

To: Royal Commission into Institutional Responses to Child Sexual Abuse

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Topic: Response to Consultation Paper Institutional Responses to Child Sexual Abuse in Out-of-Home Care

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Introduction

Barnardos Australia (Barnardos) is pleased to respond to the March 2016 Consultation Paper on Institutional Responses to Child Sexual Abuse in Out-of-Home Care (OOHC). Barnardos provides a wide range of OOHC programs including: crisis and long-term foster care, residential care (limited), kin care and adolescent homelessness throughout metropolitan and rural/regional NSW and ACT. We have long-term experience of reporting allegations of child sexual abuse in these two jurisdictions, as well as working in the areas of preventing abuse, collecting data, supporting carers and staff, sharing information, developing child-safe organisational practices, working with children on disclosure, and establishing close working relationships with relevant government organisations in relation to all forms of child abuse.

The guiding principle of our submission is that we wish to see a system which safeguards children and provides a disincentive for offenders, but does not become overly bureaucratic. Time intense bureaucratic systems can divert resources from direct service provision and time spent directly with children, which when done well is the best protective factor for children and also encourages disclosures when a child is fearful of abuse or abuse has taken place. Barnardos has made previous submissions to the Royal Commission in addition to providing direct evidence and this current submission is consistent with our ongoing approach to the addressing institutional responses to child sexual abuse in OOHC.

Barnardos Recommendations

In order of priority Barnardos recommends:

1. All reports of child sexual abuse should be dealt within the same 'system' as other serious forms of abuse (that is serious physical and emotional abuse).
2. A reporting system more limited in scope than the current NSW system, specifically that the definition of abuse to be reported needs to be sexual abuse and significant physical and emotional abuse. Broader reporting definitions run the risk of infringing on management responsibilities but do not offer added protection for children, we note that NSW has progressively tightened definitions for reportable conduct over time.
3. Straight-forward and 'simple' systems so that people rarely dealing with an allegation are not intimidated by legal process. For this reason governments need to integrate reporting systems with probity checks (such as NSW Working with Children Check and ACT Working with Vulnerable People) and monitoring systems (for example NSW Carer Register).
4. That any oversight body should have limited involvement in ongoing investigations, except in rare and very serious circumstances.

5. Limitations to auditing of agencies unless there a serious matters of concern (as this has been shown in NSW to be time consuming and in our view did not contribute directly to child safety).
6. Better partnership between police and non-government agencies, our experience is that agencies are frequently excluded from information about investigations and outcomes, but must still support the child.
7. A uniform definition of reportable conduct across all Australian States and Territories, to ensure consistency of safety mechanisms for children.
8. That data collection and sharing be a clear responsibility of government oversight bodies, in NSW NGOS already are currently required to report data associated with an allegation up to four times to individual government instrumentalities, in addition to complying with their own internal processes (for example reports to Board and agency insurers). NGOs should not be responsible for data collection which repeats information already sent to government.
9. Resources be increased to carer groups to support foster and kin carers throughout investigation of allegations.
10. Support for agency work involved in therapeutic support, training, research on abuse prevention, and resource implications of compliance.
11. Accreditation of all OOHC providers (including government providers) with standards associated accreditation criteria to include:
 - Not placing multiple unrelated children in foster or kin care
 - Children aged under 12 years never to be placed in residential care
 - OOHC caseworkers regularly seeing children alone
12. Strong consideration of alternatives to placement of vulnerable children in foster care or residential care whenever possible, particularly in the case of very young children via consideration of open adoption.

Identifying and responding to child sexual exploitation and child-to-child sexual abuse

Barnardos believes there to be three main ways to prevent child-to-child sexual activity. Firstly that children under twelve (12) years of age should not be placed in residential care, other than for the sole purpose of keeping sibling groups together should a foster placement not be readily available. The numbers of children under 12 in residential care in NSW is currently rising, despite government policy being that children under 12 should not be placed in this form of care. NSW children are at escalating risk as a result of this practice. Secondly, unrelated children should not be in a placement together (unless the child of foster carers). Most accredited non-government OOHC agencies in NSW do not routinely place unrelated children together in foster care. Thirdly, all carers must be fully informed of a child's history including sexual abuse and sexualised behaviours, prior to placement.

Child-to-child abuse raises questions about the mix of ages when children are placed, how agencies respond to these incidents of 'abuse', and whether or not there should be a mandated role to report such incidents. There is a very difficult set of dilemmas to be examined when traumatized children display behavior that in the adult world could be considered 'reportable conduct'.

There are clear differences between placement in residential care and foster care for the risk of child-to-child abuse. The risk of substantiated abuse in residential care is disproportionately high compared with foster care, providing additional reason to prohibit the placement of children under 12 in residential care due to power and coercion differentials with respect to

ages of children and young people placed together. There is a need to exercise great caution in assuming that children in residential care can be ‘fixed’ by time limited trauma focused treatment programs, and also the ‘risk’ of peer learned behaviors and peer on peer abuse is high.

We need to be cautious about approaches with this vulnerable population and to recognise that power relationships can be different between young people and young children to relationships with adults. By using the language of criminology, there is a risk that our response to this issue could slide into further labeling vulnerable children in OOHC who display sexualised behavior as a result of prior to placement life experience. Our schools tell us that sexualised behavior is definitely not restricted to children in OOHC. Further exploration is also needed of the sexualisation of children and young people in this demographic, and we note there is a current NSW parliamentary inquiry into the sexualisation of children and young people in the contemporary cultural environment with access and exposure to sexualised content in public and through social media.

In relation to management of child-to-child sexual activity, we endorse any attempts to improve awareness and training in this area amongst workers, including appropriate responses and therapeutic interventions.

Improving the quality of data on child sexual abuse in OOHC

Barnardos believes in the importance of collecting data to understanding and changing the social problems affecting children. Over the past ten years we have developed very extensive electronic unit data systems which are capable of providing data to State and Federal governments. We have also previously worked with Australian Institute of Health and Welfare on the development of data in OOHC.

Given this experience, we believe that State bodies which currently oversee reportable conduct, such as the NSW Ombudsman, should be responsible for collecting and collating data on child sexual abuse. The data set described above is complex information for unit records as it requires constant updating as events in an investigation change.

Non-government agencies in NSW have extensive responsibilities for reportable conduct allegations and an extra reporting systems takes from the ability of agencies to provide direct service to children. Currently in NSW OOHC agencies report the same or related information to the Ombudsman at least twice (two forms plus potentially ongoing monitoring) and the Office of the Children’s Guardian up to three times (notifications related to Accreditation, Police Checks and Carer Register sections). We also report data to agency insurance providers and for internal accountability purposes to Barnardos Board. The cost of further data collection should be met by government to ensure the avoidance of severe current duplication.

In making this recommendation, we would point out that information on allegations of child sexual abuse in OOHC is currently not collected electronically and we provide paper copies of all documents. Barnardos would be highly concerned at any attempt to establish a separate ‘portal’ for specific information about child sexual abuse in addition to current labour intensive reporting requirements.

Improving regulation and oversight to better prevent and respond to child sexual abuse in OOHC

Barnardos supports the establishment of State and Territory reporting bodies which receive and centrally record allegations, check investigations, and undertake prevention training. We strongly believe such bodies should be modelled on the NSW system and any improvements

that could be made to it. The definition of what is reportable should be at a high level of significance and include incidences of sexual abuse and significant physical and emotional abuse of children in OOHC. We agree that any monitoring body should be independent of the government department responsible for child welfare and OOHC placement, and that this body should oversee every provider of OOHC as well as other service providers to children such as schools. Reporting functions should be closely linked to probity checks (such as the NSW Working with Children Check and ACT Working with Vulnerable People Check), and any other related systems (for example Carer Registers). There should be common cross jurisdictional definitions of abuse.

Accreditation and standards monitoring

A robust accreditation system is most important to protect children and needs to include accreditation criteria to protect children from sexual abuse. At a minimum we believe that these criteria must include:

- Not placing multiple unrelated children together in a foster or kin care placement
- Residential care never should be used for children under the age of 12 years
- Each child should be seen alone regularly by an allocated caseworker
- Monthly supervision of casework staff by an experienced worker

We believe contravention of these standards leaves children vulnerable to child sexual abuse.

Barnardos has been accredited three times by the NSW Office of the Children's Guardian and believes that processes of external inspection and audit are useful, however care needs to be taken to avoid such systems becoming too bureaucratic and overly driven by concern with outcomes for individual children.

Our experience of the National OOHC Standards is that they have not had a significant impact on practice as they only involve 'data reporting' (and the data is of relatively low quality). Without inspection and dialogue the enforcement of OOHC Standards is very difficult if not impossible to achieve, an audit and inspection system is definitely needed to enforce OOHC Standards.

Authorisation of Carers- ensuring minimum standards for carers

Authorisation of carers should be the responsibility of direct OOHC providers, with all carers subject to assessment, probity checks and training which should be overseen by the accreditation body in each jurisdiction. We note that there are some excellent packages for foster and kin carers (such as Winangay for Aboriginal carers) however agencies often have unique ways of providing services and therefore we do not believe that these should necessarily be standardised.

Oversight body for out-of-home care

We believe that an accreditation and reportable conduct system, as Barnardos has experienced this in NSW, provides good protection for children, we do not believe another form of oversight is necessary. Oversight including accreditation bodies must be separate from government child protection departments and associated OOHC funding mechanisms. We cannot know which disclosures have not occurred but the current NSW system does make reporting and investigation of allegations very transparent. Government child protection and OOHC service delivery should be subject to the same external oversight as non-government agencies.

Reportable conduct schemes

The NSW Ombudsman Reportable Conduct system has proved a useful model for investigation of child sexual abuse from Barnardos perspective. Its implementation is currently being considered by ACT Government. Important features of the NSW system are engagement of the agency Principal Officer and requirements for good record keeping.

The NSW Ombudsman deals with matters wider than sexual abuse in OOHC and this is very appropriate as various forms of abuse can happen concurrently. We believe that sexual abuse and significant physical and emotional abuse should be handled together and no different child sexual abuse reporting processes introduced.

However, we believe that any oversight body should avoid problems with the NSW system in two areas, scope of abuse included and integration with other monitoring mechanisms (such as current Office of Children's Guardian administered Carer Register, and processes related to the Working with Children Check).

Carer registration

Barnardos believes caution needs to be exercised in relation to regulated Carer Registration schemes. Our experience of the NSW Carer Registration scheme introduced in 2015 indicates it to be a cumbersome administrative process and it is as yet unclear how much greater protection to children it provides in addition to that already provided by police checks. The NSW Carers Register has proven expensive from the agency perspective, and difficult to centrally implement. A highly bureaucratic system may prove to be a disincentive for many potential carers because of requirements to complete multiple administrative procedures. We are concerned with its impact on Aboriginal people coming forward to care and this is particularly important in recruiting kin carers. Also for those adolescents who self-place from OOHC there can be complications arising from OOHC young people choosing to live within households that may not meet the Carer Register requirements.

Encouraging disclosure and reporting

Both of these issues are best dealt with through an accreditation system which requires that caseworkers properly case manage placements and that all workers receive individual supervision within professionally acceptable timeframes. Barnardos has attempted to institute good case management standards, and the capacity for management to review casework practice via the use of best practice case management systems (previously Looking After Children Electronic System LACES and currently MyStory).

Barnardos understands that disclosure by children and young people, notwithstanding the case management system used, may take a considerable amount of time and we believe that it is essential to have stable staffing and opportunities for children to speak alone with workers. We have recently undertaken research on children waiting to be adopted including looking at time frames for disclosures of child sexual assault that they have made. This research indicates that it frequently takes some years of stable placement before children disclose about abuse by strangers prior to entering OOHC, and even longer to disclose about abuse within their birth family. Such disclosures are most likely to happen with foster carers and therapists, rather than caseworkers.

Potential improvements in information sharing to better protect children in OOHC

Barnardos supports information sharing between government and non-government agencies and has found the introduction of Chapter 16A to NSW care and protection legislation very effective in promoting information exchange. We believe that the effectiveness of information sharing needs to be carefully evaluated, however we are unaware of any evaluation to date.

Our practice experience is that information exchange capacity is often not effectively used as a result of dispersed responsibilities within organisations, particularly in the case of large bureaucratic government departments.

Barnardos has not experienced requests for information about specific foster carers since the introduction of the Carer Register in NSW in 2015 (apart from initial teething problems when the system was used inappropriately by some agencies routinely for assessment and which created an untenable amount of work). Yet this system is very time intensive for example it has required the development of a new section inside the Office of the Children's Guardian and OOHC agencies need additional resources to fulfil this new compliance responsibility. In our assessment we cannot, of course, gauge the deterrent effect of having such a system in place on carers who may pose a potential sexual abuse risk to children.

We believe it to be crucially important that all carers are fully informed of children's abuse history, this should be reinforced through accreditation and having adequate and sustainable information keeping systems in place for the period a child is in OOHC. Barnardos has developed the MyStory case management system which ensures that all information is well ordered and appropriately shared with carers.

Applying the child safe elements to the OOHC sector

Although it is impossible to tell how many children have not disclosed child sexual abuse in OOHC, Barnardos experience of the accreditation (including requirements for Codes of Conduct) and reportable conduct processes in NSW is that existing measures have improved the transparency of behaviour towards children. These measures should be standard across Australia subject to:

- Limiting reportable conduct to sexual abuse and significant physical and emotional abuse only, and linking the system closely to probity checks.
- Evaluation of the effectiveness of the system in comparison to other strategies to generally improve OOHC. We note that in the sixteen years, since the current NSW Ombudsman Reportable Conduct scheme was established, there have been 138 criminal convictions: 37 were from OOHC (16 were in NGOs) of which 23 were for sexual assault. There are no estimates of the cost of the program and it is therefore difficult to conjecture what else could be done with these resources. Evaluation needs to consider that it is also unclear whether these abusers would have been detected through the criminal justice system regardless of the NSW reportable conduct system.

Other strategies that could be pursued relate to increasing resources for agencies to enact stronger internal safeguarding mechanisms. In our experience, prevention and stable adult relationships that lead to disclosures of abuse are only possible when the OOHC sector is provided with adequate resources to reach agreed regulatory standards. Barnardos believes that all standards should be binding and apply to any situation where children have face to face contact with workers, carers or volunteers. Monitoring of child safe organisations is ideally undertaken by a trusted body which actually visits agencies and can set up ongoing relationships with them.

A national strategy to prevent child sexual abuse in OOHC

It is our understanding that the education campaigns over the past years in Australia (Thakkar-Kolar, Ryan et al. 2008) have had an impact on sexual abuse allegations and therefore, despite not knowing the cost of such programs, Barnardos supports education in this area.

We would however prioritise enforcement of standards in OOHC across Australia, over education campaigns. We are particularly concerned to see standards enforced in areas such as unrelated children placed together in foster care, the requirement that workers must spend regular time alone with children, and that children under 12 should not be placed in residential care.

Improving support for children and young people

Barnardos supports all items numbered one through twenty one on pages 120-122 of the Consultation Paper and we have been actively advocating for these for well over thirty years, as have many other agencies such as the CREATE Foundation. Progress has been limited and the increase in children and young people in OOHC and in homelessness services points to lack of success of strategies employed across Australia to date.

We would add one additional area for reform to this list, and that is the need to prioritise the ability for some non-Indigenous children to move out of the OOHC system and into open adoption. For some children in OOHC, particularly those who enter care at a very young age having been removed by the Court and who can never return safely home, moving to a new legally permanent family will help avoid vulnerability to child sexual abuse in care. Whilst we are of course aware that children are not necessarily safe from child sexual abuse in any family, we know of only three incidents amongst 210 children adopted from Barnardos over the past twenty six years where criminal action has been taken as the result of child sexual abuse. Our experience therefore is that children and young people are less vulnerable to child sexual abuse in adoption than in unstable foster placements, the latter often leading to young people becoming detached from adult caregivers by their mid-teens and consequently at risk.

For almost the past thirty years Barnardos has focussed, for children in long-term care, on securing adoption from OOHC as a legal care option where children are safest as they have stable adults in their lives with long-term interest in their wellbeing. We are currently able to move increasing numbers of children permanently removed from their families and in long-term care with us out of the vulnerability of foster care into a legally permanent adoptive family. We believe that throughout Australia many more children in OOHC could be assisted through open adoption than is currently the case.

The children for whom Barnardos advocates open adoption are those who the Children's Courts have already determined will never be able to live safely at home with their birth parents. Indigenous children and young people are not included because it is understood in law as culturally inappropriate and is seen by the Aboriginal community to have been used in the past to negate and suppress cultural identity. Barnardos of course also acknowledges that decisions must be made cautiously about adoption for older children with strong attachments to their birth family.

Thank you for the opportunity to provide this response.

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References

Thakkar-Kolar, R. R., E. E. Ryan and M. K. Runyon. (2008) 'Child Sexual Abuse : from prevention to self-protection.' *Child Abuse Review*, **17**, pp. 36-54.

United Kingdom Department for Education (2016). 'Children looked after in England (including adoption and care leavers) year ending 31 March 2015.' Retrieved 24th March, 2016, from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464756/SFR34_2015_Text.pdf.

United States Department of Human Services (2015). 'AFCARS Report 2014.' from <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>.