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Royal Commission into Institutional Responses to Child  
Sexual Abuse  
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Consultation Paper: Institutional Responses to  
Child Sexual Abuse in Out-of-Home Care

Dear Commissioners

I became aware of the above Consultation Paper only yesterday, and as I am leaving the country on Tuesday 15 March for a month I have time to make just a few comments on some selected aspects of the Paper. I wish I had more time because I think it is a very important area of discussion.

**1. The Royal Commission's attention to OOHHC**

My observation is that the Commission has not done nearly enough in this sector which is commonly described as crisis-driven. The Commission reports that OOHHC is by far the largest category of institutions identified in the more than 4,700 private sessions. More than 40 per cent of all reports of child sexual abuse were located in the OOHHC sector.<sup>1</sup> Yet only 11 of the public hearings of 37 to date have examined OOHHC. This is unjustifiably disproportionate. The Commission has allocated far more time to Case Studies involving churches and schools than to OOHHC.

The OOHHC Round Table conducted by the Commission in April 2014 was profoundly disappointing, and Case Study 24 held in Sydney in March and

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<sup>1</sup> Depending on how tight the definition of OOHHC, this figure could be as high as 46%.

June 2015 more closely resembled a cheerful seminar than rigorous examination of experts and the hard facts. It was dominated by agencies with a vested interest in putting their best foot forward while advocacy representatives were accorded inadequate opportunity to give their insights. The commissioned research on the evaluation of OOHC practices that prevent child sexual abuse was depressingly inadequate.

## **2. The poor state of knowledge throughout Australia in relation to the incidence of child sexual abuse in OOHC (pp. 27-31)**

The lack of accurate, consistent and complete data is a major problem which the Royal Commission must address in its final report—or preferably by commissioning more research as a matter of urgency. It is difficult to know what changes might be effective, as the Paper says, without knowing ‘the true shape and size of the problem’ (p. 28)

Yet, we need not be totally paralysed by this lack of national data. Some data produced by and for the Royal Commission to date should be taken as symptomatic of issues where immediate action (or at least further investigation) is warranted. The high incidence of sexual abuse in residential ‘care’ compared with other forms of OOHC is a case in point. It is remarkable—and great cause for concern—that while only 5 per cent of children in OOHC are in residential settings, 33 per cent of reports of child sexual abuse in the period 2012-2014 come from residential facilities (Charts 1.1 & 1.2). This raises questions such as the quality of supervision of residents, the training and professional development of staff, and, indeed, the process of determining which children are placed in residential facilities and why, and the relationship which is allowed (or not) between inmates and their families.

## **3. Child-on-child sexual abuse**

The Paper states: ‘We have been told that more needs to be done to better protect children from, and respond to, issues of child-to-child sexual abuse in OOHC’ (p. 6). I think this is a very complex issue and should not be rolled out so glibly. The Paper states: ‘We have heard evidence in public hearings that child-to-child sexual abuse is a serious and common problem in contemporary OOHC’ (p. 6).

It is disappointing that this statement is so vague. What evidence? Who provided it? Was it substantiated evidence? Some of this evidence may have been coloured by the first version of the commissioned research (now amended) which made a wholly unsubstantiated claim about child-on-child sexual abuse which was picked up and repeated by Counsel Assisting the Commission on 10 March 2015 who stated:

The major focus of preventing child sexual abuse in out of home care should be on efforts to prevent child to child sexual abuse rather than caregiver child sexual abuse, since this type of abuse likely represents the vast majority of observed child sexual abuse in out of home care.<sup>2</sup>

This fallacious and damaging statement has not been publicly corrected and remains a permanent part of the Commission's official record. Much better research is needed in this area—as a matter of some urgency. In the meantime, sweeping generalisations should be avoided. Likewise, the use of terms like 'perpetrator' and 'abuser' should not be applied to children in OOHC without sensitive and nuanced discussion about what such labels imply in the context of closed institutions and the ethics of labelling victims/survivors/perpetrators.

Moreover, the phenomenon of child-on-child sexual abuse needs to be better defined, described and analysed. It is most unlikely that all incidents allotted to this category of events are conceptually the same. Issues such as the age gap between the two children, their relative lengths of time in 'care', and any prior history of sexualised behaviour could be significant variables in differentiating types of incidents—and the ways they are best handled.

#### **4. Historical sexual abuse**

In reference to sexual abuse that occurred in OHHC many years ago, the Consultation Paper states that 'We have heard numerous accounts of the significant sexual, physical and emotional abuse of children that occurred in these institutions and its detrimental impact on many people's lives' (p. 4). It is disappointing that the Paper then dismisses what it calls 'Historical context' and then 'Shifting attitudes' in a single page (p. 20). This suggests to me the writer of the Paper is much too ready to dismiss historical experience as irrelevant to contemporary OOHS and, worse, to suggest that somehow

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<sup>2</sup> Gail Furness SC, Public Hearing, 10 March 2015, para. 96, p. 22.

times have changed.

This is a concern because we know that, while closed institutions like orphanages and other forms of residential life have changed in terms of architecture, size and human scale, many of the features of the old culture have not changed. This is illustrated by the report of the Victorian Commission for Children and Young People which is cited in the Paper.<sup>3</sup> Social history is rarely marked by sudden shifts in policies and institutional practices and the then-but-now syndrome can be hazardous.

Moreover, survivors of sexual abuse, even when it occurred decades ago, hardly ever think of that experience as 'historical'. Many of them attest to the fact that the past is always with them. Many of them have come forward to the Commission precisely because they think there is something to be learned from their 'historical' experience. They don't want the lessons of the past to be ignored.

In addition, it is well known anecdotally among Care Leavers that many children in OHHC today are the children and grandchildren of former state wards and Homies. I know of no systematic research that assesses the incidence of inter-generational institutionalisation. None of the relevant authorities think this data could be useful to them, but I beg to differ because such a study would shed some light on how families get on, and stay on the welfare treadmill—and thus become potentially the next generation of abused residents.

## **5. Access to Care Leaver records and information**

It is pleasing to note that the Commission is working in the important area of access to records. The summary on pages 118-19 is a very good listing. However, I think there are three very important elements that the Paper misses because it focuses only on the problems of access.

The first of these is related to the participation of the young person in

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<sup>3</sup> *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, 2015.

OOHC in constructing the record. The young person's voice is almost always silent in these records because agencies who make and keep the records rarely think to invite the subject person to make a contribution to the record. This is a significant omission because critical incidents are always recorded from an adult's perspective whereas the child is likely to have some important insights worth recording. One result of not engaging the young person is that when they do gain access to their records, they are often shocked by the prevailing negativity of the contents, especially when value judgments of the adult writer are so obviously unwarranted or unfair. Many Care Leavers complain about omissions from their records especially when they recall events such as a complaint they made about their treatment. Involving the young person in contributing to the records would almost certainly make it a more balanced narrative of their life in OOHC.

Likewise, there are some legislated opportunities for Care Leavers to challenge usually by adding another version of events to the record. However, this opportunity is rarely exercised for a variety of reasons not the least being the government and non-government agencies rarely publicise the existence of this provision.

The second and related issue is that of ownership. Care Leavers often speak of making application for 'my file' in the mistaken expectation that as adults they own the record made about them as children and can go and pick it up. They are genuinely shocked to be told by record keepers that the Department, or the agency, owns the file and the best they can expect is a photocopy of it, or some of it. This mismatch of expectations with harsh and unreasonable legal reality is the cause of considerable angst. In some cases, Care Leavers, especially those who may have been abused and are considering taking an action for redress, are suspicious of agencies' motives in withholding material. It is my contention that there is little justification for government and non-government agencies being so precious about their control of these records. A change of legislation accompanied by a change in culture is required.

The third issue that the paper omits is reference to statutory obligations related to record making and keeping. It beggars belief that a government or non-government agency can hold custody of a child sometimes for years and not be required by law to construct and maintain an official record of the child's time in their custody. But such has been the practice in many

cases that records were never kept or were so superficial as to offer no insights into the circumstances at a later time. It should not be difficult to develop a list of essential items of information that should be kept in every child's record. These would be matters relevant to

- identity such as birth certificate, name and last known address of immediate family members, and evidence of family religious affiliations such as the child's baptism certificate or similar;
- reasons for the child's initial admission to OOHC including any court orders;
- medical conditions and treatments;
- school progress;
- details of all changes of placements including reasons for transfer;
- names of any person who visits the child while in care;
- critical incidents that affected the child's development positively or negatively; and
- arrangements made when the child or young person was to be discharged for OOHC.

It should not be difficult to mandate that these primary documents must be safeguarded by the relevant agency and their loss or destruction should result in a penalty for the offending agency.

I trust you will find what I have written in haste to be of relevance to the Royal Commission's further work in this somewhat neglected area.

Yours sincerely

Frank Golding