

**CREATE Foundation response to the
Royal Commission into Institutional Responses to
Child Sexual Abuse Consultation Paper:**

**Best practice principles in responding to complaints of
child sexual abuse in institutional contexts
May 2016**

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About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 43,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

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


We achieve our mission by facilitating a variety of programs and services for children and young people in care and developing policy and research to advocate for a better care system.

Introduction

CREATE welcomes the opportunity to provide a response to the *Consultation Paper on Best practice principles in responding to complaints of child sexual abuse in institutional contexts*. CREATE commends the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) for developing this paper to highlight much needed improvements to the systems that encourage children and young people to share their complaints, concerns, and feedback about the care they have or are receiving, and provide mechanisms for recording and reporting on these. As acknowledged by the consultation paper it has been the historic lack of believing children and young people's complaints, and the mishandling of these reports that are the basis for this and every other inquiry into abuse in institutional care.

CREATE's response is informed by the United Nations Convention on the Rights of the Child (1989), and emphasises that the National Standards for Out-of-Home Care (the National Standards) have specific relevance to how institutional responses to sexual abuse of children and young people in out-of-home care should be framed. The National Standards are an initiative of the federal, state, and territory governments under the *National Framework for Protecting Australia's Children 2009-2020* (the National Framework) (Council of Australian Governments, 2009). CREATE believes that children and young people with a care experience play an important role in providing the Royal Commission with insight into their experiences within Australia's statutory care system. CREATE's policy positions are informed by the voices of children and young people with a care experience, gathered across Australia through consultation and research.

As we noted in our response to the consultation paper on *Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, CREATE believes the out-of-home care system(s) across



Australia should adopt and foster culture(s) of seeking direct, continuous feedback from children and young people throughout their care experience. Developing and embedding strong complaints processes into all systems involved in the care of children and young people is essential to ensuring their care is safe, abuse incidents are minimised, and corrective processes promptly enacted when issues are reported.

In this submission, CREATE will be drawing upon its previous presentations to the Royal Commission. This response addresses the key areas of best practice principles, oversight of complaints handling, and advice and support for institutions as they pertain to children and young people in out of home care.

Best practice principles

The CREATE Report Card 2013 (McDowall, 2013), in summarising the views of children and young people in out-of-home care in Australia regarding their knowledge and use of complaints about their treatment in out-of-home care, found that:

- about half of the children and young people surveyed (n = 1069) knew how to complain if they needed to, and 19% had made a complaint;
- of the 204 children and young people who had made a complaint, 45% reported being at least quite satisfied with the outcome, compared with 24% who were quite dissatisfied;
- older age groups (15–17 years) had better knowledge of complaints systems and had used them more. The older groups were also more likely to have wanted to complain but chose not to; and
- children and young people in residential care and permanent placements also reported more knowledge of complaints systems.

The following comments illustrate the complexity of making a complaint when you are a young person living within the out-of-care system:


I wasn't meant to be in a tier-three house where people had just come out of juvey (sic). It's hard when people are trying to kill you. I brought it up but the response was – just wait it out. (Male, 20)

...no one ever got back to me. And half the time I knew what the results would be because it's always the same. The result would be nothing or not much. (Male, 14)

...actually there was one time I discussed something with my caseworker and he went and spoke to the carer about it and then I got punished. I didn't know my caseworker was going to do this. (Female, 18)

(CREATE, 2015c)

This research prompted CREATE to develop a position paper on *Complaints Mechanisms in Out-of-Home Care* (CREATE, 2015a) to provide guidance on the principles to be included in developing child friendly complaints systems (full version in Appendix A).



CREATE Foundation believes listening and responding to the views of children and young people in out-of-home care systems is a cornerstone of best practice. A well-functioning child protection system is underpinned by an independent, child and young person friendly, transparent, accessible, and responsive complaints mechanism. Independent oversight of out-of-home care systems is essential to ensure children's and young people's individual and systemic concerns are heard and addressed.

CREATE Foundation believes that an ideal complaints mechanism would have the following characteristics:

- it is safe, open, and independent of the providers of out-of-home care;
- it is easy to access online or face-to-face for children and young people;
- it allows for a support person to accompany a child or young person at any face-to-face meetings;
- it includes individual advocacy services to have complaints resolved;
- it provides a timeline noting expected dates for reporting and/or resolution of the matter; and
- it reports on systemic advocacy issues to improve the care experience for all children and young people.


Oversight of complaints handling

Independent complaints mechanisms are needed to encourage children and young people in out-of-home care to be able to express their concerns and make complaints outside of the organisation that makes decisions about, provides, and/or funds their care.

CREATE adopts the view that truly unbiased, unfiltered feedback from children and young people in care is best achieved through their engagement with external independent bodies whose primary role is to provide meaningful opportunities for the expression of views. Examination of key issues at a systemic national level is an opportunity to develop a comprehensive picture of the experiences of children and young people in care.

We draw the Royal Commission's attention to our submission to the Senate Select Committee into Out-of-home care (CREATE Foundation, 2014):

CREATE believes independent complaint mechanisms are important for children and young people in care to be able to air their concerns, complain, and/or seek redress without fear of repercussions and potentially harming the relationship with their care provider. All states and territories have a Commissioner or Guardian for Children and Young People whose responsibilities include oversight of the services provided to children and young people in out-of-home care. The ability to investigate individual complaints varies between jurisdictions and CREATE would like all Commissioners and Guardians to be able to do this. CREATE believes that without true independent oversight of out-of-home care systems, where children and young people feel confident their individual concerns will be heard and addressed, they are



left without a voice and someone to stand up for them when they are at their most vulnerable.

From the many case studies the Royal Commission into Institutional Responses to Child Sexual Abuse has conducted, it is clear that internal investigations of allegations of child sexual abuse have failed victims when they were children, and as adults. The findings of the Royal Commission to date signal the importance of independent oversight of child protection systems. If a complaint comes to the attention of Children's Commissioners or Guardians then it is imperative that they can fully investigate and act upon findings to avoid further harm to children and young people.

CREATE acknowledges there are other mechanisms, separate to the Children's Commissioners where young people may also seek assistance; however, CREATE's research shows that services must be child-friendly and accessible to encourage young people's confidence in, and use of these services.

For example, when young people were asked by CREATE whether they had wanted to make a complaint and decided against it, they gave the following reasons for their decision:

My caseworker made me feel guilty by crying. (Female, 16 years)

I was worried I might get in trouble. (Female, 11 years)

(CREATE Foundation, 2014, pp. 9-10)


CREATE endorses The Senate Community Affairs References Committee (2015) recommendations that the Coalition of Australian Governments develop and implement nationally consistent powers for independent child commissioners and guardians to:

- review individual out-of-home care cases;
- address complaints and concerns by children and young people;
- ensure the voice of children and young people is heard in all decision-making processes about placements and case planning; and
- provide community visitors to visit all out-of-home care placements.

Advice and support for institutions

CREATE believes that all organisations, regardless of their size should be held to the same standard of care, and that all complaints and investigations of sexual abuse should be referred to an independent body that has the authority to appropriately address these matters.

CREATE acknowledges the additional support required for smaller organisations to establish and maintain robust complaint mechanisms. CREATE concurs that these organisations need to be sufficiently resourced to develop their capacity to adequately train their staff, develop robust systems, and have access to independent organisations to investigate complaints and



allegations to ensure children and young people in out-of-home care are safe and the organisation has the capacity to respond appropriately.

In CREATE's response to the Royal Commission's consultation paper on Redress and civil litigation we recommended:

- establishing an independent authority with the powers to investigate complaints, make redress decisions and compel institutions to comply with orders for information and other requests as deemed necessary. This could be achieved by either setting up a new authority, or perhaps more economically, through employing existing structures such as the state and territory Ombudsman's offices, provided these agencies are adequately resourced for undertaking the extra responsibilities. (CREATE, 2015b)

CREATE thanks the Royal Commission for the opportunity to include the voices of children and young people with an out-of-home care experience to improve complaints mechanisms to listen and respond to the voices of children and young people in out-of-home care in Australia. For any questions or further information about this submission please contact Noelle Hudson, National Policy and Advocacy Manager on 07 3062 4860 or by email on noelle.hudson@create.org.au



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