



# Submission in response to:

## Issues Paper 4: Preventing sexual abuse of children in out of home care

November 2013

For further information in relation to  
this submission contact:

Amanda Jones  
Senior Manager - Evaluation, Policy & Research  
p: 03 9429 9266  
e: [adjones@berrystreet.org.au](mailto:adjones@berrystreet.org.au)

## Introduction

Berry Street welcomes the opportunity to address issues relating to prevention of sexual abuse of children in Out of Home Care through a response to the Royal Commission's *Issues Paper 4*.

For over 130 years Berry Street has been supporting, assisting and caring for children and young people that are the victims of abuse, violence and neglect. We have seen, and continue to see, how trauma in early childhood can severely disrupt and impair children's development with lifelong consequences.

At Berry Street nothing is more important than ensuring that children and young people, whose connection to Berry Street stems from some personal experience of harm, abuse, neglect or trauma, are not subjected to any subsequent harm whilst in our care. We acknowledge however that this has and does happen. Berry Street accepts its responsibility to provide the highest quality services and to effectively manage the risks, typically complex and often with critical implications for children's well-being, inherent in providing our services. Further, we accept responsibility to openly and honestly respond to any allegations of a failure in our duty of care towards a child or young person and to do so with their rights and life-long well being as the primary considerations in how we respond.

The passage of time should never diminish our responsibility to fully respond to allegations of abuse and neglect. The passage of time does not of itself provide healing, recovery and restorative justice for childhood victims of abuse or neglect. What can be is the willingness to confront failures in caring for and protecting children, to place the interests of the victims ahead of organisational interests and to fully commit to reparations.

Berry Street has encouraged past and current clients to make submissions to this inquiry and will continue to promote the role and work of the commission. Berry Street has provided this submission as a public submission and does not wish it to be treated confidentially, and would be pleased to provide further comment about this submission.

## Response to issues raised

### Core strategies for keeping children in OOHC safe from sexual abuse

Consistent with Berry Street's response to issues paper #3, the core strategies for creating and maintaining a child safe organisation apply in relation to out of home care, including residential care, foster care and kinship care. These include:

- **strengthening licensing and regulatory requirements** so that they clearly reference 'child safe' core strategies, and establishing transparent processes of **auditing against these licensing and regulatory requirements**.
- **strengthening the Working with Children check** in the service of requiring organisations to adopt child safe organisational strategies.
- an **organisational child safety strategy** (and periodic review of same) that is the combination of an organisation's commitments, policies, procedures and other initiatives to prevent and/or minimise potential risks of harm to children and young people. Organisations need to be overt about their commitment to being child safe agencies and to monitoring child safety closely, e.g. on their websites, and in offices and care settings.
- an **organisational child safety policy**
- an **organisational code of conduct**
- **clear and consistent organisational and independent sector complaints and consultation/feedback mechanisms** that support children to express concerns about safety or disclose harm, including explicitly any allegations or complaints about sexual abuse, and ensure response to any allegations of child abuse or maltreatment, both past and current. Ideally, children and young people should be

involved in the development and implementation of such complaints processes, and complaints processes should be in a variety of formats and should be age appropriate and accessible for all children. Children and young people - especially those in out of home care - should have access to an independent advocate.

- **organisational leadership** that models placing children's rights and safety at the centre of organisational concerns and promotes an open and aware culture.
- a range of mechanisms for **enabling and promoting the participation and voice of children** in programs and organizationally.
- **robust recruitment, selection and screening processes** for choosing suitable carers, staff and volunteers, including police check and Working with Children check, and effective interviewing strategies that utilise scenarios and open behavioural questions<sup>1</sup>.
- **risk management planning** in relation to programs and activities.
- **organisational and sector training and education** in what constitutes child safety<sup>2</sup>, and appropriate responses. The curriculum for courses in child and family welfare ideally should also be required to build in content relating to child safety.
- **staff and carer support, formal supervision and performance monitoring.**

Additional strategies specific to out of home care (at the tertiary stage) should include:

- robust assessment of the children and young people prior to placement by Departmental placement coordination;
- assessment and matching of children to care arrangements. The need for emergency placements for children in an environment where demand for approved out of home care exceeds supply means that we cannot be confident of the child's safety in care. Despite clear program requirements in Victoria, there is a lack of sufficient safe, pre-assessed care options for children removed from their home (kinship care being a particularly acute site for this - see below).
- strong analysis of incident reporting and monitoring of 'weak signals' from a range of sources;
- improved funding and more intensive placement options in relation to children and young people who are known offenders and known victims of sexual exploitation (e.g. placement in specialist units of 2 children or young people, with live in carers and continuity of care and support).

Berry Street is keen also in this context to raise the issue of positive, safe touch within OOHC. There is persistent confusion around this issue which needs to be addressed in the sector. The approach for a period of time was that no touch for sexually abused children and young people was appropriate. This is a distorting, reductionist position leading to a dehumanizing environment in which some children are effectively being neglected in care. Berry Street, through its therapeutic interventions for children who have been sexually abused, recognises the need for these children to experience safe and positive touch as an integral aspect of recovery from trauma and disturbed attachment, however, what is critical is the meaning ascribed to that touch.

### **Differential strategies to keep children in OOHC safe from sexual abuse depending upon type of out of home care**

---

<sup>1</sup> See for example the training program, *Choose with Care*, run by Child Wise ([www.childwise.net](http://www.childwise.net)). This program identifies that it is not only sexually predatory behaviours that need to be screened for, but also broader behavioural red flags including capacity to work well with authority and teams.

<sup>2</sup> An inclusive definition is needed that recognises that safety is multidimensional and means more than the absence of harm, i.e. one that takes in various forms of abuse and neglect, trauma-informed service models that reduce the likelihood of compounding or triggering pre-existing trauma, various forms of safety, e.g. cultural safety, a right to non-discrimination based on sexual identity, gender or race, etc)

It is important to recognise that the overwhelming majority of children in out of home care are currently in home based care, i.e. people's homes in the community, and that of these the proportion represented by kinship care placements is growing rapidly. Over the past decade, kinship care has emerged as a central element of the Victorian child protection system, as a key source of out of home care placements. Placement with a relative (kin) or a member of a child's extended social network (kith) is now mandated as the first option for consideration by the Department of Human Services through the Children, Youth and Families Act (2005). The number of children and young people living in formal kinship care arrangements in Victoria has increased rapidly in the last 10 years, and this upward trend is expected to continue. From 1997/98 to 2006/2007, kinship care placements increased by 142%. For a number of years however, the level of attention paid to the adequacy of Kinship Care arrangements was not commensurate with program growth. Formal policy and program responses lagged behind practice, as the number of DHS supported kinship care placements increased.

The characteristics of kinship carers however, are somewhat different from those of carers in other forms of out of home care. Kinship carers are older (often grandparents), have higher health needs, and are likely to be relatively financially disadvantaged having retired, and often relying on income support (i.e. a pension). Kinship carers may have different motives for caring for young people compared to other carers. In addition, kinship carers have a very different relationship with the birth parents - family relationships can be fraught, contributing to stress and mental health problems. In some cases kinship carers may be ill equipped for their role due to a range of complex factors. These vulnerabilities can pose additional risk.

Placing a child/young person with family through kinship care is, on balance, a preferable option, and can facilitate keeping siblings together, however, there are a number of issues which need to be considered in order to ensure that placement with kin is a suitable option, and maximises the safety, well-being and development of the child. The current Kinship Care model and level of resourcing does not adequately recognise or acknowledge that the kinship clients essentially have similar profiles and needs to those of other clients of the home based care system. The higher levels of need of the kinship carer group also need to be acknowledged. Disparities between kinship care and home based care programs are most obvious in kinship care funding levels and practices, which are less than home based care funding levels and practices. These are further discussed below.

## **Funding**

Kinship care agencies receive funding for placement support at a lower level than "General" clients in Out-of-Home Care, even though some young people in kinship care placements would be classified as having intensive or complex needs if they were in a foster or residential care placement. The level of carer reimbursement does not reflect the true costs of caring for children, and kinship carers are often financially disadvantaged compared to carers of comparable programs. There is no separate funding for management (team leaders), establishment costs, and brokerage funding. Kinship care clients have less access to material resources than other children and young people in other forms of out of home care.

## **Key practice elements**

- **Assessment**

All potential kinship care placements should be subject to a comprehensive assessment which takes into account the specific needs of children and young people, and the capacity of kith or kin to provide quality care. Assessment processes need to balance the benefits of care by a family member, or friend, with a rational consideration of the carer's age, health, attitudes, circumstances and capacity to provide long term care. There is currently a backlog of assessments yet to be done, so a proportion of children are in kinship placements for weeks without adequate scrutiny of the appropriateness of placement.

- **Training**

Appropriately funded training and support are needed in the kinship care program, as a priority for future program development. Currently it not a prerequisite for kinship carers to undertake training and professional development (as is the case for other home based carers), however many kinship carers would benefit from training and education. In particular, carers require knowledge about the impacts of trauma on the children they care for; services which are available for children and young people; carer rights and responsibilities; as well as healthy parenting strategies. Ongoing training and support has implications for quality of care, and for carers' capacity to cope in the longer term.

- **Standards**

Ambiguity in relation to specific standards for kinship care has created problems in relation to addressing quality of care and abuse in care concerns. Berry Street has struggled to apply home based care standards to kinship care, as the motivation, knowledge, and preparedness of kinship carers is often substantially different from that for general foster carers. Collaboration and discussion between DHS and CSOs is required to clarify and agree to standards, and processes to ensure concerns are addressed in a timely and constructive way.

- **Access**

Access between biological parents and their children is more complex for kinship care compared to other out-of-home care, and currently this is not specifically addressed or resourced by the Kinship Care model. Kinship carers may need to negotiate emotionally complex family relationships, which can impact on access arrangements. Kinship carers can also be faced with repeated court cases and uncertainty relating to the stability of the placement. Strategies to deal with access arrangements need to be specifically included in the program model.

- **Respite**

A systematic approach to the provision of respite for kinship carers is required. This is particularly important given the age and health of many kinship carers, and the importance of additional stimulation, relationships and opportunities for children and young people. An appropriately funded respite component in the Kinship care program should contribute significantly to enhanced placements, and capacity of carers to continue longer in the role.

The growth in kinship care relative to other forms of out of home care represents a very different landscape to for putting mechanisms in place for safety in care. Currently, in Victoria at least, kinship care is the poor cousin to foster care and falls outside our capacity to monitor adequately for safety. If kinship care is to be the preferred option for children and young people who need to be placed in OOHC, Berry Street believes that it is essential that kinship care programs are established in a way which maximises the safety, wellbeing and development of children and young people.

A further consideration here is the question of where oversight of the placement lies. Case planning is mostly the responsibility of the Department in Victoria, but in some cases has been transferred to OOHC services. Berry Street strongly recommends that case management of Child Protection clients to be contracted out to the sector and for the Department to focus its role on statutory functions. Whilst there are many examples of where DHS is doing effective case management work and coordinating care teams, in Berry Street's experience, the interests of children and young people are best served where the case management function is contracted to CSO's. CSO's are better placed to engage with and maintain strong relationships with children and young people and, working through care teams and other mechanisms, to advocate for their best interests. What we have observed is the crisis driven statutory work of the Department and the demands of the Children's Court take precedence over client support and case management. This has resulted in Departmental case managers who are over-worked, disconnected from their clients, unresponsive and not able to manage cases effectively due to other pressures. The contracting out of all case management to CSO's would also allow the Department to focus their efforts and expertise on their core responsibility and major strength - the performance of statutory Child Protection work.

## **Models for checking OOHC practices**

Berry Street endorses both a standards-driven auditing approach and regular supervisory visits, as vital elements of checking OOHC practices. While Berry Street is interested in exploring consumer advocacy approaches, these would not substitute for the former, and there are significant issues associated with existing models.

What we know from experience in delivering residential care in particular is that an important consideration is getting the balance right between the amount of scrutiny and the associated number of adults entering the child's home environment, versus provision of strong mechanisms for keeping the care system of the residential unit open and enabling child feedback about the safety of their care. An 'irregular' visit does raise concern as the residential care unit represents the child's home, and further, if the irregularity is designed to 'catch out' carer or child-to-child abuse this would not seem to be a realistic strategy. The other consideration here is that residential care represents some 5% OOHC placements within the sector only, and as such a community visitor

model (presumed to be impractical for home based care) is a solution that could only be directed at this small minority, leaving out the 91% of children in home-based.

Stronger solutions are likely to be relationship-based, i.e. many children, particularly those with trauma and disturbed attachment histories, will struggle with disclosing to yet another adult with whom they have not had the opportunity to develop trust. This is one reason why a regular visit by a senior manager of the service who sits down for a meal or some other activity-based engagement regularly with the children of each unit represents a stronger strategy relative to a poorly known irregular community visitor.

## **How best to regulate OOHc providers**

Berry Street believes that in Victoria the Department is carrying too many roles and functions, including that of system regulator. Berry Street strongly endorses an outcomes based regulatory system under the authority of the Independent Children's Commissioner that creates structural separation between statutory child protection work and OOHc service delivery. This is further reinforced by the fact that the Department is itself responsible for some direct service delivery alongside its other functions.

In relation to kinship care the Department is the main provider of kinship care and, as noted above, this is the most rapidly expanding form of OOHc. Unlike all other OOHc providers, the Department is not required to meet the service standards that form that basis of registration as a Community Service Organisation. Hence the most rapidly expanding form of care in Victoria, kinship care, is predominantly provided by an agency (the Department of Human Services) that is not subject to independent scrutiny and periodic auditing against service standards. This is not in children's best interests.

## **Training needs of those working with children who might be sexually abused, and those caring for children who have sexually abused other children**

One of the most strongly identified needs for training in relation to children who might have been sexually abused is how to respond to a disclosure of sexual abuse. While Berry Street supports standard training in relation to sexual abuse, this needs to be contextualised by agencies adopting comprehensive child safe strategies, as outlined in Berry Street's submission to Issues Paper #3. This would also ideally be supported by a national mandatory standard for procedures for responding to sexual abuse that is part of licensing/regulation requirements and associated auditing.

It is also important to recognise that in relation to residential care there is already a long list of mandated out-of-unit training (some 11 days' worth) in fire, OH&S, food handling, effective conflict management, orientation, first aid, mental health and *With Care* (inclusive of some content in relation to sexual abuse). This is therefore a challenge in practice and a question of resourcing of CSO's to adequately support out of office training.

More broadly, there is an ongoing high need within residential care services sector for training in the sexual health and education needs of young people. These children and young people experience acute vulnerability in relation to sexuality issues -precisely because of the context of their removal from family into state care. Far from enjoying stable, secure relationships with parents in a home care environment that empowers these children to make good decisions about their physical and sexual safety, many have suffered abuse (including sexual abuse), neglect and disrupted attachment at the hands of adults or siblings which may give rise to highly problematic development and pathways in relation to sexuality. This includes:

- sexual identity formation confusion
- ongoing unresolved trauma in relation to sexual abuse
- problem sexual behaviours
- prostitution
- sexual exploitation of others

Coupled with this, children and young people in OOHc tend to have many workers and carers in their lives once in OOHc and in the case of residential care, they often co-reside with other children and young people who bring their own complex and troubled histories in relation to sexuality. While staff and carers can and should play a key role in addressing the sexual health and education needs of children and young people in OOHc, it is not surprising, given these complexities, that the level of anxiety amongst practitioners and carers about this is

high. They recognize that to do nothing is contrary to the best interests of children in their care, but they are concerned about acting in ways that are construed as inappropriate, or that inadvertently compound the child or young person's difficulties or behaviours.

While *Fostering Hope* and the *Circle* training provided to foster carers within Berry Street address the impact of sexual abuse, Berry Street does recognize that carers are not receiving adequate or effective training in relation to children who have abused other children. This includes supporting them to protect their own children. There needs to be a focus both on the response to the child as perpetrator, and the needs/role of the carer/parent.

### **How best to determine the rate of sexual abuse of children in OOHC & change in practice**

Berry Street believes that there should be a transparent system of reporting on allegations of sexual abuse of children whilst in care, and that critical incident reporting and quality of carer concerns reporting are the most suitable sources for determining these rates. These represent vast datasets that are currently not shared with the sector. The OOHC sector and Department should collaborate to produce annual reports or some equivalent to enable analysis and use of these data.

We note and emphasise that the sexual abuse of children is a crime and reporting should include notifying the Police where a reasonable belief is held that a child has been sexually abused.

Berry Street also supports development of a system within OOHC that enables tracking evidence of follow up. Exit interviews certainly can form a component part of a system that provides children in care with multiple ways of having their voice heard more generally, however, as a means to capture information about rates of sexual abuse it can only be one partial mechanism at best as it risks delayed reporting. Further, while some children might disclose sexual abuse at this point, this process will miss a significant proportion of children who either find an independent third party too strange to disclose to, or an internal interviewer as too implicated in the system of the CSO, leading to significant underreporting.

### **Different ways of addressing allegations of sexual abuse brought against carers**

The existing quality of care concerns (QoCC's) process within Victoria that operates in relation to allegations against carers is, in Berry Street's experience, a robust one that works well if followed. An authorised investigator investigates and reports to the Secretary where the department decides that an independent investigation is appropriate. If the investigator finds that the carer is reasonably likely to have physically or sexually abused the child and the department considers the carer poses an unacceptable risk of harm to children, the department must refer the matter for hearing by the Suitability Panel. The Panel determines whether or not a person should be disqualified from being placed on the register of OOHC carers. The procedure of the Panel is set out in the legislation, and the carer is entitled to make submissions and be legally represented at the hearing. The legislation also requires information to be given to the carer and the OOHC service at various stages.

The system needs to support regular training of carers, staff, case workers, team leaders and managers in all aspects of QoCC's.

### **Implications for record keeping and access to records from delayed reporting of child sexual abuse**

Delayed reporting of child sexual abuse is obviously linked with serious harm to the child, including the risk of ongoing victimisation of the child, delays in the child receiving psychological and physical care, and delays in the child receiving validation and justice. Delayed reporting also prevents timely use of data and raises questions about the reliability and thoroughness of record keeping.

Berry Street runs *Open Place*, a support and advocacy service that co-ordinates and provides direct assistance to address the needs of people who grew up in Victorian orphanages and homes during the last century. Open Place aims to help people who identify as Forgotten Australians to deal with the legacy of their childhood experiences and provide support to improve their health and well-being. The service provides personal support, support in accessing specialist services, financial assistance and individual advocacy. Berry Street also provides

a heritage service that assists people who were are former residents of Berry Street and Sutherland Homes, to access personal information about themselves held by Berry Street.

Current best practice is that every child in OOHC has an individual file in which is recorded all significant events in that child's life in care, including, where applicable, any complaints and allegations, and the facts of an investigation, actions arising and outcomes. Alongside this there should be an agency register of complaints/allegations and associated investigations that are cross referenced with these individual client files. Most if not all of the agencies Open Place and Berry Street's Heritage Service have dealt with on behalf of Forgotten Australians cared for in the 1950's and 60's have either never held such registers or failed to maintain or index them. The impact on Forgotten Australians of not being able to recover any direct or indirect evidence of the sexual abuse perpetrated upon them whilst in care has been a profound one that has compounded the injustice they experienced.

In terms of current practice, there is lack of clarity in Victoria about what is allowed to be released from client files. Different agencies, including the Department, have different interpretations of legislation in terms of how liberal they can be about release of file content when a current child in care or former care leaver seeks to view their file. Every child in care has a right to view their file but this process needs to be one of supported release that helps the child deal with issues that can and do accompany release of file content. This implicates also the professionalism with which case notes and files are prepared and maintained.

Berry Street believes there should be minimum requirements in relation to record keeping and records access, including retention of records, that is subject to auditing, that in turn is a condition of licencing/regulation. However, this needs to be integrated into a comprehensive whole of organisation child safe strategy, as outlined in Berry Street's submission to Issues Paper #3. Records are unlikely to reflect what has happened in care accurately or sufficiently unless embedded within such a comprehensive culture of awareness of the risk of abuse, and responsiveness to children's rights and needs.

## Profile of Berry Street

### Vision and values

The Berry Street believes *all children should have a good childhood - growing up in families and communities where they feel safe, nurtured and have hope for the future*. The Strategic Plan 2007-10 (available at [www.berrystreet.org.au](http://www.berrystreet.org.au)) includes a statement of beliefs and assumptions, the context within which we operate and our 5 values (and what they mean to us) of:

- Courage,
- Integrity,
- Respect,
- Accountability,
- Working Together.

Berry Street provides an extensive range of services for children, young people and families across rural, regional and metropolitan Victoria. We work from 20 offices and a further 34 worksites, with the majority of services in the Gippsland, Hume, North & Western Metropolitan and Southern Metropolitan regions. Berry Street employs approximately 550 (EFT) staff and has the support of over 250 volunteer caregivers and in excess of another 200 other volunteers. The budget for 2010/11 is more than \$53 million. Our greatest challenges today arise from the dreadful impact on children and their families of domestic violence, substance abuse, mental illness, poverty and unemployment.

Today we are the largest independent child and family welfare organisation in Victoria, providing an extensive range of services across metropolitan, regional and rural Victoria, to many thousands of people each year. Incorporated under the Associations Incorporation Act, Berry Street is an independent, Not-for-Profit Public Benevolent Institution with Deductible Gift Recipient and Income Tax Exemption status. Our voluntary Board of Directors has responsibility for governance and stewardship of Berry Street's good name and resources.

### Services

#### Residential care

Berry Street's residential care program is often the 'last resort' for young people whose traumatic childhood means they can't safely live at home or in foster care. Across Victoria, care is provided by rostered staff in small-scale group houses for up to four young people.

#### Foster & kinship care

When children can't live safely at home because of serious child abuse, neglect and family violence, the first preference is that they go to relatives (Kinship Care). Accredited volunteer foster carers also provide care for children and young people in their own homes (Foster Care). Our professional staff ensure these carers are properly screened, assessed and supported, as well as working directly with the children and ensuring they get the help they need to recover.

#### Therapeutic

Through clinical services and counselling programs, including Take Two, we work intensively with the distressed child or young person, their family, carer and other services, to help them recover from their trauma.

#### Education, training & employment

Too many of the young people with whom we work are either excluded from, or have dropped out of, school. We run an independent school with a number of campuses, and an extensive range of other education support and training programs. We strive to: maintain the participation of those who are at risk of disengaging from mainstream school; re-engage young people who are excluded from education or training; and promote pathways for young people into employment.

#### Youth

We know that adolescence is a 'window of opportunity' to help young people recover from traumatic childhoods and prepare them for a successful adulthood. Our youth services include case management, outreach, leaving care, life skills, mentoring, and accommodation.

## Family

Our family services support parents to better care for and nurture their children and help resolve conflict between parents and their adolescents. We also play a lead role in the delivery of services for families experiencing family violence: we help women keep themselves and their children safe; and we provide contact services for parents who cannot manage safe access arrangements for their children.

## Community

Our community work includes two key approaches. First, we deliver programs in local geographic communities, with a focus on the early years, financial inclusion and capacity building in rural communities. Secondly, we engage with particular groups within the community, with a significant emphasis on supporting Forgotten Australians, Aboriginal children and their families, and new arrival groups. We place a high value on working in partnership with and for these communities.

