civil claims involving the State Government (*M2016-03-Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse*).
30. A copy of the Premier's Memorandum, including the *Guiding Principles*, is attached at Attachment A.

Question 8: Response to Case Studies involving NSW

Case Study 7 - Parramatta Girls and Hay Institution

1. This section contains the response of the State of NSW to the Royal Commission's request seeking an outline of the steps, if any, the NSW Government has taken in response to evidence given in the Royal Commission's public hearings and the findings of the case study report concerning Case Study 7: Parramatta Girls and Hay Institution.
2. This case study enabled the State of NSW to bear witness to the experiences of women who were sexually abused as children at the Parramatta Training School for Girls and the Institution for Girls in Hay. As part of this case study, the Royal Commission considered the out-of-home care (OOHC) system in NSW and the redress schemes available for victims of child sexual abuse.

Changes since the relevant period

3. There have been extensive changes in child protection policies and legislation in the NSW since the period of relevance to this case study, namely, 1950 to 1974.
4. Case Study 7 provided the opportunity for the NSW Government to reflect on an important part of the history of the State's institutional care, and to consider whether further policy reforms were needed to strengthen child protection in this area.
5. Several policy reforms have been introduced as a result of, or since, Case Study 7, as outlined from paragraph 19 below. However, first, the State wishes to recall, in broad outline, the significant changes made to the child protection policy regime in this State since the incidents that were the subject of Case Study 7 occurred.

Policy and legislative changes since 1974

6. As noted by the Commissioners in the final report for Case Study 7, OOHC in NSW is now very different from the system that was in place when Parramatta Girls and the Hay Institution were open. Underpinning these changes is the recognition that it is fundamental that children and young people receive the care and protection they need for their safety, welfare and well-being, and that they should live in a safe and nurturing environment that is free from violence and exploitation.
7. Policy changes introduced since 1974 have included the introduction of requirements for accreditation and oversight of OOHC providers, mandatory reporting obligations and the reportable conduct scheme.
8. NSW closed the last of its large residential care facilities in the early 1990s and has shifted to home-based care. This means that, wherever possible, children and young people in care are placed in the care of a person, couple or family who can provide them with a safe and nurturing family setting – as opposed to an institutional setting.
9. A placement option known as 'residential care' continues to exist, however current residential care practice is different from the large institutional care facilities that

existing during the twentieth century. Residential care is now a placement option for older children and young people with medium to high support needs. Residential care units are small community-based residences for up to five young people supported by rostered residential care staff, and aim to create a home-like environment. In principle residential care is reserved for children and young people aged 12 years and over, however placement of younger children can be approved in some circumstances, for example in order to keep siblings together.

10. Residential care aims to stabilise behaviour and address the complex needs of the child or young person so they can move on to other care types, restoration or independent living. This level of care is provided for as long as required by the child or young person. As at 30 June 2016, there were 681 children and young people in residential care in NSW.
11. Statutory OOHC providers have been required since 2003 to meet standards for accreditation. The current NSW Child Safe Standards for Permanent Care 2015, Standard 3 relates specifically to child protection. The assessment criteria for compliance by a “designated agency” (as defined in the legislation) with the standard is as follows:
 - The agency is aware of its responsibilities for the protection of children and young people in its care;
 - The need to protect children and young people from abuse and harm underpins all areas of the agency's work with children and young people, including safe care environments and the management of carers and staff;
 - The agency's approach to child protection is consistent with current legislation and relevant government requirements;
 - Staff and carers are made aware of their responsibilities and reporting obligations;
 - Children and young people receive support when making allegations;
 - Allegations are reported, recorded and managed within the required timeframes;
 - Carers and staff are trained and resourced to support children and young people to feel safe and to develop a sense of security.
12. The NSW Government recognises that in order for children and young people to become safe, their disclosures must be heard. The Department of Family and Community Services (**FACS**) caseworkers have an important role in identifying whether sexual abuse has occurred where a report of sexual abuse has been made.
13. In 2012 the Care and Protection Practice Framework was developed to guide the work of FACS. It places the voice and experience of children at the centre of FACS' work. FACS caseworkers are trained to ask children about their experiences and to listen to them. The framework is underpinned by the knowledge that the best way to keep children safe is through the relationships they and their caregivers form with people who care and listen. As stated by Kate Alexander of FACS in her evidence to the

Royal Commission, “children are now more likely to be listened to when they make disclosures of abuse now than appears to have been the case in the past.”¹

14. Since 1994, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (formerly known as the *Community Services (Complaints, Appeals and Monitoring) Act 1993*) has provided Official Community Visitors with broad powers to visit children and young people in residential care. Official Community Visitors are appointed by the Ombudsman. They check on the child or young person’s wellbeing and whether there are safe practices in place for them in the residential facility. There is also now a system for independent visits to juvenile justice centres in NSW by Official Visitors who are community members appointed by the Minister for Juvenile Justice. Official Visitors conduct visits to juvenile justice centres every two weeks and detainees are able to request, without notice, to see an Official Visitor at any time during a visit (with or without anonymity). An Official Visitor can report to the Minister at any time on matters concerning the welfare of detainees. Oversight of Juvenile Justice centres is also provided by the NSW Ombudsman and the Inspector of Custodial Services.
15. Significant legislative and policy changes have been implemented in the area of mandatory reporting and reportable conduct. Pursuant to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**the Care Act**) workers within OOHC in NSW, including employees working in residential services for children and young people, who meet the criteria in section 27 of the Care Act are ‘mandatory reporters’. The Care Act provides that if a mandatory reporter has reasonable grounds to suspect that a child or young person is, or that a class of children or young people are, at risk of significant harm, they must make a report to the Secretary of FACS. In accordance with this legislative requirement together with relevant policies, these workers are obliged to make such a report to FACS via the Child Protection Helpline.
16. All employees working in residential services for children and young people are required to have completed working with children checks, in compliance with the *Child Protection (Working with Children) Act 2012*.
17. Since 1999, pursuant to Part 3A of the *Ombudsman Act 1974*, the Ombudsman has had oversight of “reportable conduct” which includes allegations of abuse made against FACS employees and other individuals involved in child-related work (including authorised carers in-OOHC).
18. The civil redress available for victims of child sexual abuse in NSW has been, and continues to be, the subject of reform in NSW. Current developments in this area are detailed separately in the section dealing with NSW’s response to the Royal Commission’s Redress and Civil Litigation Report, released on 14 September 2015. A significant reform has been the removal of time limits for victims to claim compensation through the courts for damages relating to death or personal injury resulting from child abuse.

¹ Statement of Kate Alexander, 25 February 2014 – Paragraph 112

19. Further detail of reform in the area of OOHC services in NSW is provided in the section of this response relating to Case Study 24: Out-of-Home Care, and in the response of the NSW Government dated 8 May 2016 to the Royal Commission's consultation paper titled *Institutional Responses to Child Sexual Abuse in Out-of-Home Care*.

Reforms since Case Study 7

20. The reforms introduced since Case Study 7 are summarised below.

Management of Civil Claims

21. The NSW Government has introduced policies and procedures which aim to create an effective and efficient system for the management of civil abuse claims. The approach focuses on ensuring that child sexual abuse claims are managed sensitively and consistently and that appropriate information about services and supports is made available to victims of abuse. These policies and procedures are outlined in the section of this response relating to Case Study 19: Bethcar Children's Home.
22. The NSW Government has also taken specific steps, as detailed below, in relation to claims made by former residents of the Parramatta Girls Training School (**PGTS**).
23. The NSW Government acknowledges and accepts that sexual, physical and psychological abuse occurred at PGTS and the Institution for Girls in Hay.
24. Claims in relation to abuse suffered at PGTS and the Hay Institution are made to FACS. FACS has as at 15 September 2016 received a total of 104 claims in relation to abuse suffered at PGTS and Hay.
25. FACS has implemented procedures, developed precedents and engaged external legal practitioners to advise on liability and quantum of claims made by the former residents of the PGTS who have suffered abuse. FACS' internal legal officers are trained in the management and resolution of sexual abuse claims and regularly communicate with and instruct FACS' external legal practitioners on compliance with the applicable policies and procedures.
26. Upon receipt of a new claim against FACS, the General Counsel sends a letter of acknowledgment to the claimant's solicitor that provides information and contact details for free counselling services for the claimant. Counselling is made available to all claimants through Victims Services. In some matters FACS has agreed to reimburse the claimant for counselling already received. It is not uncommon for a claimant to attend a number of counsellors until they find one they are comfortable with to talk about the abuse they have suffered. FACS does not require a further expert report when a report is already available.
27. The letter of acknowledgment to the claimant's solicitor confirms FACS' adherence to NSW's *Model Litigant Policy* and the *Guiding Principles*. It advises claimants of the obligation upon FACS to report to the NSW Police any serious indictable offence. The letter also requests information as to whether the abuse has been reported and, if so, access to any information or documents that relate to the matter.

28. FACS assesses claims on a case by case basis. Where FACS identifies or is informed that a claimant is ill or elderly, its policy is to seek to expedite the settlement process. Of the 104 claims of abuse suffered at PGTS and at Hay received by FACS, a total of 25 claims have been successfully resolved without proceeding to litigation. The claimants received monetary compensation and an apology delivered either orally or in writing at each settlement conference/mediation.
29. In respect of the 25 claims that have resolved, personalised apologies were delivered to each claimant by a senior representative of FACS (in most cases a Deputy Secretary). FACS has received consistent feedback from claimants and their solicitors that the apologies are comprehensive, sincere, thoughtful and greatly appreciated. Feedback has also been received that the claimants are appreciative that senior officers of FACS have taken the time to attend the mediations and deliver these apologies.
30. Of the claims resolved by all NSW State agencies in the 2015-16 financial year, 93 per cent were resolved within two years, as required by the *Guiding Principles*.

Parramatta Girls' Home Memorial

31. Following Case Study 7, in November 2014 the NSW Minister for Family and Community Services and the NSW Attorney General announced the creation of an active place of recognition (or memorial) to pay tribute to former residents of PGTS, particularly those women who were abused as children during their time in the PGTS and have suffered lasting anguish from their experiences.
32. The wishes of former residents have guided the creation of the memorial. FACS engaged independent consultants to design and implement a consultation process aimed to provide an inclusive and sensitive engagement program that would allow all stakeholders to be involved. The consultation process was facilitated independently of FACS, to allow former residents to engage directly with consultants and personally contribute to the creation of the memorial.
33. A series of four discussion groups and four 'drop-in' days were held in December 2014 and January 2015. These consultations were designed to provide an opportunity for participants to consider and share their ideas about how memories and experiences from PGTS could be represented in a memorial.
34. Importantly, former residents unable to or electing not to come along to the discussion groups or 'drop-in' sessions had the opportunity to have their say by telephone, email or mail. A dedicated phone number and email address was established and this was supported by a regular newsletter and webpage which kept former residents updated on the memorial.
35. During the consultation process, 16 former residents attended one or more of the group discussions, 13 former residents took the opportunity to share their ideas and thoughts in one-on-one discussions during the drop-in sessions, and 52 former residents made contact in relation to the memorial and future use of the site via the dedicated email address or 1800 telephone number.

36. In response to feedback asking for the opportunity to visit the site and buildings, FACS arranged a site visit on 6 February 2015. The main purpose of the visit was to provide former residents and their families and friends an opportunity to visit the site and the buildings. During the visit there were also informal opportunities to share ideas about a memorial and future use of the site. Around 60 women and their families and friends attended.
37. Themes and messages that emerged from the consultations were recognition, trust, hope, healing, dignity, pride, respect, courage, strength, resilience, survival and lost childhood. Importantly, it was felt that the memorial must send the message 'never again'.
38. To ensure a memorial of high artistic and interpretive merit, the NSW Government undertook an open procurement process to select an appropriate artist/designer to design, build and install the memorial. This began with the opportunity for artists / designers to submit an expression of interest (EOI) in March 2016.
39. A number of EOIs were received. FACS convened a Memorial Advisory Panel who reviewed all the EOIs and provided a shortlist of feasible memorial proposals and tenderers who were selected to consult and collaborate with the former residents of PGTS.
40. The Memorial Advisory Panel comprises representatives who can review the designs for their artistic merit, technical expertise, feasibility, alignment with budget and, most importantly, interpretation of the themes outlined by former residents during consultations.
41. The consultation and collaboration stage provided the opportunity for tenderers to further develop their designs by collaborating with the former residents of PGTS. As part of this stage, a workshop and site visit was held on 17 June 2016. This was attended by the tenderers and around 40 former residents and their families and friends. The workshop provided the opportunity for former residents to talk about their experiences with tenderers and provide feedback on their designs.
42. Concurrently with the workshop, former residents were invited to complete a questionnaire on the various proposals. Feedback from the workshop and questionnaires was consolidated into a written report prepared by the facilitators.
43. Those tendering will present their final design proposals to the Memorial Advisory Panel in November 2016. Following this, the Memorial Advisory Panel will make a final recommendation on a tenderer and design to the Minister for Family and Community Services. A survey completed by former residents will form part of the assessment process.
44. The memorial's relevance to former residents is paramount. However, it is likely that other people whose lives have been challenged by similar experiences will also visit the memorial. As a new community emerges following the redevelopment of North Parramatta, the memorial will hold an important message for new audiences.

45. The announcement of a final design is anticipated to be made in early 2017 (subject to the deliberations and recommendation of the Advisory Panel), with the installation to follow in 2017 or early 2018.

Case Study 19 - Bethcar Children's Home

1. This section contains the response of the State of NSW to the Royal Commission's request seeking an outline of the steps, if any, the NSW Government has taken in response to evidence given in the Royal Commission's public hearings and the findings of the case study report concerning Case Study 19: Bethcar Children's Home.
2. As part of this case study, the Royal Commission considered the experiences of former residents of Bethcar Children's Home (**Bethcar**), the monitoring and control of those residents and the operations at Bethcar. The Royal Commission also considered the conduct of civil proceedings brought by 15 former residents of Bethcar against the State of NSW between 2008 and 2013, as well as the applications made by former residents of Bethcar for victims' compensation.

Policy changes since the relevant period

3. There have been significant changes in child protection policy and legislation in this State since the period in which children were abused at Bethcar, namely, between about 1974 and 1984. These changes have included requirements for oversight and accreditation of out-of-home care (**OOHC**) providers, mandatory child protection reporting obligations, the reportable conduct scheme, mechanisms for the sharing of information between State agencies and reforms to civil redress.
4. Developments in the area of OOHC in NSW are outlined below in response to Case Study 24: Out-of-Home-Care, and the response dated 2 May 2016 of the NSW Government to the Royal Commission's consultation paper titled *Institutional Responses to Child Sexual Abuse in Out-of-home care*.
5. The current status of reforms in NSW in relation to the civil redress for victims of child sexual abuse is detailed separately in the State's response to the Royal Commission's Redress and Civil Litigation Report.
6. Other significant changes are summarised in the section of this response relating to Case Study 7: Parramatta Girls and Hay Institution.
7. As noted in that section, all employees working in residential services for children are required to have working with children checks, in compliance with the *Child Protection (Working with Children) Act 2012*.
8. In 2000, when the Working With Children Check (**WWCC**) scheme was introduced, it provided for probity checking. In 2013, the scheme was strengthened by the introduction of the *Child Protection (Working with Children) Act 2012* (**the WWC Act**). This legislation affords powers to the Children's Guardian in relation to the exchange, collection and use of information about people employed in child-related work or those intending to undertake child-related work. It expanded the scope of persons required to have a WWCC, such that child-related volunteers, paid workers and self-employed people are subject to the same WWCC requirements. This topic is explored in further detail in the section of this document outlining the State's response to the Royal Commission's Working with Children Checks Report.

FACS Funding Arrangements

9. In addition to the above legislative requirements imposed on residential care service providers, the Department of Family and Community Services (**FACS**) may take action under its funding arrangements with non-government residential care service providers which contain service delivery terms and conditions.
10. Those terms and conditions include requirements for service providers to adhere to all applicable laws and accreditation requirements and all relevant professional ethics, principles and standards.
11. Actions taken in line with these contracts include but are not limited to:

Auditing:

- (a) FACS is entitled to audit the service provider's compliance with the funding contract.

Performance reporting and monitoring

- (b) The service provider is required to meet or exceed specified performance measures and to meet or exceed certain specified services.
- (c) Service providers are required to collect and provide information relating to performance, the delivery of services and in accordance with data collection requirements.
- (d) Special Conditions for residential care service providers enable FACS to access a range of existing data and information to assess the current and historical performance of OOHC funded services.
- (e) Agencies funded to provide OOHC residential care services agree to undertake National Police Checks (**NPCs**) of their existing and new staff, any contractors and volunteers during the contract period and to follow up with appropriate actions. Agencies agree that failure to undertake NPCs and appropriate follow up action will be considered a breach of their contractual funding arrangements.
- (f) Service Providers are required to submit financial accountability documents to FACS on an annual basis.
- (g) FACS has a Contract Governance Framework to monitor non-government organisations (**NGOs**) compliance and performance for the programs they are funded to deliver.

Risk assessment

- (h) FACS uses a risk assessment tool for identifying service provider risks and performance issues in the areas of governance, financial management and service delivery.

- (i) Any risks are analysed to determine the severity of the risk and the likely impact on the provider's ability to meet their contracted requirements. Risk treatment is dependent upon the outcome of the FACS risk assessment

Objecting to personnel employed

- (j) FACS may object to any personnel employed by the service provider where the personnel has engaged in misconduct or cannot perform the inherent requirements of the services.
- (k) Personnel engaged must be properly authorised, accredited, trained and experienced to provide services.
- (l) Misconduct includes criminal and other behaviour that would see a person being barred from being able to work with children.

Compliance monitoring including with accreditation requirements

- (m) FACS is placing greater emphasis at both the central and local (District) levels on monitoring NGO performance across the OOHC sector.
- (n) Each OOHC NGO must be accredited as a designated agency by the Office of the Children's Guardian (**OCG**) against the NSW Child Safe Standards for Permanent Care (November 2015) to receive funding. These standards describe what is required to provide quality care to children and young people in OOHC and adoption. Should an organisation be non-compliant with the NSW Standards, the OCG requires it to show cause and take action to address any issues. Ongoing non-compliance would result in removal of accreditation, FACS would be advised and steps taken to terminate funding.
- (o) In addition, FACS is continuing to strengthen its relationships with the OCG and NSW Ombudsman in relation to the exchange of information about accreditation, as well as contract management and service delivery issues. FACS has a Memorandum of Understanding with the OCG under which the OCG provides information to FACS in relation to the accreditation of service providers.

Inspection of premises and records

- (p) Where FACS holds serious concerns about the operation of a service, the funding contract allows FACS to attend any premises where the service provider performs program activities to inspect the operation of the program and records and documents.

Termination of the Deed

- (q) FACS may terminate the funding deed if it is breached by the service provider and is not able to be remedied.

Information sharing

12. Under the WWC Act, FACS must notify the OCG of the name and particulars of a person who has been found by FACS to have engaged in sexual misconduct committed against, with or in the presence of, a child, including grooming a child and / or any serious physical assault of a child (section 35). The NSW Ombudsman may also disclose information to the OCG about an employee of FACS that the Ombudsman believes may cause that employee to be a disqualified person under the WWC Act, or to be subject to an assessment requirement under that Act (s. 25DA *Ombudsman Act*).
13. Where FACS substantiates allegations of child sexual abuse against a person who is required to have a WWCC (because that person is or intends to be in a child related role) FACS discloses this information to the OCG. This information is provided under Chapter 16A of the Care Act, which facilitates the exchange of information between agencies that have responsibilities relating to the safety, welfare or well-being of children and young persons (including FACS, the NSW Police Force, a public health organisation, a Public Service agency or public authority).

JIRT

14. The Joint Investigation Response Team (**JIRT**) provides for a timely, coordinated and comprehensive response by the partner agencies (being NSW Police Force, FACS and NSW Health) to children and young people who have been subjected to sexual abuse, serious physical abuse and / or serious neglect (where the abuse constitutes a criminal offence). Allegations of child sexual abuse are referred through the Child Protection Helpline for investigation by JIRT.
15. Actions that may be taken by JIRT to protect a child from harm include (but are not limited to):
 - investigation leading to criminal charges against the alleged perpetrator.
 - referral to early intervention and prevention programs, for example, Brighter Futures and Intensive Family Support Services.
 - casework support including development of safety plans with families.
 - applying for an apprehended violence order (**AVO**), where appropriate, to protect a person against threats and acts of violence, non-physical abuse or damage or threatened damage to property. An AVO is a less intrusive option for intervention in protecting a child or young person. In a case where there is an immediate danger of abuse, an AVO can be used against a person associated with causing harm requiring them to stop certain behaviours and / or to leave the relevant premises.
 - applying to the Children's Court for an emergency care and protection order in situations where there is an urgent need to protect a child or young person who is at risk of serious harm (section 46 Care Act).

16. In 2014, the JIRT Local Contact Point Protocol 2014 (**LCP Protocol**) was implemented in response to issues arising in Case Study 2 of the Royal Commission (YMCA NSW's response to the conduct of Jonathon Lord).
17. The aim of the LCP Protocol is to outline a process for the dissemination of information where allegations are made in an institutional setting. The LCP Protocol may be activated in matters where JIRT is involved.
18. The LCP Protocol allows for appropriate communication with parents and carers of children in the institutional setting in which allegations are made. The LCP Protocol has been activated 15 times across NSW since its introduction.
19. JIRT investigations that are finalised or discontinued are referred to the appropriate FACS Community Services Centres for appropriate follow-up and ongoing support.

Further changes since Case Study 19

Management of civil claims

20. This case study shed important light upon the history of Bethcar and the limitations within the existing civil litigation process in providing appropriate redress for victims of historical child sexual abuse committed in an institutional context. The case study also illuminated deficiencies with particular practices and the State's conduct of the civil proceedings concerning claims made by former residents. The NSW Government acknowledged at the conclusion of this case study that it could be more effective in how it deals with civil claims relating to child sexual abuse, and it informed the Royal Commission that it had developed a number of initiatives to better support victims of child sexual abuse who choose to bring a claim against the State.
21. Prior to the release of the Royal Commission's findings in this case study, the NSW Government had introduced changes as a result of lessons learned during the Case Study. Relevant policy reforms concerning the management of civil claims in NSW are summarised further below.
22. NSW Government policies (and procedures applied within Government agencies) have created a systematic approach for the management of civil abuse claims. The approach focuses on ensuring that child sexual abuse claims are managed sensitively and consistently and that appropriate information about services and supports is made available to victims of abuse.
23. As referred to earlier in this response, on 3 November 2014 the State introduced new *Guiding Principles for Government Agencies Responding to Civil Claims for Child Sexual Abuse*, (***the Guiding Principles***) which apply to existing and new claims. The *Guiding Principles* aim to make litigation less traumatic for victims and to ensure a compassionate and consistent approach across NSW Government agencies when dealing with civil claims for child sex abuse. They include new measures to improve oversight and accountability for how claims are handled by NSW Government agencies, increased training and support for Government lawyers managing such claims, improved access to records and provision of information to claimants about services.

24. The *Guiding Principles* were subsequently amended to reflect the changes introduced by the *Limitations Amendment (Child Abuse) Act 2016 (NSW)* (assented to on 17 March 2016). The *Guiding Principles* were amended to:
- include an expanded definition of “child abuse”, to cover claims for both sexual abuse and/or serious physical abuse of a child or young person (under 18 years of age) and other abuse that is connected to the sexual or serious physical abuse;
 - include an additional principle (Principle 19) that agencies will provide assistance, where possible, to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified. By way of example, there have been two occasions on which FACS has made its own enquiries with other agencies as to who should respond to a claim of child sexual abuse. On each of these occasions it was determined that another agency was the proper defendant and the claimant was informed that the claim had been transferred to the other agency, with details provided to the claimant’s representative of the appropriate officer to contact at the other agency; and
 - reflect the change in legislation by which the time limit was removed for victims to claim compensation for damages relating to death or personal injury resulting from child abuse. This means that any person who suffered sexual or serious physical abuse when they were under the age of 18 years can claim compensation, regardless of how long ago the abuse occurred, or whether it occurred in an institution or domestic setting. This reform is detailed further in the State’s response to the Royal Commission’s civil redress report.
25. On 1 July 2016 Premier’s Memorandum 2016-03 was released which sets out the updated *Model Litigation Policy for Civil Litigation* (initially released on 8 July 2008). The *Model Litigation Policy* provides principles for maintaining proper standards in litigation and the provision of legal services in NSW, and incorporating the *Guiding Principles*.
26. Initiatives have been introduced by a number of NSW Government agencies to implement the *Guiding Principles* and learnings arising from Case Study 19. This includes, but is not limited to, initiatives by the Crown Solicitor’s Office (**CSO**) and FACS. The initiatives of these two agencies are summarised below.

Response of the CSO to Bethcar

27. During the hearing of Case Study 19, the CSO recognised the need for improvement in the approach taken in historical child sexual abuse claims. A number of measures have been implemented by the CSO, including internal guidelines which clarify and strengthen supervision arrangements for legal work, more comprehensive guidelines on the application of model litigation obligations in the CSO, and ensuring child abuse civil damages claims are only conducted by senior solicitors in the CSO.

Supervision

28. Following Case Study 19, supervision arrangements were strengthened including through updated guidelines which make detailed provision for supervising solicitors and others involved in conducting a client's matter on behalf of the Crown Solicitor. All new matters are reviewed by team leaders and are assigned to a solicitor and a supervising solicitor of an appropriate grade. The CSO's supervision guidelines include requirements for regular file reviews by supervisors and for key documents and advices (including correspondence containing legal advice or strategy) to be approved by senior officers. Supervisors are to work with solicitors to enable advices to be completed within the required timeframe of within 21 days of receipt of instructions, unless the client indicates otherwise.
29. On 1 September 2016, the CSO's new Divisional Structure commenced, which was developed to create a more effective management structure for legal roles. Its aims include to promote greater collaboration and to increase the CSO's capacity to efficiently run matters and to identify and minimise risk in legal matters in which the Crown Solicitor is engaged.
30. The new Divisional Structure created four new legal Divisions, including the Civil Law Division, headed by an Assistant Crown Solicitor. Three specialist Legal Practice Groups (including two Torts Legal Practice Groups) fall within the Civil Law Division, each headed by a Director who leads and manages the Practice Group. The new Divisional Structure is anticipated to enhance the CSO's ability to provide for consistency in dealing with claims, including civil claims for child sexual abuse, and to provide an effective oversight structure to conduct matters in accordance with whole of government policies.

Guidelines and training

31. Since the conclusion of Case Study 19, CSO solicitors working on child sexual abuse claims have attended compulsory training on their model litigant obligations, and on more sensitive and appropriate communication with indigenous witnesses and parties in litigation. Solicitors are required to conduct matters with empathy for claimants. The CSO is making enquiries with a well-regarded external training provider to supplement the current internal training. SICorp now run annual *Guiding Principles* training on behalf of the NSW Government for legal firms handling child abuse claims, including the CSO. The next training forum is scheduled for 28 November 2016.
32. CSO solicitors are equipped with an online resource providing detailed guidance on the application of the Model Litigant Policy and the role of solicitors in assisting and facilitating agencies in complying with their model litigant obligations. CSO solicitors are reminded through this resource that, where a matter relates to a child abuse claim, the *Guiding Principles* apply in addition to the model litigant obligations.
33. Upon accepting instructions in a new matter, CSO solicitors are required to inform clients of the application of the Model Litigant Policy and *Guiding Principles* in relevant matters, and the need to ensure ongoing compliance. This requirement is embedded in the precedent letter to clients accepting instructions in a new matter.

34. CSO solicitors are required to monitor compliance with the Model Litigant Policy in matters being conducted by solicitors on an ongoing basis. This includes the completion of a Model Litigant checklist at appropriate stages of matters, together with regular consultation with supervisors in relation to compliance, and a requirement for any identified issues with compliance being elevated to the Practice Group leader.
35. CSO solicitors are required to refer barristers briefed by the Crown Solicitor to the Model Litigant Policy and, in matters involving child sexual abuse allegations, the *Guiding Principles*, at the time of engagement. Specifically, solicitors must alert barristers as part of their observations to counsel to the requirement that the State and its agencies must act as a model litigant and must comply with government policies and guidelines (including the *Guiding Principles*) in that regard.
36. In seeking particulars in relation to claims, CSO solicitors are required to advise of the availability of counselling services, and of Government's commitment to resolving the claim and taking all necessary steps to facilitate that process in accordance with the *Guiding Principles*. Attached is an "example" letter seeking particulars, and a chart showing a decline since 2015 in the average months from receipt of instructions by the Crown Solicitor to settlement in child abuse matters (**Attachment B**).
37. The CSO Code of Conduct, which consists of the Code of Ethics and Conduct for NSW Government sector employees together with a supplementary code implemented by the CSO, was implemented and circulated to all staff on 2 March 2016. The Code of Conduct specifies the role of CSO solicitors in the application of the Model Litigant Policy and refers solicitors to relevant resources. Following its implementation, all staff were required to familiarise themselves with the Code of Conduct and complete an acknowledgement of completion together with an assessment concerning its contents.
38. The CSO continues to be committed to working with its NSW Government clients, guided by the policy framework introduced by Government during and following the hearing of Case Study 19, in an effort to ensure that child sexual abuse matters are conducted with greater sensitivity towards claimant parties.

FACS

39. FACS' objective is to resolve each claim (whether litigated or not) sensitively and compassionately and in accordance with the spirit and terms of the *Guiding Principles* and the Model Litigant Policy.
40. On 3 November 2014, the Secretary of FACS approved the *FACS Policy Directive for Management of Legal Matters (FACS Policy Directive)*, which promotes compliance with NSW Government policies concerning the management of legal matters, including the *Guiding Principles*.
41. The *FACS Policy Directive* provides instruction, guidance and support to FACS staff (including legal practitioners) to help them discharge their obligations to manage legal issues in an efficient, effective, professional and ethical manner. This includes guidance on the interpretation and implementation of the Model Litigant Policy.
42. In particular, the *FACS Policy Directive*:

- Provides that the Model Litigant Policy will be observed and that FACS should not argue limitation periods or technical defences (subject to certain specified exceptions).
 - Provides that FACS should settle matters where it would be quick, just and in the public interest to do so.
 - Sets clear time lines that are to be followed when responding to a claim.
 - Provides that the settlement process will be transparent.
 - Provides better support for victims to ensure that victims are treated with dignity and respect and are provided with access to appropriate information and services.
43. The *FACS Policy Directive (Attachment C)* provides that FACS will provide regular training to its legal services officers in the model litigant obligations through weekly meetings and the induction program for legal services officers.

Mediation

44. The *FACS Policy Directive* provides that claimants should be treated fairly and ethically and FACS should facilitate negotiations to reach an early settlement where it is quick, just and in the public interest to do so.
45. In accordance with this directive, FACS considers mediation and other forms of alternative dispute resolution in all claims as early as possible. Acknowledging that the mediation experience can be confronting for claimants, FACS has implemented procedures to ensure mediation is concluded as quickly as possible.
46. This includes:
- making reasonable opening offers;
 - not delaying the making of counter offers;
 - increasing offers in meaningful increments to minimise unnecessary “back and forth”.
47. If the negotiations become too stressful for the claimant, the practice of FACS is to suggest that the mediation be suspended until the claimant feels they are able to continue. Depending on the circumstances, this may mean that the mediation is resumed within a number of hours or it may not be resumed for a number of days or weeks.
48. Importantly FACS ensures that the mediation occurs at a location and venue that is accessible and causes minimal discomfort to the claimant, which is generally the venue suggested by the claimant’s representative.
49. Only those people whose presence is strictly necessary attend mediations on behalf of FACS. Where possible requests made by claimants are respected.

Apologies

50. FACS has revised its apology and mediation process since the conclusion of Case Study 19.
51. In accordance with the Model Litigant Policy, the Secretary or delegate will, on behalf of FACS, personally offer an apology to the claimant. To date, a number of senior officers within FACS have personally delivered these apologies on behalf of FACS and the State.
52. FACS offers an apology in all of its claims. Where an offer is not accepted, this position is respected.
53. Apologies are usually provided to claimants as part of the settlement process. The apologies are personalised and tailored to the individual wishes of the claimant. To date, the majority of claimants have requested that the apology be delivered orally and in writing.
54. FACS has received consistent feedback from claimants and their solicitors that:
 - the apologies are comprehensive, sincere, thoughtful and greatly appreciated; and
 - they are grateful that senior officers of the department have taken the time to attend the mediations and deliver these apologies.

Case Management

55. FACS appointed a General Counsel in May 2015 who is accountable to the Secretary for the management of all legal matters, reporting administratively through the Deputy Secretary, Corporate Services. The General Counsel is supported by the General Litigation and Dispute Resolution Practice Group, responsible for managing and resolving all civil claims against FACS. A Director, General Litigation and Dispute Resolution has been appointed to lead and manage the Practice Group and is responsible for the day to day monitoring, management and resolution of civil claims.
56. The Office of the General Counsel leads the in-house legal practice, with the aim of enhancing the transparency and consistency of the processes for providing instructions in civil litigation matters, to assist FACS to meet its responsibility for managing legal claims in accordance with whole of Government policies.
57. The in-house legal structure includes a system of supervision that includes:
 - a clearly defined legal officer management structure which designates the responsibilities of individuals and their accountability;
 - a designated supervisor or practice leader for each area of work undertaken by the practice who has appropriate experience of the work supervised and is competent to guide and assist other legal officers;
 - a process which provides for the active supervision of all lawyers (including permanent and temporary lawyers or lawyers on a contract) and mechanisms for checking on the triage of legal matters.

58. In light of the ever-increasing volume of claims and with the aim of ensuring that claims are managed effectively, efficiently, consistently and sensitively, FACS' General Counsel has implemented a systematic approach to the management and reporting of child sexual abuse claims which includes:
- requiring all claims to be notified to the Office of the General Counsel;
 - the implementation of various legal practices and procedures to be adhered to throughout the conduct of legal matters;
 - the development of precedents specifically for the management of these matters;
 - training lawyers (in-house and external) in both the procedures and the use of precedents;
 - regularly reporting to the Secretary and Minister for Family and Community Services on all civil claims.
59. The *FACS Policy Directive* (clause 5) requires a case management plan to be prepared for each legal matter. The case management plan sets out the details and status of a legal matter, including the litigation strategy, milestones and the responsible delegated decision maker. The plan also includes all critical information including a summary of the key legal issues, risks, policy implications and / or decisions which need to be made, the significance of the matter, dispute resolution options and the anticipated ongoing costs of the matter.
60. FACS aims to support those who make a civil claim, including by the following practices:
- upon receipt of a civil claim, the General Counsel sends a letter of acknowledgment which includes reference to the *Guiding Principles* and refers the claimant to Victims Services for free counselling and other support services.
 - if a claimant is unrepresented, the legal officer with carriage of the matter will provide information to the claimant regarding obtaining independent legal representation.
 - FACS lawyers regularly correspond with the claimant's solicitor regarding the status of the matter.
 - FACS lawyers assist with providing the claimant with a copy of their files if requested.

Victims Support

61. Following Case Study 19, FACS reviewed and implemented changes to its victims support services with the aim of ensuring that victims are treated with dignity and respect, and provided with access to appropriate information and services, in accordance with the NSW Code of Practice for the *Charter of Victims' Rights dated July 2014*.

62. FACS developed tools and training for FACS and NGO staff to equip them to assist victims of crime who are in OOHC placements to access financial assistance and counselling through the Victims Support Scheme. To this end, FACS developed:
- a new casework practice procedure to guide caseworkers who work with victims of crime, including fact sheets which provide references to relevant information and processes;
 - guidelines and a factsheet for NGOs which clarify the role of OOHC NGOs and provide guidance on how to work with FACS to provide the children and young people with their entitlements. The resources were circulated to all OOHC NGOs and are also available on the FACS external website;
 - an eLearning module was developed which explains in detail the Charter of Victims' Rights that applies to FACS and how staff can work towards ensuring that they are upheld. This module is now live on the FACS Learning Management System, and is also available to NGOs via the NGO Learning Centre website.
63. FACS now reports quarterly to the Commissioner for Victims Rights on the implementation of the *Charter of Victims' Rights*, including the numbers of staff trained in the Charter.

Case Study 24 - Out of Home Care

1. This section contains the response of the State of NSW to the Royal Commission's request seeking an outline of the steps, if any, the NSW Government has taken in response to evidence given in the Royal Commission's public hearings and the findings of the case study report concerning Case Study 24: Out-of-Home Care.
2. This case study focussed on the out-of-home-care (**OOHC**) system in NSW. The Royal Commission subsequently released its consultation paper titled *Institutional Responses to Child Sexual Abuse in Out-of-Home Care* (Consultation Paper) on 8 March 2016. On 2 May 2016, the NSW Government responded to issues raised in the Consultation Paper. The Consultation Paper and NSW Government's response dealt with a broad range of the most challenging and pressing issues in relation to the protection of children and young people in OOHC from sexual abuse, including issues related to the disclosure of abuse and the response of organisations when allegations or evidence of abuse emerge.
3. The present response does not seek to duplicate the information detailed in the NSW Government's response to the Royal Commission's Consultation Paper, but supplements and updates the State's response to the issues raised in Case Study 24.
4. Issues relevant to the protection of children and young people in OOHC have emerged in other case studies including Case Study 1: Scouts and Case Study 7: Parramatta Girls and Hay Institution, as referred to above, and during the Royal Commission's research program and roundtables in which the State's agencies have had input (including roundtables concerning OOHC, child safe organisations, and therapeutic treatment responses). The Royal Commission's examination of broader issues not touching solely on OOHC, including what makes organisations child safe, the operation of oversight and reporting mechanisms (including reportable conduct schemes) and the role of working with children checks (**WWCC**) also have direct relevance to protecting children and young people in an OOHC context.
5. The NSW Government, including FACS, has taken a close interest in the insights emerging from the work of the Royal Commission in this area. The NSW Government looks forward to the Royal Commission's findings and / or recommendations arising from Case Study 24 and its broader consideration of these issues. The NSW Government may seek the opportunity to provide further comment and information to the Royal Commission following its consideration of the Royal Commission's findings and recommendations, once they have been released.

Further policy initiatives since Case Study 24

6. Significantly, the work of the Royal Commission has resulted in collaboration across Government and with non-government partners and other jurisdictions to consider the future scope and effectiveness of mechanisms to protect children and young people in OOHC, within NSW and nationally.
7. FACS is implementing strategies to improve outcomes for young people leaving care by providing more secure pathways into services such as education, accommodation

support and other forms of assistance which can help them to transition into independent living. FACS has developed the *Youth Empowerment Program* which is a multifaceted contemporary approach to create direct lines of communication with young people. The program includes:

- youth consultants to advise on the development or revision of programs and policies
 - the development of a youth booklet and website
 - the YOU Campaign to promote access, engagement and empowerment in 15-24 year olds making positive choices
 - a youth expo to support and provide information to care leavers.
8. In April 2016, FACS commissioned the development of a new *Therapeutic Residential Care* model for NSW. The resulting report (**Attachment D**) provides recommendations on how to establish an evidence-based therapeutic residential care system across NSW and the resources required to undertake recommissioning of residential care. FACS supports the findings of the report and is currently developing an implementation plan in preparation for a wider procurement process for all residential care services in November 2016. Contract commencement for preferred service providers is expected to occur on 1 July 2017. FACS will provide a range of support to preferred service providers and young people to assist in transitioning to the new model.
 9. In July 2016, FACS commissioned a review of the Child Assessment Tool (**CAT**). The CAT determines the level of care required for a particular child on the date when the child requires an OOHC placement. The report arising out of that review has made a number of recommendations including:
 - realignment of the CAT from an administrative tool to a casework support tool so that better placement matching occurs and it is used to guide casework support; and
 - broadening the use of the CAT to FACS placements.
 10. FACS has accepted the findings of the report. The revised tool has been incorporated into the building phase of FAC's new case management system called ChildStory. The changes will take effect from 1 July 2017 when ChildStory is due to become operational.
 11. FACS has completed a review of the Charter of Rights for Children and Young People in OOHC resources. The new resources for the Charter of Rights were launched by the Minister for Family and Community Services during Children's Week on 25 October 2016.

Independent Review of OOHC in NSW

12. In November 2015 the NSW Government commissioned Mr David Tune AO PSM to conduct an independent review of OOHC in NSW. The review was initiated in response to the continued growth of the OOHC population, rising system costs and continuing poor outcomes for vulnerable children and families.
13. The NSW Government has adopted the findings of an interim review by Mr Tune which identified that the current OOHC system requires immediate change and is financially unsustainable. The 2016-2017 NSW Budget includes a commitment of \$190 million over four years to expand evidence-based intensive programs targeting family preservation and restoration.
14. The overrepresentation of Aboriginal children in OOHC is a particular area of focus for this new investment, as is the need to improve their life outcomes.
15. The further recommendations of the Tune Review are currently being considered by the NSW Government and it is expected that further reforms related to OOHC will be announced by end 2016. The NSW Government would welcome the opportunity to provide the Royal Commission with further information on these reforms when it becomes available.

Therapeutic services to prevent entries into care

16. International evidence-based therapeutic models adopted by other jurisdictions, are currently being considered by NSW. These models are licensed, require adherence to implementation fidelity, and provide rigorous monitoring. These models have been used successfully in New York and have led to a reduction of children in OOHC.

Access to therapeutic services for children in residential care

17. The NSW Government has allocated \$8.5 million over four years to establish a new trauma treatment service to support the needs of children who are living in OOHC, including residential care. The focus of the service will be the identification of the best evidence based interventions for children and young people who have experienced trauma, facilitating access to these services and/or procuring these services, so that children and young people receive the interventions they require from a range of professionals including psychiatrists, psychologists and allied health professionals in the timeframes needed. Where there are gaps in service provision, FACS will fund a team, established in partnership with NSW Health or commission specific outcomes from non-government organisations (**NGO**) and other government agencies.
18. The clinical identification of services to meet a child's needs and ensuring the availability of these services will complement and support the new therapeutic residential care model. Sound implementation and evaluation of these services will enable NSW to build evidence of what works for children in care requiring therapeutic support.

Improving support for care leavers

19. The NSW Government will continue to consider how to better support care leavers (adults who as children spent a period of time in care), who are more likely to experience disadvantage and other adverse life outcomes than non-care leavers. For example, 20% of female and 12% of male care leavers will have a child in OOHC at some time in the 20 years after exit from care.
20. Vulnerable young people leaving OOHC will be helped into stable housing and receive education, training and job support under a funding boost of \$40 million over four years from 2016-17 aimed at preventing youth homelessness.
21. Further work will be undertaken to improve the evidence base of the interventions most likely to support improved life outcomes of care leavers.

Case Study 27 – Healthcare providers and regulators

1. This section contains the response of the State of NSW to the Royal Commission's request seeking an outline of the steps, if any, the NSW Government has taken in response to evidence given in the Royal Commission's public hearings and the findings of the case study report concerning Case Study 27.

Learnings from Case Study 27

2. Reading and hearing the testimony of the adult survivors in Case Study 27 gave the NSW Ministry of Health (the **Ministry**) cause to reflect on the need for ongoing vigilance to ensure that the State's public health institutions are child safe and that strong direction and clear guidance is given to the health workforce, to ensure a compassionate and caring response to victims of child sexual assault (both children and adults).
3. The case study has reminded the Ministry that health professionals frequently move between the public and private sectors and that it is incumbent on NSW Health to assist private sector colleagues to comply with NSW child protection laws and engage fully in the shared system of child protection and wellbeing in NSW. (Note: the term "NSW Health" is an inclusive term for the Ministry and the NSW public health system as a whole.)
4. The case study provided impetus for the Ministry to reflect on whether further reforms are needed to strengthen NSW Health policy around child protection and reportable conduct and to reinforce policy requirements through training and communication strategies to ensure that child protection messages are communicated across the health workforce. Specifically, as a result of the case study, the Ministry considered that further work could be done:
 - to clarify the reporting obligations of medical practitioners in cases of historic child sexual abuse, particularly where the alleged perpetrator is currently, or was at the time of the alleged abuse, NSW Health staff or otherwise engaged in professional work involving access to children;
 - to clarify the obligations of staff where allegations of historic child sexual abuse are made, including being receptive and responsive to adult survivors making disclosures and providing support to the alleged victim and access to counselling, including through the NSW Health sexual assault services or by referral to other appropriate services;
 - to ensure that child protection training is targeted to the diverse needs of the health workforce and educates health workers about their important role in supporting vulnerable children and families. The Ministry considered that child protection training modules should be reviewed to reinforce child protection roles and responsibilities throughout the health workforce, as outlined further below;

- to promote the recent legislative changes giving private medical practitioners access to the Health Child Wellbeing Units and bringing health professionals into the scheme of interagency information exchange under Chapter 16A, *Children and Young Persons (Care and Protection) Act 1998 (the Care Act)*.
5. The reforms which have been prompted by the case study are timely for NSW Health given the Government's increased focus on the areas of sexual assault and domestic and family violence. The former and current Secretaries of the Ministry reflected on how the Ministry's internal structures can better support NSW Health's role in these important Government policy priority areas. A relevant structural reform has been the transition back to the Ministry of the functions of NSW Kids and Families, a statutory health corporation under s 41 of the *Health Services Act 1997*, in order to reinforce and reflect the centrality of the work on those issues to the business of the Ministry and the NSW Government.

Reforms as a result of the Case Study 27

6. Several policy reforms have been introduced as a result of or since the case study. Each relevant reform is outlined below.

Update to policy on child-related ("reportable") allegations against NSW Health staff

7. An issue raised during the public hearing, and in counsel assisting's written submissions, was whether the reporting obligations of medical practitioners under the Care Act in cases of historic abuse are well understood by practitioners where the practitioner knows or believes that the alleged perpetrator is still engaged in the provision of health services to children. As a result of the case study, the Ministry considered that further guidance to staff was warranted and that the issue should be more clearly identified in NSW Health policy.
8. As a consequence, in its revision of the Policy Directive 'Child Related Allegations, Charges and Convictions against NSW Health Staff' (PD2006_025), the requirements for reporting and managing child-related allegations of a historic nature as well as those arising outside the work context have been better emphasised. As outlined in the statement of the Ministry's then Secretary, Dr Mary Foley, dated 22 April 2015, that Policy Directive gives effect to the responsibilities of local health districts, specialty health networks and chief executives with regard to "reportable allegations" and "reportable convictions" under Part 3A of the *Ombudsman Act 1974* (NSW).
9. The revised policy (now numbered PD2016_025) requires all child-related matters to be managed according to the processes outlined in the 'Managing Misconduct' (PD2014_042) Policy Directive, but provides for certain varied or additional requirements. The revised policy:
- emphasises that reportable allegations and convictions include conduct that has occurred outside the workplace or prior to the person's engagement in NSW Health, including historic matters where the alleged victim is now an adult (section 1.3.1);

- provides more detailed guidance on the requirements for investigating and reporting such matters;
- sets out the responsibilities of the NSW Health organisation to the alleged victim, including for the provision of information and support (section 3.1);
- emphasises that non-work and/or historical child-related allegations are required to be reported to the Child Protection Helpline, including in respect of a class of children, as required by s 27(3) of the Care Act. The policy guides staff to consult the Mandatory Reporter Guide and the NSW Health Child Wellbeing Units for assistance (section 5.3);
- provides specific guidance where the allegation is made against a former staff member of NSW Health or where the alleged victim is now an adult (sections 5.7 and 5.8). For allegations against a former staff member, the policy requires that the relevant Chief Executive be notified and that any appropriate reports be completed, including to the Child Protection Helpline, NSW Police and/or the Australian Health Practitioner Regulation Agency (**AHPRA**) if the alleged perpetrator is a registered health practitioner;
- clarifies NSW Health's responsibilities when external agencies, such as NSW Police and/or Family and Community Services, are involved (sections 4.1, 5.5);
- updates the requirements for reporting to the Office of the Children's Guardian and to AHPRA (section 7);
- requires that NSW Health records relating to child-related matters, even where allegations are not proved, be kept in a central secure location for a minimum of 100 years (section 8).

Amendment of the NSW Health Code of Conduct

10. The NSW Health Code of Conduct (PD2015_049) has been updated to include a requirement for all NSW Health staff to "*report to the designated person within their Health organisation, upon becoming aware of an allegation, charge or conviction involving an under 18-year-old against another NSW Health staff member*" (4.3.19).
11. This requirement was previously included in the Policy Directive 'Child Related Allegations, Charges and Convictions against NSW Health Staff' (PD2006_025). However, given its importance, the Ministry considered that it is more appropriately placed in the Code of Conduct, which all staff (as that term is broadly defined in the Code of Conduct) are required to comply with and sign upon being employed or otherwise engaged to work in NSW Health.

Follow-up on relevant legislative amendment

12. As noted in the evidence of Dr Foley during the public hearing², from March 2012 until September 2013, NSW Health conducted a trial which enabled General Practitioners and General Practice Nurses to access the NSW Health Child Wellbeing Unit (**CWU**) at certain locations to assist them to understand and fulfil their mandatory reporting obligations.
13. On the basis of that trial, the *Child Protection Legislation Amendment Act 2015* introduced amendments to the Care Act which permit a person to be prescribed as a 'prescribed body' for the purposes of Chapter 16A. A change to the regulations followed, with the proclamation of the *Children and Young Persons (Care and Protection) Amendment (Private Health Professionals) Regulation 2016* (the **regulatory amendment**) on 6 May 2016. Its object is to amend the *Children and Young Persons (Care and Protection) Regulation 2012* to enable:
 - certain health professionals to participate in the scheme for the exchange of information under Chapter 16A 'Exchange of information and co-ordination of services' of the Care Act; and
 - registered medical practitioners and general practice nurses access to the CWU under s27A 'Alternative reporting arrangements' of the Care Act.
14. Chapter 16A authorises the exchange of information relevant to the safety, welfare or wellbeing of a child or young person between prescribed agencies. It also requires those agencies to take reasonable steps to coordinate the provision of those services with other agencies.
15. For the purposes of Chapter 16A, participating agencies are defined as 'prescribed bodies' under section 245B. As a result of the regulatory amendment, the following professions are now (additional) prescribed bodies for the purpose of section 245B(1)(b), regardless of whether they work in the public or private sectors, or as sole practitioners or in incorporated practices:
 - nurses
 - registered medical practitioners
 - registered midwives
 - registered psychologists
 - persons registered under the Health Practitioner Regulation National Law to practise as occupational therapists (other than as students)
 - speech pathologists eligible for membership of Speech Pathology Australia.

² Transcript 11/05/2015 at p 14378 lines 2-22.

16. As a result of the amendment affecting section 27A of the Care Act, all registered medical practitioners and general practice nurses can now consult with and report to the CWU if they have concerns regarding the safety, welfare or wellbeing of a child, young person or unborn child. In doing so, they can meet their mandatory reporting obligations under the Care Act (as to the CWU, see [77] of Dr Foley's statement).
17. The Ministry is currently in discussions with the Royal Australian College of General Practitioners (**the RACGP**) regarding further promotion of these changes, and developing targeted training regarding child protection and wellbeing more broadly, to its general practitioner members. At the same time, the Minister for Women and Minister for the Prevention of Domestic Violence and Sexual Assault is working with the RACGP and other external stakeholders, including in the non-government sector, on initiatives to promote collaboration with the government sector in responding to sexual assault and domestic and family violence.
18. While NSW Health is not directly responsible for the delivery of general practitioner or private medical specialist services in the community, the above reforms are aimed at strengthening both the private and the public health sector's response to child protection and wellbeing concerns.

Development of new Standards and Guidelines for NSW Health Sexual Assault Services

19. During the case study, the Royal Commission received evidence from a number of adult survivors of child sexual abuse. This included evidence from a survivor about a disclosure made to a counsellor in the Sexual Assault Service at Royal North Shore Hospital regarding child sexual abuse perpetrated by a family doctor when the survivor was a child. The disclosure indicated that the alleged perpetrator was not an employee of the counsellor's area health service at the time the disclosure was made. As noted in the Case Study report³, the Ministry's Sexual Assault Services Policy and Procedure Manual (Adult) 2005 (PD2005_607) applied at the time.
20. The Ministry has developed new Standards and Guidelines for NSW Health Sexual Assault Services (**the Standards and Guidelines**) which, once finalised, are intended to replace the Sexual Assault Services Policy and Procedure Manual (Adult) 2005. Specific content about responding to disclosures of adult survivors of child sexual abuse has been developed for inclusion in this document as a result of Case Study 27.
21. It is intended that the Standards and Guidelines will be published in late 2016, pending finalisation of a new chapter on responding to the needs of people with a disability.
22. The Standards and Guidelines set out the principles, standards and guidelines for NSW Health Sexual Assault Services, the tertiary Child Protection Units (being Sydney Children's Hospitals Network at Randwick and Westmead and the Child Protection

³ See Case Study Report at page 55.

Team, John Hunter Children's Hospital, Hunter New England Local Health District), the JIRT Health Program and New Street Services. They also contain principles, standards and guidelines for responding to children under 10 years old who exhibit problematic or harmful sexual behaviour. These health services provide specialised and targeted therapeutic care for children, young people and adults who have been subjected to sexual assault and for their non-offending family members and carers. The Standards and Guidelines contain detailed guidance on the impact of sexual assault and the provision of trauma-informed responses to ameliorate the longer term health impacts of sexual assault.

23. Of relevance to this case study, the Standards and Guidelines provide greater emphasis, and more detailed guidance, than the previous policy on the provision of services to adult survivors of child sexual abuse. In this regard, the Standards and Guidelines will:
- emphasise the significance of disclosure and the importance to victims of being believed and feeling validated and respected by the health service;
 - identify the need, when responding to a disclosure of past abuse, to assess potential risk to others. The document addresses the reporting obligations under the Care Act and includes guidance where the alleged assailant is reported to be working, or to have worked, within NSW Health or with children generally, and is consistent with, and makes reference to, other relevant policies (including Child Related Allegations, Charges and Convictions Against Employees; Managing Misconduct and the Child Wellbeing and Child Protection Policies and Procedures for NSW Health);
 - prioritise access to sexual assault services based on age, time of sexual assault and clinical need. While services have traditionally been targeted at adult victims of recent sexual assault and child victims⁴, the new Standards and Guidelines allow adult survivors who have immediate needs for support and safety to be prioritised for a service;
 - require local health districts/specialty networks to have in place referral guidelines to assist adult survivors of child sexual assault to access appropriate trauma-informed services;
 - emphasise the role of Sexual Assault Services in providing consultation to other agencies and workers in relation to working with adult survivors of childhood sexual assault.
24. A Policy Directive will be developed in 2016/17, which the Standards and Guidelines will accompany. The Policy Directive will outline the responsibilities of NSW Health organisations in responding to victims of sexual assault, including adult survivors of child sexual abuse, and promote trauma-informed services. It will bring together the

⁴ See Case Study report at page 56.

relevant NSW Health policies, frameworks, guidelines and legal requirements and associated inter-agency agreements and arrangements.

25. To support the implementation of the Standards and Guidelines, the Ministry has developed Fact Sheets on the following topics to accompany the Standards and Guidelines. Once endorsed, they will be accessible to staff on the NSW Health intranet and be used to inform future policy reviews across NSW Health. They will also be embedded in workforce training development with the Health Education and Training Institute (who support education and training across the NSW health system) and the Education Centre Against Violence (who deliver education and training to staff in health and other sectors to provide them with skills to prevent interpersonal violence and to identify and respond to child and adult victims of violence and sexual assault):
- what is sexual assault?
 - when an adult client discloses sexual assault
 - response to adult survivors of child sexual assault
 - response to Aboriginal communities – re sexual abuse
 - an integrated medical and forensic response to sexual assault
 - the rights of clients accessing NSW Health Sexual Assault Services.

Review of Child Wellbeing and Child Protection Policies and Procedures for NSW Health' (PD2013_007)

26. The Ministry is also in the process of reviewing the Policy Directive 'Child Wellbeing and Child Protection Policies and Procedures for NSW Health' (PD2013_007). This policy is described in the statement of Dr Foley at [37], [75]-[76] and [102]. As outlined in Dr Foley's statement, it brings together and outlines the child protection responsibilities applying to individuals working in the NSW public health system. Areas of proposed revision include:
- specific content about responding to disclosures by adult survivors of child sexual abuse, including clarifying for health mandatory reporters that the obligation to report may arise where an allegation of historic child sexual abuse is made against a professional who has access to children. This new content will be consistent with the Standards and Guidelines and the policy on Child Related Allegations, Charges and Convictions Against Employees;
 - information on the new Child Abuse Sexual Assault Clinical Advice Line (CASACAL). CASACAL is a new initiative which provides all clinicians (whether in NSW Health or private practice) who are concerned about the safety, welfare and wellbeing of a child, including those in rural and remote locations, with 24/7 telephone access to medical advice, peer support and supervised examination. CASACAL will help ensure an appropriate and timely psychosocial and medical and forensic response for victims of child abuse and sexual assault throughout NSW;

- an acknowledgment of the regulatory amendment affecting section 27A and Chapter 16A of the Care Act (outlined at [13] above);
- guidance for NSW Health workers on how to identify and respond to medical neglect for children with chronic and complex health care needs (although unrelated to child sexual abuse, this initiative further strengthens NSW Health's child protection response and responds to issues raised by the NSW Ombudsman and Coroner).

Targeted training for doctors

27. As a result of Case Study 27, the Ministry has been conducting a review of mandatory child protection training in NSW Health, under the leadership of the NSW Health Child Protection Training Working Group, an internal working group chaired by the Deputy Secretary, Governance, Workforce and Corporate. The review aims to ensure that child protection training is targeted to the diverse needs of the health workforce and equips health workers to meet their responsibilities to support vulnerable families and promote child protection and wellbeing in New South Wales.
28. Since the case study, a re-development of the Health Education and Training Institute online child protection mandatory training module has commenced, with the aim of including stronger messaging about the role of health workers in supporting vulnerable children and families and intervening early before abuse occurs. The redeveloped training module is expected to include a segment on responding to disclosures of historic abuse and reporting obligations where disclosures relate to NSW Health staff.
29. The redeveloped training module will introduce additional case examples that are streamed for the various categories of health professionals and help motivate workers in relation to promoting child safety, welfare and wellbeing in the context of their particular role in NSW Health. As a result of the case study, the Ministry considered that training targeting specific health professions was required, particularly doctors, to raise awareness of child protection issues in their workplace settings, especially in high risk areas such as emergency, mental health, drug and alcohol, maternity and child and family health services.
30. The redeveloped training module is due for completion by December 2016 and will be renamed "Initial Child Protection Awareness Training". Learning pathways beyond this training will be promoted as part of the module to encourage health workers to continue to build their knowledge and skills in this area.
31. One day face-to-face training offered in the Local Health Districts/Specialty Health Networks will continue to be mandated for health workers in roles which have regular contact with children and young people and families. This face to face training is also being reviewed and will be updated for consistency and continuity with the redeveloped Health Education Training Institute online module. Updated guidance on assisting adult survivors of child sexual assault will again be incorporated in the face-to-face training.

Strengthening the Joint Investigation Response Teams

32. The JIRT program is currently undergoing a comprehensive interagency review under the oversight of the NSW Deputy Ombudsman, Mr Steve Kinmond. The review will consider whether the current JIRT program is meeting the needs of clients, partner agencies and other stakeholders and identify possible areas for further reform.
33. Since the case study, NSW Health has continued efforts to strengthen the response of NSW Health to the JIRT program. Additional funding has been allocated by the Ministry in 2015/16 and 2016/17 for enhancements to the JIRT Health workforce across New South Wales. The JIRT Health workforce is being increased from 26 to 52.5 Full Time Equivalent workers. This enhancement to the JIRT Health workforce is designed to improve NSW Health's coverage across all JIRT units with the additional resources distributed according to demand.
34. The Ministry is currently preparing a policy to be known as 'NSW Health JIRT Policies and Procedures' with a view to strengthening consistent, effective and quality practices by workers who collaborate in JIRT on behalf of NSW Health. The policy document will highlight that the contribution made by NSW Health to the JIRT program is broader than that of the small workforce of Senior Health Clinicians and Health Clinicians who work in JIRT teams, as it encompasses all of the health services providing information on and services to JIRT clients. It will set out the systems and processes which local health districts and specialty health networks should implement to ensure a timely and effective service response to JIRT clients across NSW Health. It is expected to be issued later this year and updated next year if needed in response to the review referred to above.

Attachments

[*Attachment A - M2016-03-Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse*](#)

Attachment B – Example CSO letter and chart

[*Attachment C – FACS Policy Directive*](#)

[*Attachment D – Therapeutic Residential Care \(VERSO Report\)*](#)