Dr Michelle Townsend

Much of the material in this submission was taken directly from my PhD thesis (Townsend, 2011) based on a study undertaken between 2005 and 2010 that focused on improving educational engagement and outcomes for children and young people in care.¹ The thesis presents findings from a sample of children in care before and after they made the transition from primary to high school as well as large-scale data about children’s educational participation and performance. The case studies of children making the transition to high school (n = 56), together with individual and focus group interviews with adults in their lives (n = 187), provide a rich understanding of the complex issues involved in improving the educational engagement and achievement of children in care.

This submission is also informed by my work at the CREATE Foundation, the national consumer body of children and young people in out-of-home care and in particular the Do No Harm report (CREATE Foundation, 2004) that I oversaw the development of.

¹ Children in care is used as shorthand for children and young people in out-of-home care.

² The enrolment forms now require that school be made aware than a child is in out-of-home care.
Introduction

Children and young people in care are removed from their families and often their communities, due to abuse and neglect. It then becomes the responsibility of every part of the child care and protection system to ensure that these children are better of, safe and protected and having their needs met. It is a failing of the system if these children are further abused in care.

Response to Questions

An essential element of OOHC is for a child to be safe and secure. Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?

There are many elements that play important roles in keeping children safe from harm in out-of-home care. A quality care system, well resourced with skilled staff and caregivers, and access to support and resources is essential. However, one key strategy that I would like to focus on is relationships between the caseworker and child or young person in care. In the research I have undertaken with children and young people in care, having a positive and effective relationship with their caseworker, and having regular contact is viewed as highly important to their well-being across many domains.

Increasingly there has been an appreciation that individual children’s participation occurs within the context of relationships where there is the presence of strong and supportive relationships between children and adults (McLeod, 2007; Schofield & Thoburn, 1996). As Cashmore (2002) emphasised, children who have been abused and neglected require time to build trust in adults and to be open with them about their needs and wishes. For some children their trust in adults has been further harmed in care by a having a succession of adults, including carers and caseworkers, in their lives (Cashmore, 2002). Children’s participation requires a commitment to an ongoing process, rather than a one-off process, where children are given
explanation and reassurances (Thomas & O’ Kane, 1998) and opportunities to explore their feelings, concerns and possibilities. 

In this study, children either had an active caseworker in regular contact, a caseworker but not a strong relationship with them or they had no caseworker at all. The children were frank in identifying the lack of connection and trust they had with many of their caseworkers – past and present – yet emphasised that having a caseworker (that is, being allocated one), knowing who they were, and having time to build a trusting relationship with them through continuity and regular contact, was important. This is supported by other studies (Winter, 2009). For most children, the presence of strong, trusted and ongoing relationships with their caseworkers was seen as vital for their meaningful and ongoing participation in decisions that affected them. The emphasis that children place on caseworkers may be based on their view that caseworkers represent a ‘higher authority’ than other adults in their lives. Children are aware that caseworkers are the adults making many of the decisions that determine where they live and where they go to school, among other things (Townsend, 2011).

In the interviews conducted with children as they transitioned to high school, I asked each time what caseworkers should do to help children with their education; finding children in care a nice, safe family remained the highest priority across the Year 6 and Year 7 interviews.

The responsibility of caseworkers to find children in care a nice and safe family was critically important for all the children who were interviewed. As Ashley argued: “That’s what they are meant to do.” Participation and regular contact were also important for the children. The decision to place children in care had ramifications for children every day, and therefore having a caseworker who listened and supported their participation was crucial. “They should listen; take their voice and opinion.” [Ethan]
For the children who highlighted the need for caseworkers to visit more often (at their placement), this was to ensure children’s care needs were being met and for caseworkers to have an appreciation of what was happening in that environment: “They should always do that because they need to know.” [Amelia] Given the number of children who experienced abuse while in care, this is a particularly salient point. Several children indicated they were disappointed that their caseworker had never visited them where they lived (Townsend, 2011).

Children’s relationships with their caseworkers acts as a protective mechanism, where quality of care issues or abuse in care can be prevented, identified or acted upon immediately (Sinclair, 2000; Stein, 2006).

How should the rate of sexual abuse of children in OOHC be determined, noting that the National Standards for Out-of-Home Care require reporting of substantiated claims of all types of abuse? Would a form of exit interview assist in capturing information? What should be introduced to ascertain whether information on child sexual abuse in OOHC is resulting in changed OOHC practices?


- The proportion of children in out-of-home care who were the subject of a notification while in out-of-home care, which was substantiated
- The proportion of children in out-of-home care who were the subject of a substantiation where the person responsible was living in the household providing out-of-home care. (15.30)

While the data is not without limitations, the proportion of children in out-of-home care who were the subject of a substantiation, where the person responsible was living in the household providing out-of-home care, ranged between 0.3% to 3.7% of the total number of children in care. What is not available is data on the type of
abuse, although it is likely that individual jurisdictions do collect this information. Certainly Queensland has collected and reported on this (see Do No Harm – p. 14). The proposed shift to unit level data for national child protection data will support an increased understanding into the characteristics of the types of abuse in care, placement types, age and gender of the child as well as the child's relationship to the perpetrator.

What are the strengths and weaknesses of different oversight mechanisms in keeping children safe from sexual abuse in OOHC?

There are a range of important oversight mechanisms that monitor children and young people in care, but one important one that is sometimes overlooked is the school system.

Schools support the well-being of children in care, and the out-of-home care system, by monitoring children. Teachers, as the professionals with most contact with children in care (Gilligan, 1998), can offer a unique perspective within case planning, identifying and addressing problems while building on strengths (Kufeldt, Simard, & Vachon, 2000). Education staff also monitor the well-being of children by observing the appearance, behaviour, performance, time-keeping, parental contact and progress to and from school, providing information on their “situation beyond school” (Gilligan, 1998, p. 15). This monitoring serves to provide protection from abuse for children in care (Berridge & Brodie, 1998).

Two recommendations from my thesis are relevant in relation to schools monitoring of children in care; the first one focuses on the training needs of schools staff, and the second focuses on schools having a designated senior staff member whose role is to monitor and support students in care.
Recommendation: That a training package be developed and implemented to support school staff in understanding the experiences, needs and behaviours of children in care, particularly with regard to trauma and attachment, and to acquaint school staff with the support available to them when they assist children in care.

Recommendation: That all schools with one or more students in care designate a senior staff member who is the key contact for all matters related to students in care.²

Conclusion

The goal of out-of-home care is to safeguard and improve the circumstances of children. Out-of-home care aims to provide an environment where children develop, learn, and have any problems assessed and addressed. Their families, likewise, need to have their problems and concerns responded to, and they should receive services that enhance the likelihood of children’s successful return home. Doubts have been raised about whether out-of-home care always provides children with a better environment than they would experience with their parents (Jackson & Martin, 1998). Some children have been further abused in care by individual perpetrators and by the system (Cashmore, Dolby, & Brennan, 1994; CREATE Foundation, 2004; Ombudsman Victoria, 2010). As Rutter (2000) argues:

Clearly, the children have been admitted to care in order to protect them from risk environments but, equally, it is apparent that their experiences whilst in care cannot necessarily be assumed to be benign or protective (p. 687).

The Royal Commission offers a significant opportunity to investigate and address the prevention of sexual abuse of children in care. I hope that this submission can in a small way support the important work that is being undertaken.

² The enrolment forms now require that school be made aware than a child is in out-of-home care.
References


Townsend, Michelle. (2011). *Are We Making the Grade? The Education of Children and Young People in Out-of-Home Care*. (Doctorate), Southern Cross University.

Do No Harm

TOWARDS GOOD PRACTICE
IN PROTECTING CHILDREN AND YOUNG PEOPLE
IN OUT OF HOME CARE
FROM ABUSE AND NEGLECT
Acknowledgements:

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CREATE FOUNDATION

CREATE Foundation is an organisation run for and by children and young people in out of home care and those that have previously been in out of home care. CREATE Foundation exists to improve the life opportunities of children and young people from birth to eighteen years who are unable to live with their parents and are placed in out of home care. We do this by providing services and programs run for and by children and young people.

One of the ways in which CREATE Foundation promotes life opportunities of children and young people in out of home care is by informing community and government about how well they are being protected and cared for across Australia. This involves identifying key issues impacting on the protection and care of children and young people in out of home care, collecting information about their needs and progress in care and making this information available to others.

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INTRODUCTION

Over 20,000 children and young people, whose parents are unable or unwilling to provide for their safety and well being, live in out of home care across Australia. Most of these children and young people were placed in out of home care as a result of abuse or neglect by their parents.

Children and young people in out of home care are particularly vulnerable as a result of separation from their families, the circumstances leading to their separation and subsequently, their placement in new, and often unknown, situations. In placing these children and young people in out of home care, state and territory governments have a ‘duty of care’ to ensure that they are protected from harm, have their day to day care and developmental needs met, and are assisted in accessing life opportunities.

Notwithstanding the efforts of state and territory governments and other stakeholders involved in their protection and care, some children and young people are abused or neglected whilst living in out of home care. That the system designed to provide for their protection and care is, at times, unable to do so, is unacceptable. As noted by Bass et al (2004)

“When children are placed in foster care only to suffer additional harm, it undermines the rationale for government intervention and is an egregious violation of the public trust. The lives of children and families should be enhanced, not diminished, by the foster care experience.”

The first principle of the child welfare system must be to “do no harm” (Badeau 2004). All stakeholders involved in the protection and care of children and young people share responsibility for addressing abuse and neglect in out of home care. No stone should be left unturned in preventing it from occurring in the first place and, where it has occurred, the system must be sufficiently robust and transparent to identify and address it.

In 2002 CREATE Foundation’s Report Card on Australian Children and Young People in Care identified abuse in out of home care as a priority for action:

“There is a need to review States and Territories’ policies in respect of preventing harm, reporting harm, recording of allegations and outcomes of assessments, and responding to harm in relation to children and young people in out of home care.

Governments are responsible for ensuring that children and young people who have been harmed by their families and placed in out of home care are protected from further harm. It is important that information be shared across States and Territories to identify best practice and improve standards.”

As part of our commitment to this action, CREATE Foundation has undertaken a national project to promote good practice in preventing, identifying and responding to the abuse and neglect of children and young people in out of home care across Australia.

The project is timely in view of the recent report of the Queensland Crime and Misconduct Commission ‘Protecting Children: An Inquiry into Abuse in Foster Care’ (CMC 2004) and the current ‘Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management’ (Commissioner for Public Administration 2004). More broadly, there are a range of legislative reviews, policy developments and service reforms occurring across all states and territories.
It is hoped that the outcomes of this project can contribute to these initiatives, promote good practice in preventing and managing abuse and neglect in out of home care and improve the lives of children and young people in out of home care.

This paper reports on the outcomes of the project.

**About this paper**

**Part 1: Approach to the project**

Outlines the approach taken in examining policy and research in relation to the abuse and neglect of children and young people in out of home care and the strengths and limitations of this approach.

**Part 2: Abuse and neglect in out of home care**

Examines what is known about the harm of children and young people in out of home care.

**Part 3: Overview of state and territory policies**

Provides an overview of state and territory policies in relation to the prevention of harm, the identification and reporting of harm, the assessment and investigation of harm, the recording of reports, actions taken and outcomes, and the response to harm.

**Part 4: Towards good practice**

Identifies and discusses issues arising from current state and territory approaches using key elements of good practice.

**Part 5: Conclusion**

Concludes the paper with suggestions for building on the outcomes of the project and moving toward good practice.
PART ONE: APPROACH TO THE PROJECT

This part outlines the approach taken in examining policy and research relating to the abuse and neglect of children and young people in out of home care.

Information was collected from the following sources:

- state and territory community services departments
- data and commentary on reported incidences in Australia and overseas
- literature and research

State and Territory Community Service Departments

In August 2003 state and territory community services departments were requested to provide detailed information in relation to legislation, policies, procedures and practice in:

- prevention of harm
- identification and reporting of harm
- assessment and investigation of harm
- recording of reports, actions taken and outcomes
- response to harm

The information provided by states and territories was summarised and collated.

In March 2004 the collated information was sent back to states and territories to review and provide feedback, and to provide additional information if necessary.

A summary of the information provided by states and territories is attached – see Attachment 1.

Additional information in relation to state and territory community services departments was obtained from relevant papers and reports downloaded from their respective websites or from other sources.

It should be noted that the policies of community services organisations that provide out of home care services were not collected and examined as part of this project. The policies of these organisations are developed within the requirements of state and territory government legislation, policy and funding arrangements, and should be monitored by those governments.

Data on reported incidence

Data on reported incidence was collected from the ‘Report on Government Service Provision’, a search of state and territory reports, and a search of relevant research.
Literature and research

A comprehensive review of Australian and overseas literature and research was undertaken, including a search of academic journals and the Internet. An annotated bibliography was prepared to support this project. A copy of the annotated bibliography will be distributed following the release of this paper.

Analysis of the information

A descriptive analysis of the information was undertaken to identify:

- what is known about abuse and neglect in out of home care
- what approaches are taken in Australian states and territories to prevent and respond to abuse and neglect in out of home care

Key elements of good practice were then identified from state and territory policies, the review of relevant literature and the experience of CREATE Foundation. The key elements of good practice are used to identify and discuss issues arising from current state and territory approaches.

It should be noted that the content of this report represents an analysis of what was received. Notwithstanding the process used to collect and review the information received, there was considerable variation in the range and detail of the information provided by each jurisdiction.

In addition, this project is focused on the policies of states and territories and the guidance provided in practice. It is not an evaluation of the extent to which the policies are reflected in practice or of practice itself.

This approach provides the foundations upon which further endeavors toward good practice can be built.
One of the major issues confronting policy and practice in preventing, identifying and responding to abuse and neglect in out of home care is a lack of:

- clarity about what constitutes abuse and neglect in out of home care
- information about the extent to which abuse and neglect occurs in out of home care

It follows that without such clarity and information, there is little understanding of the factors that contribute to abuse and neglect in out of home care or prevent it from occurring.

This part examines what is known about abuse and neglect in out of home care.

**Definition**

The way in which abuse and neglect is defined is important to how we understand, identify and respond to the problem.

In response to the request for information for this project, most jurisdictions referred to the general definitions of child abuse and neglect used in their respective child protection legislation for children and young people living with their families or caregivers. No state or territory identified a specific definition of abuse or neglect in respect of out of home care, applying instead the general definition also to children and young people living in these circumstances.

To what extent are general definitions of child abuse and neglect appropriate to children and young people in out of home care? Gough (1996) identifies harm and responsibility for harm as the two basic concepts that underlie all definitions of abuse. In respect of harm, he states that:

> "All abuse concerns some sort of actual or potential harm to a child ranging from physical injury to emotional pain to adverse effects on a child’s physical, cognitive, or socio-emotional development, or infringement of child’s rights".

He identifies two aspects of responsibility:

> "The first aspect of responsibility is the scope or breadth of persons or groups who could be considered responsible for the abuse, ranging from intra and extrafamilial perpetrators, groups, institutions, child protection interventions or whole societies”.

> "The second aspect of responsibility is the assignment of responsibility (or culpability or blame) through an interpretation of the social acts of those involved in the abuse. The responsibility may be for acts of commission or of omission of sufficient protection and concern for the welfare of the child."

The concepts of ‘harm’ and ‘responsibility for harm’ provide a useful framework in which to consider general definitions of abuse and neglect and their appropriateness to children and young people in out of home care.
Child protection legislation defines child abuse and neglect in terms of the statutory basis on which the State can intervene in family life and determine if a child is in need of protection. In this instance, the operational definition of abuse and neglect is clearly linked to the purpose for which it is being used, that is to delineate when the State can intervene in family life. Further, responsibility is largely focused on the actions or inactions of a parent to provide appropriate protection and care (AIHW 1999).

**Harm**

In out of home care, the State is the ‘parent’ (through custody or guardianship arrangements) or is acting as ‘parent’ (through a placement arranged by the relevant department with the agreement of the parent) and has a ‘duty of care’ to the children and young people it has placed. In these circumstances, the operational definition of abuse and neglect needs to be linked to the State fulfilling its ‘duty of care’. There is a range of matters that may breach duty of care, but only some of these would constitute abuse or neglect. The State’s duty of care requires it to effectively monitor, identify and respond to all breaches of standards of care. This broad approach is also necessary to prevent situations from deteriorating and harm from occurring.

Most states and territories differentiate between ‘standard of care’ matters and allegations of abuse or neglect. However, definitions of what constitutes a standard of care matter vary across jurisdictions and the threshold for differentiating these matters from alleged abuse or neglect are unclear.

Examples of how states and territories differentiate between standards of care matters and allegations of abuse or neglect include:

**Tasmania**

Complaints about general standards of care include non-physical discipline of children, setting of limits and other non-protective issues whilst complaints about abuse or neglect are defined as those that fall within the meaning of “at risk” as described in the *Children, Young Persons and Their Families Act 1997*.

**Northern Territory**

Standard of care incidents can be defined as behaviour by caregivers or other occurrences that will have a significant impact on the wellbeing of a child or young person in placement. Such incidents include where:

- the caregiver requests a child to leave a placement without adequate preparation or discussion
- the caregiver strikes a child
- there are developmental relationships detrimental to the long term well being of the child eg. the denigration of their family

Reference is made to the prescribed standards of care in making determinations about such incidents, whilst ‘maltreatment’ is defined in the *Community Welfare Act 1983*. 


Scope of responsibility

Further, the State exercises its ‘duty of care’ through a complex set of service delivery arrangements involving direct carers, non-government agencies, and government service provision. There are therefore a range of individuals, agencies and departments that have responsibility for the day to day care of children and young people in out of home care or are involved in working with them. In situations where the State’s ‘duty of care’ has been breached, in the first instance, who or what contributed to that breach is not important in terms of a responsibility to act and to ensure the child or young person’s safety and well-being.

The scope of responsibility needs to be focused on the range of individuals, non-government agencies and departments involved, or who come into contact, with the child or young person. The range of individuals include:

- direct carers involved in providing day to day care (foster carers, relative carers, residential care workers, youth workers etc)
- other adults residing in the child or young person’s place of residence and/or other adults with whom they come into contact through those arrangements
- other departmental staff and/or agency personnel involved in working with the child or young person and/or with whom they come into contact through those arrangements
- parents or other relatives during family contact
- other adults with whom they come into contact (including those involved in school, religious organisations, community groups etc)
- other children or young people in the same placement (including children of their carers) or with whom they come into contact at the place of residence or as a result of those arrangements
- persons otherwise unknown to the child or young person (strangers)

Queensland

A ‘Matter of Concern’ is any concern raised in relation to the standards of care provided to children and young people in out of home care (standards of care refer to Statement of Standards S122 Child Protection Act 1999). Matters of concern can be responded to by way of either casework or investigation and assessment. Casework intervention is defined as an appropriate response when the concern/s about the standards of care provided to children or young people in alternative care are not at a level constituting a child protection notification.

Investigation and assessment occurs in response to any allegation of harm or the risk of harm. “Harm” and a “child in need of protection” are defined in the Child Protection Act 1999.
This range of individuals, non-government agencies and departments involved, or who come into contact, with the child or young person are not reflected in the definitions of “abuse and neglect”, “maltreatment”, “harm” or “a child in need of protection” contained in the child protection legislation of any jurisdiction.

Further, the range of persons referred to in state and territory guidelines for responding to abuse and neglect in out of home care vary markedly across jurisdictions. Examples include:

**Australian Capital Territory**

The chapter in the policy and procedures manual on “Special Appraisals” refers to “… allegations of harm by approved carers to children in care and children placed in substitute care services.” Further, it states that “… reports alleging harm in the following circumstances:

- child care facilities
- by a Family Services staff member or staff member of the department
- harm by another child or young person in care

are referred to the Manager Child Protection Services for consideration.”

**Queensland**

The policy refers to children and young people in alternative care and for the purposes of the policy “… the term carer refers to persons:

- providing direct care to children and young people in alternative care, including approved foster carers (irrespective of placement type), relative carers, limited approval carers, residential care staff and other direct care workers; and/or
- affiliated with a licensed care service or recognised Aboriginal or Torres Strait Islander agency including Managers, Coordinators and other service staff (irrespective of service status).”

**Tasmania**

The protocol refers to “… all situations where there is a complaint about a standard of care or an allegation of abuse or neglect concerning children in out of home care …. including children placed with non-government providers”.

The term “carers” is used throughout the protocol but is not clearly defined. The use of the term implies that it is referring to any person providing direct care.
Assignment of responsibility

Beyond and in addition to the action or inaction of the range of individuals, agencies and departments involved, it may be argued that the assignment of responsibility involves a consideration of the range of systemic matters that may impact on that action or inaction.

These matters include:

- interplay of individual, agency and departmental roles and responsibilities
- procedures and practices of agencies and departments
- monitoring and review of practice
- government policy and funding

The abuse or neglect of a child or young person in out of home care requires a dual focus on the action or inaction of an individual and the systemic context in which that action or inaction has occurred.

State and territory guidelines however, are largely focused on investigation and assessment of allegations about the action or inaction of individuals involved in the direct care of children and young people in out of home care.

Exceptions include:

Northern Territory’s policy and procedures refers to “Special Considerations at Investigation” and states:

“Research findings indicate that, with the exception of sexual abuse, the problem of abuse by caregivers and staff does not generally derive solely from their inadequacies or unsuitability but from resource, structural and practice issues.

Even where abuse is the result of an unsuitable caregiver, the work unit plays a significant part, having responsibility for recruitment and ongoing placement management.

Therefore particular attention needs to be paid during the investigation to the context within which the abuse has occurred, not just the individual perpetrator and a narrow assessment of whether or not a specific incident of harm has occurred. Did the incident occur independently of extenuating circumstances? To what extent is the problem the result of administrative or practice deficits?”

Queensland’s policy refers to:

“Where it is identified that matters of concern may have arisen as a result of departmental or service staff not fulfilling their respective responsibilities for implementing existing case-planning goals and/or action plans specifically related to addressing any previous matters of concern, the Area Manager and/or service Manager or Coordinator are to:

- inform their respective line managers; and
- take necessary steps to address the issue/s.
Ongoing matters of concern specific to licensed care services must be attended to through Regional licensing processes, in accordance with current departmental policies and procedures. The service Manager is responsible for activating any necessary internal processes, including informing the service’s Nominee.”

Incidence

Knowledge and understanding of the nature and extent of abuse and neglect in out of home care is essential to the development of effective strategies for its prevention and intervention. Access to this information enables effective monitoring of the care of children and young people and informs continuous improvement of policy, service delivery and practice. Further, collection and publication of this information is an important aspect of government accountability for its performance.

However, little is known about the nature and extent of abuse and neglect in out of home care in Australia. A review of relevant reports, publications and research reveals only limited information about the nature and level of abuse and neglect. It is possible that relevant data is collected by state and territory departments but is not published or could not be accessed for the purpose of this project.

The following presents the information reported by states and territories at a national level and within their own jurisdiction, and the results of a national survey of foster carers.

National reporting

The substantiated abuse and neglect of children and young people in out of home care is identified and used as a safety outcome indicator in performance reporting on government service delivery (SCRCSSP 2004). This outcome indicator measures whether children and young people were safe in out of home care, whether this was family-based care or facility based care. The person responsible may include the carer(s), children of carers, relatives of carers staying at the home or a residential care worker (AIHW 2002).

Of the eight states and territories, only Queensland, Western Australia, Tasmania and the Australian Capital Territory could provide data on the incidence of child protection substantiations where the person believed responsible for harm or risk to the child was either the carer or another person living in the household (SCRSSP 2004).

Table 1: Children in out of home care by whether they were the subject of a child protection substantiation and the person believed responsible was in the household, Australia, 2002-03

Of those jurisdictions that were unable to provide this data:

- Victoria indicated that data provided for 2000-01 (3 children) and 2001-02 (2 children) was likely to have underestimated the incidence of the number of children subject to substantiation.

- Northern Territory indicated that it could not provide the data as it does not record the person believed responsible was living in the household at the time of the abuse or neglect.

In contrast to the above figures, it is understood that Victoria does not record allegations of harm relating to carers in a similar way to notifications on children and young people in the general community (DoF 2002).

States and territories agreed to report on this indicator of safety in 1995. In 2004 it is difficult to understand why only four states and territories are able to provide the data for abuse and neglect in out of home care.

Further, the discrepancies in the data between states and territories are difficult to understand. As noted by the then Department of Families (2003), ‘…. it cannot be assumed that Queensland foster carers are more likely to harm children and young people in alternative care than in other jurisdictions. The discrepancies in the data are more likely to do with policies, procedures, recording practices and reporting decisions.’

Queensland

Queensland appears to be the only jurisdiction that collects, analyses and reports on abuse and neglect in out of home care on an annual basis (DoF 2001, DoF 2002). In addition, Queensland recently undertook an audit of foster carers subject to child protection notifications (Murray 2003).

In 2000-01 there were 136 distinct children harmed in out of home care where the person believed responsible was a foster carer or a residential carer (DoF 2001), whilst in 2001-02 the number of distinct children had increased to 151 (Dof 2002).

The total number of distinct children and young people notified was not included in the report. It is therefore not possible to comment on the proportion of notifications that were substantiated.

The following provides an overview of the incidence of substantiated harm amongst Queensland children and young people in out of home care in 2001-02, characteristics of those children and young people, the nature of harm involved, and the number and type of carers involved.

**Number of children**

- there were 100 notifications (a notification may involve more than one child) in relation to 179 substantiations (a child or young person may be notified and found to have been abused or neglected on more than one occasion during the year) for children and young people in out of home care

- the 179 substantiations related to 151 distinct children and young people

- 28 children had more than one substantiation - 26 children or young people were the subject of two substantiated notifications and one child or young person was the subject of three substantiated notifications
in 99 of these notifications (178 cases), the person believed responsible was identified as a foster carer, and in one notification the person believed responsible was identified as a residential carer.

**Cultural background**

- of the 151 distinct children and young people, 72 (47.7%) were recorded as being of Aboriginal or Torres Strait Islander descent.
- this indicates that Aboriginal and Torres Strait Islander children and young people are significantly over-represented in substantiated outcomes of abuse and neglect in out of home care as only 10.9% of the total number of children and young people subject to a substantiated notification in Queensland in 2001-2002 (7,392) were recorded as being of Aboriginal or Torres Strait Islander descent.

**Gender**

- Of the 151 distinct children subject to a substantiated outcome, 78 (51.7%) were female and 73 (48.3%) were male.

**Age**

- Children and young people aged 8, 13, 14 and 15 were the subject of higher numbers of substantiated notifications than those of other ages.

**Type of harm**

The most common type of harm substantiated was neglect, followed by physical harm, emotional harm and sexual abuse.

Table 2: Most serious type of harm substantiated to children and young people in alternative care, Queensland 2001-02

<table>
<thead>
<tr>
<th>Type of harm</th>
<th>Total Number</th>
<th>Substantiated</th>
<th>Substantiated Risk</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual</td>
<td>16</td>
<td>7</td>
<td>9</td>
<td>8.9</td>
</tr>
<tr>
<td>Physical</td>
<td>59</td>
<td>49</td>
<td>10</td>
<td>33.0</td>
</tr>
<tr>
<td>Emotional</td>
<td>30</td>
<td>17</td>
<td>13</td>
<td>16.8</td>
</tr>
<tr>
<td>Neglect</td>
<td>74</td>
<td>42</td>
<td>32</td>
<td>41.3</td>
</tr>
<tr>
<td>Total</td>
<td>179</td>
<td>115</td>
<td>64</td>
<td>100</td>
</tr>
</tbody>
</table>

**Number and type of carers**

A total of 82 carers were recorded as responsible for the harm or risk of harm in respect of the 99 notifications in which harm was substantiated. Harm was substantiated for:

- four carers twice in relation to different children or young people
- eleven carers twice in relation to the same child or young person
- two carers three times in relation to the same child or young person
- two carers three times in relation to different children or young people

Of the 82 carers identified as the person believed responsible for the harm, 47 (57.4%) were approved carers (3.6% of the total number of approved carers), 23 (28%) were relatives, 11 (13.4%) were limited approval carers, and one was a residential carer.

8 (10%) of the 82 carers also had a substantiated notification in 2000-01, whilst 2 carers had a previous substantiated notification in the 1999-00 and 2000-01 period.

**Victoria**

In Victoria a number of audits of children and young people in out of home care have been conducted, which recorded information about physical and sexual assault.

**Foster care**

In a sample of 606 children and young people in foster care (DHS 2002), case managers reported that:

- 22 (3.6%) had allegedly been physically (13) or sexually (9) assaulted during the period of their current foster placement
  - The persons believed responsible in the instances of physical assault were carers (4), a friend of a carer (1), children of carers (3), a parent (1), unknown adults (3) and another child (1). The persons believed responsible in the instances of sexual assault were members of their own family during family contact (3), an unknown adult (2), a relative of a carer (1) and another client (3)
- 50 (8.3%) had allegedly been physically (30) or sexually assaulted (20) in a previous placement (all types of placement)
  - The persons believed responsible in the instances of physical assault were carers (19), carer’s children (2), another client (7), and unknown (2). The persons believed responsible in the instances of sexual assault were a carer or someone associated with their family (13), sibling of the client (1), another client (3), and an unknown adult

**Kinship care**

Of 537 children and young people placed in kinship care (DHS 2000), case managers indicated that 19 (4%) had experienced physical assault and 5 (1%) were sexually assaulted whilst in their current placement.
**Residential care**

Of a sample of 387 children and young people placed in residential care (DHS 2001), case managers identified 65 (16.8%) young people who had been physically assaulted and 27 (6.9%) young people who had been sexually assaulted by fellow residents in their current placement. No young people were identified as having been physically or sexually assaulted by a staff member or other adult.

**Permanent care**

Of the sample of children and young people living in permanent care arrangements (DHS 2003), 6% had been the subject of physical or sexual assault while in the current placement. The perpetrators of the alleged assaults were the carer, carer’s partner or another resident in the home.

**New South Wales**

In New South Wales in 2001-02 there were 12,145 reports where assessment determined abuse or neglect. Of these 12,145 reports, 24.6% (2,988) related to physical abuse and 20.1% (2,441) related to sexual abuse. Foster carers were identified as the ‘person believed responsible for abuse’ in 1.7% (92) of cases where ‘assessment determined physical abuse or sexual abuse’ (5429).

*Source of data: Tables 3.8 and 3.9 - Annual Report 2001-2002 Department of Community Services, New South Wales*

**National survey of foster carers**

In a national survey of foster carers (AFCA2001), 189 (23%) of 812 respondents to the survey said that they had been subject to an allegation of abusing a child in their care. In addition, 351 (43%) of respondents indicated that they knew of foster carers who had ceased caring because of a lack of support following an allegation of abuse.
PART THREE: OVERVIEW OF STATE AND TERRITORY POLICIES

This part provides an overview of State and Territory policies in relation to the:

- prevention of harm
- identification and reporting of harm
- assessment and investigation of harm
- recording of reports, actions taken and outcomes
- response to harm

Prevention of Harm

States and territories referred to a range of policy and practice initiatives that contribute to the provision of quality care and therefore to preventing harm. These included:

Standards of care

Most states and territories have explicit standards of care in respect of children and young people and/or in respect of out of home care services.

Only Queensland indicated that their standards were legislatively based, the other jurisdictions were policy based. In addition, Queensland has a legislated ‘Charter of Rights for a Child in Care’, which details the State’s responsibilities to children and young people in out of home care.

In Tasmania, a code of conduct has been developed for carers and children.

Regulation of care

South Australia and Queensland indicated that they have legislatively based requirements for the licensing of out of home care services, whilst New South Wales has provision for authorising organisations to provide care and Victoria has provision to approve community service organisations to provide care services.

In addition, South Australia, Queensland and the Northern Territory have legislative requirements for the approval or registration of foster carers for a period of 12 months. New South Wales has provision to authorise individuals to provide care. Western Australia has a central registration system for foster carers.

Western Australia highlighted its ‘duty of care’ to children and young people in out of home care and reported that it has established a Duty of Care Unit.

Victoria and Queensland have legislative requirements for regular inspection of out of home care. In addition, the Commission for Children and Young People in Queensland conducts a Community Visitor Program within a range of out of home care services for children and young people including residential care. This is currently being extended to foster care.
Some jurisdictions also identified service agreements between their departments and non-government agencies as a means of ensuring appropriate care.

**Safety screening**

Increasingly, states and territories have developed safety screening processes for staff of their departments, staff of non-government organisations, foster carers and a range of other persons who work with children and young people.

**Care and development needs**

The use of “Looking After Children”, a case management approach to identifying and responding to the needs of children and young people in out of home care, was identified by a number of jurisdictions (Western Australia, Tasmania, Australian Capital Territory and Victoria) as contributing to better outcomes for children and young people.

In a similar vein, South Australia identified its ‘Life Domain Tool’ and, in addition, stressed its use as a means of engaging children and young people in case planning.

**Participation**

Queensland highlighted the participation of children in decision making as an important means of preventing abuse and neglect.

**Placement**

States and territories identified a number of strategies in terms of the placement of children including:

- matching needs and placement options
- preparation of child or young person and carer
- monitoring children and young people in placement

Western Australia and the Northern Territory indicated that they have specific guidelines for the placement of children and young people at risk of perpetrating violence or sexual assault.

More broadly, case planning and review practices, and case management were highlighted as means of promoting and monitoring quality care.

**Quality carers**

All states and territories identified assessment, training, approval, supervision and support of carers as important to ensuring quality of care and preventing abuse and neglect.

New South Wales funded the Association of Child Welfare Agencies to develop:

- a training package for prospective carers
- a competency based assessment tool for the assessment of carers
- educational modules for the ongoing training of carers.
Queensland highlighted the use of local, regional and statewide strategies for supporting carers, and identifying and addressing issues in foster care.

The Northern Territory identified specific information and training strategies to support carers in managing the behaviour of children and young people in out of home care.

New South Wales and the Northern Territory identified Foster Care Handbooks as a means of providing carers with information.

**Quality staff**

South Australia and Western Australia highlighted the employment of professionally qualified staff and the training, professional development and supervision of staff.

**Quality assurance**

A number of jurisdictions indicated that they had or were developing quality assurance strategies to monitor and review the standard of care provided by out of home care services.

New South Wales has an Accreditation and Quality Improvement Program through the Office of the Children’s Guardian. As part of the licensing process, Queensland child protection legislation requires the independent evaluation of out of home care services. Victoria is establishing a quality assurance strategy to monitor compliance of community service organisations with minimum standards and outcome objectives for home based care services and residential care services respectively. This will involve a system of internal and external reviews, and will include feedback from children and young people about their experience.

**Advocacy and accountability**

A number of jurisdictions now have authorities that advocate for children and young people including:

- Commission for Children and Young People (New South Wales, Tasmania and Queensland)
- Advocate for Children in Care (Victoria)
- Children’s Guardian (NSW)

**Identification and Reporting of Harm**

All states and territories indicated that their general definitions of abuse and neglect (or harm), requirements for reporting, and the intake of reports applied to children and young people in out of home care.

Only Queensland indicated that they had legislatively based provisions for reporting of harm to children in out of home care. These require:

- mandatory reporting of suspected harm of children and young people in residential care
- licensed care services to have a policy that facilitates reporting of ‘matters of concern’
Other jurisdictions indicated that the identification and reporting of harm in respect of children and young people in out of home care were required by policy. Policies were stated in different forms including:

- service agreements with non-government agencies
- protocols between stakeholders
- protocols with other government departments

In addition, Queensland referred to its requirements to visit and review children in out of home care as measures that assist in the identification and reporting of harm. Queensland also indicated that its public reporting of abuse and neglect in out of home care facilitates the reporting of concerns.

Victoria, in outlining the role of the Advocate for Children and Young People in Care, identified the strengthening of complaint processes for children, young people and families to ensure that concerns of abuse and neglect or poor quality care are reported effectively.

**Differentiating standards of care**

The responses of most jurisdictions indicate a distinction drawn between concerns about standards of care and allegations of abuse or neglect. In some instances, responses to these two types of concern are differentiated, whilst in others they are not or insufficient detail was provided to comment.

**Assessment and Investigation of Harm**

All states and territories indicated they have or are developing specific guidelines for responding to abuse and neglect in out of home care. However, the purpose, scope, detail and cross-referencing of these ‘guidelines’ to general procedures vary considerably across jurisdictions.

The following identifies the guidelines of each jurisdiction and whether or not a copy was provided for the purposes of this project:

- **Australian Capital Territory** – “Special Appraisals” are detailed in a chapter of its Family Services Manual *(copy provided)*
- **South Australia** – Special Investigation Manual and care and concern procedures *(copy not provided)*
- **Tasmania** – “Protocol for Managing Complaints about the Standard of Care and Investigations of allegations of abuse and/or neglect concerning children in out of home care” *(copy provided)*
- **Queensland** - “Responding to matters of concern raised in relation to the standards of care provided to children and young people in alternative care” *(copy provided)*
- **Northern Territory** – “Duty of Care” breaches (notifications and standards of care) are detailed in its policy and procedures manual) *(copy provided)*
- **New South Wales** – reporting of critical incidents have specific procedures in relation to allegations of abuse against children and young people in out of home care (that constitute a critical incident) *(copy not provided)*
In addition, Western Australia is currently developing a protocol between non-government agencies and the department detailing procedures for notification, assessment and investigation of harm.

**Responding to allegations of harm**

Most states and territories manage their investigation and assessment of allegations of abuse and neglect (or harm) within the same service delivery arrangements as those for general investigation and assessment.

South Australia indicated that they are establishing a Special Investigation Unit within the Department of Human Services, but separate to the Family and Youth Services area, which will ensure the timely and independent consideration of such reports.

New South Wales indicated that it is establishing a dedicated unit to manage allegations of child abuse and neglect by Department of Community Services authorised foster carers (it is not clear if this includes kinship carers or not). The unit will be located within the Complaints, Assessment and Review Branch of the Department of Community Services. Allegations of abuse of children and young people in the care of other agencies will continue to be dealt with through the normal reporting and assessment processes.

**Who conducts the investigation and assessment?**

There were significant variations concerning who conducts investigations and assessments as follows:

- **Northern Territory and Tasmania** - Staff other than those involved with the carer or the child conduct the investigation and assessment.

- **Australian Capital Territory** - A Special Appraisal Team, comprised of a senior worker designated with primary responsibility and a secondary worker, is appointed.

- **South Australia** - The Special Investigation Unit will conduct the investigation and assessment.

- **New South Wales** - A centralised unit will assess the carers, whilst the assessment of the child will remain the responsibility of the field staff (with close cooperation between the field and the unit). Allegations of abuse of children and young people in the care of other agencies will continue to be dealt with through the normal reporting and assessment process.
Queensland - It is possible that the officer with case responsibility for the child or young person will conduct the investigation and assessment of notified concerns. However, consideration is also given to skills and knowledge of available staff, and the officer’s responsibilities to, or relationship with, the carer concerned. The use of specialist caseworkers to undertake all investigations and assessments is planned.

Western Australia - Two workers from the District Office where the child or young person is case managed conduct the investigation and assessment. One of the workers is usually the child's case manager.

Victoria - It was not clear from the information provided.

Assessing harm

State and territory guidelines for responding to abuse and neglect in out of home care provide little specific guidance to staff in assessing harm or the risk of harm in this context. Responses from some states and territories indicate that staff are directed to standard risk assessment frameworks or tools to assist in this regard.

Areas of guidance provided

Areas of guidance provided by states and territories to staff responsible for the investigation and assessment varied markedly in terms of the range of areas covered and the level of guidance provided.

In brief, the range of areas covered across jurisdictions included:

- planning of the investigation and assessment
- identifying roles and responsibilities
- use of multi disciplinary teams (including notification of police and joint investigation with police)
- advising non-government agency (where involved)
- supporting the child or young person
- informing parents
- informing carer of their rights
- provision of support to carers
- provision of written advice of the outcome to all parties
- recording the name of a carer who poses an ongoing risk to children on the required database as a person believed responsible for harm to a child
- provision of written advice to the person of the intention to record their name and the option to seek a review of the decision
Recording of Reports, Actions Taken and Outcomes

All states and territories require the recording of reports, action taken in response to those reports and the outcomes of those actions. However, responses received from most jurisdictions did not provide sufficient detail to clearly identify specific requirements.

Queensland appears to be the only jurisdiction that has specific legislative requirements in relation to the recording of information in relation to abuse and neglect in out of home care. In Queensland, the child protection regulations specify that both the department and licensed care services must maintain records of suspected harm, breaches of standards of care and actions taken. Further, the department must keep records in such a way that enables analysis of information in relation to particular carers, care services or the system as a whole.

New South Wales has legislative requirements for the recording of all risk of harm reports and actions taken in relation to those reports.

Both the Australian Capital Territory and New South Wales have requirements for reporting to external bodies.

In the Australian Capital Territory, child protection legislation requires the department to maintain a written record of all reports of suspected abuse or neglect. If the department has parental responsibility for a child or young person about whom a report has been made, the department must provide a copy of the report and the appraisal made to the Community Advocate.

In New South Wales, the department and other providers of out of home care are required to report cases of alleged abuse in out of home care to the Ombudsman. In addition, the department is required to notify the Commission for Children and Young People of any authorised foster carer who has been the subject of completed disciplinary proceedings, including any allegation of abuse or neglect.

Western Australia advised that all details are maintained on a Duty of Care Register, whilst the Northern Territory and Tasmania indicated that details are maintained on their respective client information systems.

Victoria indicated that reports on findings of investigations are placed on the caregiver or worker’s file.

Response to Harm

States and territories referred to a range of matters that would be considered or reviewed in response to harm. Most jurisdictions indicated that these matters would be considered in a planning forum.

These matters are listed in terms of those relating to the child or young person, the carer or facility, the broader service system, and other matters.

Re: child or young person

- ongoing safety and need for removal
- ongoing monitoring of placement if child or young person was to remain
• evaluation of risk to other children or young people (past and present)
• referral of child or young person to counseling if required

**Re: carer or facility**

• continuation of care arrangements
• review of carer or facility
• decision to amend, suspend or cancel the approval of a carer
• decision to amend, suspend or cancel a license to provide a care service
• identification of strategies to address concerns if the carer or facility is to continue caring for children and young people, including specific monitoring and review mechanisms
• advise carers of their right to complain or seek review of a decision if they are not happy with the outcome of an assessment and/or the action taken as a result
• advise carers of right of appeal if they are deregistered

**Re: systems**

The Northern Territory refers to a post substantiation consideration of the steps taken by the responsible work unit or non-government agency to ensure, to the best of their endeavors, that no further maltreatment of children occurs.

**Re: other matters**

Western Australia has a policy, *Protecting the Legal Interests of Wards and Other Children in the Department’s Care*, which outlines its responsibilities to provide independent legal counsel to a child who experiences an alleged assault, critical incident or serious injury whilst they are under the guardianship of the Director General. This includes adequate and accurate instructions to look into any potential causes of action resulting from the incident. If a child is not a ward but is in a departmentally sanctioned placement, the provision of access to funded legal advice is assessed on a case-by-case basis.
PART FOUR: TOWARDS GOOD PRACTICE

The overview of state and territory policies and the earlier discussion of what is known about the abuse and neglect of children and young people in out of home care indicate a continued reliance on, and influence of, standard familial child protection policy and practice.

In 1995 Forward identified six major deficiencies in historical responses to abuse in out of home care:

- the premise that abuse in care is the same as abuse in the family
- response to reports of abuse only occurs at the serious end of the scale
- paying insufficient attention to the needs and rights of others affected by the issue
- the common use of a medical formulation of child abuse that focuses on an action by an inadequate or deficient individual
- insufficient rigour and objectivity in reporting and investigation
- failure to provide effective feedback loops from investigation outcomes to the correction of deficits

Notwithstanding the developments that have occurred in individual states and territories, including the development of specific policy and procedures, it would appear that, to varying degrees, the deficiencies noted by Forward (1995) remain apparent within each jurisdiction.

In broad terms, states and territories need to review their policy and practice, and more clearly differentiate their response to abuse and neglect in out of home care from that to familial abuse and neglect.

This part identifies and discusses issues arising from current state and territory approaches using key elements of good practice.

Duty of Care

As previously noted, in placing children and young people in out of home care, state and territory governments have a ‘duty of care’ to ensure that they are protected from harm, have their day to day care and developmental needs met and are assisted in accessing life opportunities. Consistent with the arguments posed by Forward (1995) and others (Cavanagh 1992, Cashmore et al 1994, Forward and Gray 2001), it may be concluded that duty of care provides a more appropriate framework for responding to the abuse and neglect of children and young people in out of home care than that provided by standard familial child protection policy and practice.

In brief, locating abuse and neglect of children and young people in out of home care within a duty of care framework:

- reinforces the primacy of the safety and well being of children and young people in all aspects of policy, service delivery and practice
- promotes a focus on the provision of quality care to children and young people and the achievement of positive outcomes
strengthens the capacity to prevent harm

enables harm to be defined in a broader context of standards of care and breaches of those standards

acknowledges and respects the range of individuals, agencies and departments in caring for children and young people and the interplay of roles and responsibilities in providing quality care

considers the action or inaction of an individual within the range of roles and responsibilities exercised by various individuals, agencies and departments

acknowledges that systemic issues including agency and departmental policies, processes and systems impact on the day to day care of children and young people and may result in harm

encourages a commitment to continuous improvement in effectively preventing and responding to breaches of care standards

All states and territories referred to their duty of care, quality assurance and standards in terms of preventing harm in out of home care but not in relation to responding to harm.

Defining harm

In keeping with the duty of care concepts, it follows that standard child protection definitions of abuse and neglect are not appropriate for use in out of home care. These definitions are too narrow and are linked to establishing whether a child or young person is in need of protection and care, and to giving authority to intervene in family life.

Standard definitions of abuse and neglect do not reflect the State’s role as ‘parent’, its ‘duty of care’, the range of people and organisations involved in discharging that ‘duty of care’, or the complex set of arrangements in the delivery of out of home care services.

Abuse and neglect in out of home care needs to be more clearly defined in terms of the:

broader context of standards that delineate the State’s ‘duty of care’ to children and young people and the range of matters that may breach that ‘duty of care’

range of individuals, agencies and departments involved in the day to day care of children and young people, or working with those children and young people

action or inaction of the individuals, agencies and departments involved

systemic issues that may impact on that action or inaction

The need to review existing policy and practice guidelines in the light of these definitional issues is discussed later in this part.

Prevention of harm

The abuse and neglect of children and young people whilst they are in out of home care is an indication that the child protection system has failed to achieve its primary goal, which is the safety and well being of children and young people. Preventing abuse and neglect must therefore be a priority for state and territory governments and all stakeholders involved in the protection and care of children and young people.
At its broadest, prevention is about the development of a service system that delivers quality care and a commitment to continuous improvement through monitoring, review and evaluation. All states and territories referred to a range of policies and strategies that contribute to preventing harm, and collectively the full range represents a comprehensive approach. However, no single jurisdiction covered the full range or presented what they did within a quality assurance framework that was clearly linked to their duty of care.

There are significant differences between states and territories in respect of the regulation and monitoring of out of home care including specifying the responsibilities of the State, standards of care, approval of carers, and licensing of care services. In most instances, the regulation of out of home care appears to relate to the provision of non-government services. It is unclear how out of home care services provided directly by the relevant community service department are regulated and monitored.

The information provided by community services departments in respect of this project tended to be limited to their direct area of responsibility. Detailed information about the role of other parties such as Children’s Commissioners, Children’s Guardian, Advocate, Ombudsman etc were not provided.

**Identifying and responding to harm**

A duty of care framework has significant implications for identifying and responding to harm and other breaches of that duty.

**Definitions – harm and scope of responsibility**

In line with the earlier discussion of definitions in respect of harm and responsibility, there is a need for states and territories to review their policy and practice guidelines in terms of:

- specifying the range of matters that may constitute a breach of duty of care
- identifying the range of individuals, agencies and departments whose action or inaction may impact on the care of a child or young person

At this stage, state and territory guidance is varied in terms of covering standards of care concerns and/or abuse and neglect in out of home care and is largely focused on those involved in the direct care of children and young people. In those instances where reference is made to other persons, such as staff or other children, the direction relates to whom to advise and/or there is little detail provided to guide action.

State and territory guidance needs to cover the full range of action and inaction that impacts on the standard of care provided to children and young people. Allegations of abuse or neglect are one part of that range of action and inaction. In turn, the scope of the guidance needs to include the full range of individuals, agencies and departments whose action or inaction may impact on the care of a child or young person.

**Assignment of responsibility**

Approaches to assessment and investigation are largely focused on the action or inaction of the individual against whom allegations have been made and the assignment of blame or culpability to that individual.

As previously stated only the Northern Territory and, to a lesser extent Queensland, indicated the need to examine the context in which the individual’s action or inaction occurred and consider the systemic issues that may have impacted.
This focus on the individual, without consideration of the context in which their action or inaction has occurred, the roles and responsibilities of other people and/or organisations, policy and procedural issues, and any other relevant matters, is patently unfair and unsafe.

It is unfair to the person against whom allegations have been made, most often a foster carer, who, whilst responsible for the day to day care of a child or young person, works alongside a range of other people and within an organisational and systems context.

It is unsafe for children and young people in out of home care whose immediate safety may be secured by action being taken against their carer, but whose longer term safety and wellbeing may be jeopardised by failing to identify and correct other factors that may have impacted on the situation.

One of the major factors underpinning the development and introduction of initiatives such as Looking After Children (Wise 1999) was the concept of ‘corporate parenting’ and shared responsibility amongst key stakeholders for meeting the needs of children and young people and improving outcomes. This was an acknowledgement of the interplay of individual and organisational roles and responsibilities within a quality system of care for children and young people. However, when something goes wrong that same system often appears to quickly revert to a focus on individual actions or inaction and blame. For foster carers, most of whom are volunteers who strive to make a difference in the lives of children and young people within a system that provides them with limited support and resources, this is simply unjust. The impact of this on foster carers in terms of stress, levels of satisfaction and their willingness to continue as carers is increasingly being identified and examined (Wilson et al 2000, AFCA 2001, Minty and Bray 2001).

This is not to argue that there is not a need to focus on the action or inaction of an individual and to take whatever recourse is required to secure a child's safety. However, regardless of the nature of the abuse or neglect that has occurred, there is a duty of care to consider the context in which it occurred, to identify and rectify any contributing factors and, thereby, to strengthen the system designed to protect and provide optimal care for children and young people.

The impact of a shift in focus from the action or inaction of an individual to a focus on a breach of duty at an individual, agency or department, and whole of system level requires a comprehensive examination of the process for responding to allegations of harm. Further, consideration is required of how to fully incorporate this within all stages of that process.

**Range of out of home care environments**

Consideration needs to be given to differentiating responses to concerns within the range of out of home care environments taking into account the:

- relationship between the child and the person against whom allegations have been made
- role of the person against whom the allegations have been made

CWLA (2002), for example, argue that kinship/relative care be addressed in guidelines for investigating and assessing allegations to reflect the unique dynamics in relationships between the child or young person and the carer/s.

Further, the relationship between the direct carer and the agency providing the service varies considerably and may have implications for responses to concerns. For example: whilst foster carers largely remain volunteers, in some instances there have been significant shifts in levels of payments and the basis of those payments. In some instances, direct carers are employed, whilst in others they are contracted.
Objectivity

There have been increasing calls for objectivity in responses to allegations of abuse or neglect (Nunno and Motz 1988, Forward and Gray 2001, AFCA 2002, Murray 2003). Most jurisdictions appear to have moved, or are moving, to ensuring greater degrees of independence and experience in terms of the staff allocated to undertake investigations of allegations. In some instances, jurisdictions are establishing specialist units to conduct investigations and assessments in defined circumstances.

Whilst objectivity is important, the knowledge and understanding that comes with working with a child or young person and working alongside a foster carer (or other direct carer) is also critical to all stages of the investigation and assessment process. In addition, these staff will have a continuing role in supporting the child or young person and carer throughout the process. It will be necessary for all jurisdictions to consider how they will ensure that clear communication and cooperation occurs at all stages of the process.

Recording Information

As a whole, states and territories appear to have limited capacity to identify the nature and level of abuse or neglect in out of home care.

Queensland data indicates that abuse and neglect in out of home care is a significant problem. This view is supported by the reports of case managers in Victoria and suggests that the level of incidence is likely to be similar in other jurisdictions. However, there is insufficient data and information to explore the nature and level of abuse and neglect in out home care within and across jurisdictions.

This has significant implications for the safety and well being of children and young people, both individually and collectively, and for practice and policy development.

It is critical that breaches of duty of care are tracked in respect of individual children, and the person and/or agency in respect of whom concerns have been expressed. This information cannot simply be maintained on:

- an individual child or young person’s file
- an individual carer or staff member’s file
- an agency file

The information needs to be tracked and made accessible across children and young people, direct care arrangements and agencies/organisations.

In addition, this information needs to be aggregated, in a non-identifying manner, for the purposes of planning and policy, program and practice development.

The fact that apart from Queensland, states and territories do not produce comprehensive data on the incidence of abuse and neglect in out of home care presents significant challenges to government and other stakeholders. The commitment of states and territories to continuous improvement and to effectively prevent and respond to this issue is seriously compromised when they are unable to comment and reflect on its nature or scope. Failure to respond to these challenges and be proactive will continue to expose states and territories to public pressure and reactive responses that may not be in the best interests of children and young people in out of home care.
PART FIVE: CONCLUSION

In examining what is known about the abuse and neglect of children and young people in out of home care and relevant state and territory policies, this paper has identified a continued reliance on the standard familial child protection response as both unjust and unsafe and suggests, instead, that a duty of care framework be considered for dealing more effectively with these matters.

It has been argued that the duty of care held by states and territories to children and young people in out of home care provides an appropriate framework in which to define abuse and neglect in respect of harm and responsibility, prevent abuse and neglect from occurring and, where it has occurred, effectively respond. Harm to children and young people in out of home care is understood within a range of action and inaction that impact on the standard of care provided. The full range of people and organisations involved in providing day to day care and those working with these children and young people are acknowledged, as is the complex interplay of their roles and responsibilities. The action and inaction of an individual is considered alongside that of other individuals and agencies, and the systemic context in which it occurred.

Under the current approach, the questions underpinning the process are “who did what to whom?” and “who is to blame?” A duty of care framework would ask “what happened?”, “what factors contributed to that happening?” and “how can we learn from what happened and prevent it from occurring again?” Clearly, the latter approach is organisationally healthier and more constructive in a practice sense than the former.

The outcomes of this project provide a foundation for moving toward good practice in preventing and responding to the abuse and neglect of children and young people in out of home care. The challenge now is for states and territories to build upon these outcomes and further consider the implications of a duty of care approach in how it responds to allegations of harm.

Importantly, this approach focuses attention on the provision of quality care as the best means of enhancing the lives of children and young people in out of home care and, thereby, ‘doing no harm’. It encourages the monitoring of care standards to promote quality care and improve outcomes, whilst identifying and addressing issues at the earliest stage before they result in harm. It requires a commitment to continuous improvement through effective quality assurance including the collection and analysis of data and commissioning of research.

CREATE Foundation looks forward to continuing to work with state and territory governments, community services departments and other stakeholders in promoting quality care and preventing harm to children and young people in out of home care.
REFERENCES

Australian Foster Care Association (AFCA) (2001) Supporting Strong Parenting in the Australian Foster Care Sector. Australian Foster Care Association, Canberra


Department of Human Services (2001). The Audit of Children and Young People in Home Based Care Services. Department of Human Services, Victoria

Department of Human Services (2001). Findings of an Audit of Children and Young People in Residential Care. Department of Human Services, Victoria


# ATTACHMENT 1: Summary of state and territory responses

## VICTORIA

<table>
<thead>
<tr>
<th>Prevention of harm</th>
<th>Legislation</th>
<th>Policy and procedures</th>
<th>Programs / Initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Authority to visit and inspect CSO’s</td>
<td>Pre-employment/Pre-placement Safety and Screening Policy</td>
<td>A review of child protection legislation will be commenced soon – this will include consideration of the issue of abuse in out of home care</td>
</tr>
<tr>
<td></td>
<td>Right to issue standards of service for CSO’s and to ensure their compliance</td>
<td>Minimum Standards and Outcome Objectives for Home Based Care</td>
<td>Pre-employment screening of carers and staff</td>
</tr>
<tr>
<td></td>
<td>Requirements to approve CSO’s to provide out of home care services</td>
<td>Minimum Standards and Outcome Objectives for Residential Care</td>
<td>Provision of pre-service training, induction, regular monitoring, supervision and support to ensure carers and workers have the necessary skills to undertake their role</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Identification and reporting of harm</th>
<th>Identification of harm to children and young people in out of home care is guided primarily by policy</th>
<th>Critical Incident Reporting system requires the department and CSO’s to report all allegations of abuse or poor quality of care concerns</th>
<th>Draft Guidelines for Investigating Allegations of Abuse and Quality of Care Concerns have been trialed – currently being finalised</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Allegations of abuse of a child or young person in out of home care will also be referred to Police as appropriate for investigation by them</td>
<td></td>
<td>Advocate will examine existing complaint processes and make recommendations to strengthen these systems</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assessment and investigation of harm</th>
<th>Investigation of harm to children and young people in out of home care is guided primarily by policy</th>
<th>Allegations of physical or sexual abuse are reported to Police in line with the Protecting Children - Protocol between Department of Human Services and Victoria Police</th>
<th>Child Protection, CSO’s and, where appropriate, the Police, work together to cooperatively manage both the criminal and protection aspects of investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Critical Incident Reporting system</td>
<td>Draft Guidelines for Investigating Allegations of Abuse and Quality of Care Concerns</td>
<td>Advocate will play a central role in investigations of significant events and ensure that the information obtained informs OOHIC policy and practice</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recording of reports, actions taken and outcomes</th>
<th>Recording of investigations into allegations of harm to children and young people in out of home care is guided primarily by policy</th>
<th>Reports on the findings of the investigation are placed on the child’s file and the caregiver or worker’s file</th>
<th>Advocate will provide a greater focus on actions required post-investigations - both on a case by case and systemic basis</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Criminal convictions are part of the person’s criminal record and will be identified should the person reapply to become a carer or employee</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Responding to harm | Requires the provision of care for children and young people in out of home care “… in the same way a good parent would” | In most instances carers or staff who have allegedly harmed a child in their care will be stood down - the child’s safety will be ensured through this, or in the case of foster care placements, through removing the child from placement | Child Protection, CSOs and other relevant professionals work together to ensure children’s access to therapy and counseling |
# NORTHERN TERRITORY

<table>
<thead>
<tr>
<th>Prevention of harm</th>
<th>Legislation</th>
<th>Policy and Procedures</th>
<th>Programs / Initiatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions relevant to preventing harm include:</td>
<td>Standards of Care</td>
<td>Training of carers</td>
<td></td>
</tr>
<tr>
<td>• providing for necessities</td>
<td>Standards of Out of Home Care Services</td>
<td>Foster care handbook provided to carers on registration</td>
<td></td>
</tr>
<tr>
<td>• visiting a child in care at least once every two months</td>
<td>Assessment criteria for foster care registration including safety checks</td>
<td>Support of carers through placement support unit and specialist workers</td>
<td></td>
</tr>
<tr>
<td>• review of circumstances and care arrangements at least every six months</td>
<td>Requirements for monitoring and reviewing the circumstances of children and young people in out of home care</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• formal registration of foster parents for 12 months (renewed yearly)</td>
<td>Behaviour management of children and young people in out of home care</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identification and reporting of harm</td>
<td>Placement of children and young people at risk of perpetrating violence or sexual assault</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Covered by general definitions of abuse and neglect and reporting requirements - no legislation specific to abuse and neglect of children in out of home care</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Mandatory reporting for all community members (not specific to children in out of home care)</td>
<td>Policy and Practice Manual refers to duty of care breaches:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• notification</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• standard of concern</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment and investigation of harm</td>
<td>Policy and Practice Manual refers to:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All reports relating to a child suffering or having suffered maltreatment are investigated (not specific to children in out of home care)</td>
<td>• principles guiding breach of duty of care investigations</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>• child protection investigations</td>
<td></td>
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<tr>
<td>In respect of child protection investigations the Policy and Practice Manual refers to:</td>
<td></td>
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<td></td>
<td>• standard child protection procedures for investigating any notifications</td>
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<td></td>
<td>• appointment of a Senior Investigation Officer and a second experienced officer to conduct the investigation</td>
<td></td>
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<td></td>
<td>• convening of a Pre-Investigation Conference to formulate a coordinated action plan including immediate safety, key actions, roles and responsibilities, timeframes, supports etc</td>
<td></td>
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<tr>
<td></td>
<td>• informing parents of notification</td>
<td></td>
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<td></td>
<td>• special considerations including the context within which the abuse has occurred</td>
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<td></td>
<td>• contact between the child and the person against whom allegations have been made</td>
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<td></td>
<td>• holding of a post investigation conference to develop a case plan to assist in addressing the complex matters raised</td>
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<td></td>
<td>• informing parents of outcome</td>
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<td></td>
<td>• informing parents of children not notified where there is an impact on the care arrangements for their children</td>
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<td></td>
<td>• rights of carers</td>
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<td></td>
<td>• support of carers</td>
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<td></td>
<td>• informing carers of the outcome of the investigation, concerns arising from the investigation and any action to be taken</td>
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<tr>
<td>Training in relation to Mandatory Reporting</td>
<td></td>
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</tr>
<tr>
<td>Protocols with Education, Child Care Services and all government run Health facilities relating to the recognition and reporting of maltreatment</td>
<td>Introduction of Initial Danger Assessment and Risk Assessment Tools</td>
<td></td>
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</tr>
<tr>
<td>Employment of professional qualified staff to undertake child protection investigations and family assessments</td>
<td>Requirements for mandatory in-house training for all staff on assessment and investigation techniques</td>
<td></td>
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<tr>
<td>Protocols for undertaking joint investigations with Police, and arrangements for joint training</td>
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</tr>
<tr>
<td>Legislation</td>
<td>Policy and procedures</td>
<td>Programs / Initiatives</td>
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<tr>
<td><strong>Recording of reports, actions taken and outcomes</strong>&lt;br&gt; No specific requirements</td>
<td>Policy and Practice Manual refers to:&lt;br&gt; • documentation of critical incidents&lt;br&gt; • recording of child protection notifications&lt;br&gt; • documenting information during investigations&lt;br&gt; • recording case outcomes</td>
<td>All personal and casework details are recorded on the client information system&lt;br&gt; Training is provided to staff on recording information</td>
<td></td>
</tr>
<tr>
<td><strong>Responding to harm</strong>&lt;br&gt; Legislation enables the removal of a child from foster care and the cancellation of foster parents registration if care is not being provided in the child’s best interest</td>
<td>Policy and Practice Manual refers to:&lt;br&gt; • post investigation conferences&lt;br&gt; • removal of child from placement&lt;br&gt; • evaluation of risk to other children (past and present)&lt;br&gt; • standing down departmental congregate caregivers&lt;br&gt; • when the perpetrator is another child in care&lt;br&gt; • review of caregiver when a household member is responsible for abuse&lt;br&gt; • systems review to ensure that the responsible work unit or non-government organization has taken appropriate steps to ensure that further abuse of children does not occur</td>
<td>Each substantiated case of child maltreatment is examined by a multi-disciplinary team to respond to the child and family’s needs</td>
<td></td>
</tr>
<tr>
<td>Prevention of harm</td>
<td>Legislation</td>
<td>Policy and Procedures</td>
<td>Programs / Initiatives</td>
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</table>
|                    | FAYS Act prescribes:  
|                    | • registration of carers  
|                    |  
|                    | • licensing of agencies  
|                    |  
|                    | • care facilities  
|                    | Child Protection Volume 2  
|                    | Alterative Care Manual of Practice  
|                    | Special Investigations Manual  
|                    | Care Concern Procedures  
|                    | Carer Assessment Manual (used by carer agencies)  
| Identification and reporting of harm | Covered by general definitions of abuse and neglect and reporting requirements – no legislation specific to abuse of children in out of home care | Child Protection Volume 2  
|                    | Alterative Care Manual of Practice  
|                    | Special Investigations Manual  
|                    | Care Concern Procedures  
<p>| Assessment and investigation of harm | CP Act | As Above | As Above |
| Recording of reports, actions taken and outcomes | CP Act | As Above | As Above |
| Responding to harm | CP Act | As Above | As Above |</p>
<table>
<thead>
<tr>
<th><strong>Prevention of harm</strong></th>
<th><strong>Legislation</strong></th>
<th><strong>Policy and Procedures</strong></th>
<th><strong>Programs / Initiatives</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legislation prescribes:</td>
<td>Assessment and planning acts to prevent harm to children. Policies that reinforce this include:</td>
<td>Local foster care support groups</td>
</tr>
<tr>
<td></td>
<td>• Statement of Standards outlines the standard of care a child must receive</td>
<td>• alternative care as part of an integrated child protection response</td>
<td>State and regional foster care committees</td>
</tr>
<tr>
<td></td>
<td>• licensing of care services and renewal of licenses every two years</td>
<td>• case management framework</td>
<td>Community Visitor Program – Commission for Children and Young People</td>
</tr>
<tr>
<td></td>
<td>• approval of carers initially for twelve months and subject to review every two years thereafter</td>
<td>• commencement of an alternative care placement</td>
<td>• as a result of CMC inquiry to be expanded to include foster care households</td>
</tr>
<tr>
<td></td>
<td>• Charter of Rights for a Child in Care establishes the rights of children in care</td>
<td>• placement and support packages for children and young people in alternative care</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• regular inspection of licensed residential care services</td>
<td>• conclusion of an alternative care placement</td>
<td></td>
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<td></td>
<td>• independent evaluation of licensed care services</td>
<td>• transition from care</td>
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<td></td>
<td>• visiting of residential care services by community visitors</td>
<td>Participation of children and young people in decision making</td>
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<tr>
<td></td>
<td></td>
<td>Support of carers to ensure that they can provide quality care, and that they can understand and respond to the diverse and complex needs of children and young people. Support includes access to:</td>
<td></td>
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<tr>
<td></td>
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<td>• allowances and child-related costs</td>
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<td></td>
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<td>• learning and development</td>
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<td></td>
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<td>• planning processes</td>
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<td></td>
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<td>• advice, direction and emotional support</td>
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<td></td>
<td></td>
<td>• information</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Identification and reporting of harm</strong></th>
<th><strong>Arrangements for a child’s protection must be reviewed every six months</strong></th>
<th><strong>Responding to matters of concern raised in relation to the standards of care provided to children in alternative care</strong></th>
<th><strong>Performance reporting - strategic plan</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Departmental staff must meet with children on child protection orders every three months if they are on a short term order or every six months if they are on a long term order</td>
<td>Responding to matters of concern raised in relation to the standards of care provided to children in alternative care</td>
<td>Annual reports of harm to children and young people in out of home care</td>
</tr>
<tr>
<td></td>
<td>Requirements that staff of the department and out of home care services report harm or suspected harm of a child in residential care to the Chief Executive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislation</td>
<td>Policy and procedures</td>
<td>Programs / Initiatives</td>
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<td></td>
</tr>
<tr>
<td>Assessment and investigation of harm</td>
<td>Matters of concern can be responded to by way of ‘casework’ or ‘investigation and assessment’&lt;br&gt;The policy details:&lt;br&gt;• roles and responsibilities&lt;br&gt;• determining the type of response required&lt;br&gt;• planning and conduct of the investigation and assessment&lt;br&gt;All notifications in relation to harm of children and young people in alternative care are referred to a Suspected Child Abuse and Neglect (SCAN) Team</td>
<td>As a result of the CMC Inquiry specialist caseworkers will undertake all assessment and investigation responses. In addition, the investigation of matters of concern relating to a carer will be undertaken by specialist investigation workers rather than workers responsible for supporting the foster carer</td>
<td></td>
</tr>
<tr>
<td>Recording of reports, actions taken and outcomes</td>
<td>The department is required to maintain records of harm or suspected harm of children in alternative care, breaches or alleged breaches of the Standards of Care, and actions taken</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Responding to harm</td>
<td>Reasonable steps must be taken to ensure a child is cared for in a way that meets the standards of care&lt;br&gt;Carers authority may be amended, suspended or cancelled</td>
<td>The policy refers to:&lt;br&gt;• recording the outcome and action plan resulting from the investigation and assessment&lt;br&gt;• discussing the outcome and plan with the child or young person, the carers, and the child or young person’s parents&lt;br&gt;• informing the Manager of the service (where applicable) of outcomes and actions to be taken&lt;br&gt;Following a substantiated outcome, the policy refers to:&lt;br&gt;• reviewing the appropriateness of a placement to meet the child or young person’s needs&lt;br&gt;• conducting a placement meeting to review goals and identify carer support and training required&lt;br&gt;• reviewing the Foster Carer Agreement&lt;br&gt;• reviewing carer authority in accordance with requirements of the Act&lt;br&gt;• establishing monitoring and reviewing mechanisms.&lt;br&gt;The policy also refers to complaints and review of decisions</td>
<td></td>
</tr>
<tr>
<td>Prevention of harm</td>
<td>Legislation</td>
<td>Policy and Procedures</td>
<td>Programs / Initiatives</td>
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</tr>
<tr>
<td>Promotes the safety, welfare, and well being of all children and young people - this is the paramount consideration in all actions and decisions under the Act</td>
<td>All child protection policy is aimed at reducing or preventing further harm</td>
<td>Broader focus on prevention and early intervention to reduce the level of abuse and neglect and prevent abuse occurring in at risk families</td>
<td></td>
</tr>
</tbody>
</table>
| Individuals and agencies are authorised to provide out of home care | Principles of service include - “that children and young persons who are unable to live with their families are entitled to special protection and assistance” | Screening of carers includes:  
- client information system  
- medical check (non-relative carers)  
- “working with children” checks  
- police checks |
| | Currently finalising guidance on the Risk Assessment Process that outlines the preventative nature of statutory intervention, which will have particular applicability to the prevention of abuse of children and young people in out of home care | Funding of ACWA to produce:  
- training program for prospective carers  
- foster carer assessment tool  
- six ongoing training modules |
| Assessment and investigation of harm | General provision enabling investigation and assessment to determine risk of harm | Secondary Risk of Harm Assessment Framework and accompanying practice tools  
- JIRT policy manual outlines procedures for joint DCS/Police responses  
- Critical incident reporting requirements include procedures specific to the abuse of children and young people in out of home care - these include:  
  - recording of information on KIDS (information system)  
  - securing information - restricted access  
  - reporting matter to the Professional Conduct Unit and relevant personnel  
  - preparation of briefing note and notification form  
  - reporting cases of alleged abuse in care to the Ombudsman  
  - notifying the Commission for Children and Young People of authorised foster carers who have been subject to disciplinary proceedings  
  - reporting incidents where an offence has been committed to the Police | A centralised investigation and assessment unit will be established as part of the Complaints, Assessment and Review Branch, to deal with allegations of abuse and neglect by DoCS authorised foster carers - it will assess the carer only. Assessment of the child will remain the responsibility of field staff, with close cooperation between these staff and those of the new unit |
<p>| | | Allegations of abuse of children and young people in the care of other agencies will continue to be dealt with through the normal reporting and assessment process |
| Recording of reports, actions taken and outcomes | All risk of harm reports, actions taken in relation to those reports, and any subsequent disposition of and dealings with the children and young people concerned must be recorded | The introduction of the new client system will enhance the recording and management of client information in accordance with casework functions and legislative and policy requirements |
| | The importance of recording is embedded in most of the procedures | |</p>
<table>
<thead>
<tr>
<th>Responding to harm</th>
<th>Legislation</th>
<th>Policy and procedures</th>
<th>Programs / Initiatives</th>
</tr>
</thead>
</table>
|                   | General provisions for responding to harm and securing protection - not specific to children and young people in out of home care | A range of policies govern response to harm including:  
  • information and referral  
  • engaging families  
  • case management case planning  
  • taking action in the Children’s Court | These policies are not specific to the abuse of children and young people in out of home care |
## TASMANIA

<table>
<thead>
<tr>
<th><strong>Prevention of harm</strong></th>
<th><strong>Legislation</strong></th>
<th><strong>Policy and Procedures</strong></th>
<th><strong>Programs / Initiatives</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provisions support and reinforce the prevention of harm - not specific to children and young people in out of home care</td>
<td>&quot;Our Kids&quot; prevention and early intervention policy framework to achieve the best outcomes for children</td>
<td>Assessing, training and supporting carers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The &quot;Looking After Children&quot; out of home care strategic framework seeks to uphold the best interests of children in out of home care</td>
<td>Matching children’s’ needs with placement options</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Living Together: Code of Conduct for Carers and Children</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Identification and reporting of harm</strong></th>
<th><strong>Legislation</strong></th>
<th><strong>Policy and Procedures</strong></th>
<th><strong>Programs / Initiatives</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered by general definitions of abuse and neglect and reporting requirements - no legislation specific to abuse and neglect of children in out of home care</td>
<td>Protocol for Managing Complaints about the Standard of Care and Investigations of Allegations of Abuse and/or Neglect concerning Children in Out of Home Care</td>
<td>Establishment of the Child Protection Advice and Referral Service (CPAARS)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Protocol refers to:</td>
<td>An Electronic Information Tool is being developed for recording and reporting of all notifications and related activities</td>
<td></td>
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<td></td>
<td>• CPAARS intake of allegations</td>
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<td>• CPAARS initial decision making about response</td>
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<td></td>
<td>• CPAARS referral to Assessment Team for further assessment</td>
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<tr>
<th><strong>Assessment and investigation of harm</strong></th>
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</tr>
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<tbody>
<tr>
<td>General provisions for assessment and investigation would apply to children in out of home care</td>
<td>Tasmanian Risk Framework</td>
<td>The Tasmanian Risk Assessment Framework will support staff in applying professional judgment to identify and report the likelihood and consequences of harm in a range of circumstances</td>
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<td></td>
<td>Protocol for Managing Complaints refers to:</td>
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<td></td>
<td>• planning of investigation by Assessment Team (includes discussion with the child’s case manager and the out of home care support worker)</td>
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<td></td>
<td>• informing carers of process for investigation</td>
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<td></td>
<td>• considering safety of child during assessment period</td>
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<td>• informing child’s family</td>
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<td></td>
<td>• how investigation will proceed and timing</td>
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<td></td>
<td>• timeframe for commencement and completion of the investigation</td>
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<th><strong>Recording of reports, actions taken and outcomes</strong></th>
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<tr>
<td>Generic provisions for recording reports and actions would apply to children in out of home care</td>
<td>Protocol for Managing Complaints refers to:</td>
<td>The Electronic Information Tool and the Looking After Children program will assist with enhanced recording and reporting of incidents and issues arising from placements</td>
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<td>• preparation of a written report that outlines the basis of the decision to substantiate or not substantiate the allegation</td>
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<td>• recording the name of a carer who poses an ongoing risk to children on the required database as a person believed responsible for harm to a child</td>
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<td></td>
<td>• providing written advice to the person of the intention to record their name and the option to seek a review of the decision</td>
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<td></td>
<td>Procedures are detailed for responding to allegations outside of working hours</td>
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<tr>
<td>Generic provisions for responding to harm would apply to children in out of home care</td>
<td>Protocol for Managing Complaints refers to the response to a carer and their ongoing status as an approved person</td>
<td>The Protocol for Managing Complaints provides a higher level of scrutiny on the carer</td>
<td></td>
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<tr>
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|                    | Statutory Child Protection: A Policy for the Wellbeing and Safety of the Maltreated Child | Screening of staff:  
  - Criminal history checks of staff  
  - Screening of employed staff and foster carers  
 Principles and service standards for out of home care  
 Assessment, approval, registration, training, review and support of carers  
 Foster carer handbook - currently being reviewed  
 Planning requirements for children and young people in out of home care refers to:  
  - requirements for case conferences and the development of placement plans  
  - procedures for assessment and placement of children and young people considered a risk to others  
 Service Agreement with non-government agencies refers to:  
  - service specifications describing the service, the outcomes to be achieved and the reporting requirements  
  - services provide six monthly progress reports and two service reviews are conducted during the three year period of the agreement | The Children and Community Development Bill 2003 is currently before Parliament  
 Foster carer assessment and training  
 A central foster care registration system to include foster carers in departmental and funded non-government placement agencies is being developed  
 Mandatory preparation training for all new carers including relatives is being introduced - the registration system will include information on the training completed by carers  
 Out of home care standards and principles are currently under review  
 All new staff are required to undertake induction and foundation training - ongoing training is provided in specialist aspects of child protection and working with children and young people, their families and carers. |

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| Covered by general definitions of abuse and neglect and reporting requirements - no legislation specific to abuse and neglect of children in out of home care | Reciprocal child protection procedures with other government departments involved in the protection of children and young people refers to:  
  - circumstances under which organisations refer matters to the Department and to coordinate services for the child or young person and their family  
 Protocol between SAAP services and the Department refers to:  
  - guidelines in respect of child protection concerns and child maltreatment allegations including those in relation to a child or young person in care  
 Service Agreement with non-government placement agencies refers to:  
  - requirement to notify the department of any critical incidents including maltreatment of children and young people or events that may lead to disciplinary procedures | A protocol between non-government agencies and the department that sets out procedures for notification, assessment and investigation of harm is being developed |
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| Assessment and investigation of harm | Policy and procedures for assessment and investigation of maltreatment are the same as for children and young people not in out of home care. Policies and procedures that relate specifically to abuse in out of home care include:  
- Director General’s Instruction No. 59 outlines procedures in the event of death, serious injury, allegation of abuse or a critical incident in respect of all wards or non-wards who are in out of home care  
- Administrative Instruction No. 522 outlines procedures to respond to allegations of child maltreatment made against departmental employees and foster carers  
The key elements of these instructions are:  
- Recognition of the primary right of children to be protection from harm, and the rights of employees and foster carers against whom an allegation has been made to be treated justly and fairly  
- Provision of advice and support to the person against whom the allegation is made  
- Involvement of the Police Child Abuse Unit  
Consideration of the need to remove children, including the carer’s children |  |
| Recording of reports, actions taken and outcomes | Director General’s Instruction No. 35 to ensure quality and consistency in case practice recording and documentation  
Case Practice Manual requires that allegations of maltreatment of a child or young person in out of home care is recorded on the department’s central client data base  
A Duty of Care Register has been established to record all allegations of abuse in out of home care and critical incidents |  |
| Responding to harm | Administrative Instruction No. 522 outlines procedures to respond to allegations of child maltreatment made against departmental employees and foster carers  
In the event that the allegation is substantiated, the procedure requires:  
- evaluation of the risk to other children currently in the placement, or those previously placed with that carer  
- review of foster carer registration  
Protection the Legal Interests of Wards and other Children in Care policy statement includes, amongst other things – the provision of independent legal counsel to children who have experienced an alleged assault, critical incident or serious injury  
Children or young people who have been abused in out of home care may be referred to departmental clinical psychologists or private counselors or psychologists, with the costs being met by the department |  |
## AUSTRALIAN CAPITAL TERRITORY

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<td><strong>Prevention of harm</strong></td>
<td>Standards of Practice for the Provision of Substitute Care Services  &lt;br&gt; Regular compliance checks on the requirements for Assessment of Carers</td>
<td>Whole of government overarching policy - Social Plan and Children’s Plan - focus on early intervention, family support and supporting the most vulnerable members in the community</td>
</tr>
<tr>
<td><strong>Identification and reporting of harm</strong></td>
<td>Family Services Manual – Ch. 12 Special Appraisals refers to:  &lt;br&gt; • requirement that non-government agencies or facilities report possible harm of a child in their care  &lt;br&gt; • consideration of any further action required including:  &lt;br&gt; o referral to the Police  &lt;br&gt; o appraise the information  &lt;br&gt; o determine another course of action if the information relates to an inadequate standard of care  &lt;br&gt; • requirement to report allegations of harm by a departmental staff member to Senior Management</td>
<td>Provision of mandatory reporting training for all mandated persons</td>
</tr>
<tr>
<td><strong>Assessment and investigation of harm</strong></td>
<td>Family Services Manual – Ch. 12 Special Appraisals refers to:  &lt;br&gt; • the appointment of a Special Appraisal Team to consider the allegations and determine the most appropriate appraisal process  &lt;br&gt; • advising the agency of the allegations and the appraisal process  &lt;br&gt; • considering whether further placements should be withheld until the appraisal is complete  &lt;br&gt; • arranging supervised contact between the child or young person and the person believed responsible during the appraisal if appropriate  &lt;br&gt; • advising, consulting with and informing the agency caseworker (the agency will identify support workers for the carers and the child or young person)  &lt;br&gt; • appraising concerns for the safety of any other child or young person in the care of the person believed responsible  &lt;br&gt; • identifying any other deficits of care which require attention  &lt;br&gt; • informing parents of the child or young person of the allegations and appraisal process unless this is contrary to their best interests  &lt;br&gt; When interviewing the person believed responsible, the manual refers to:  &lt;br&gt; • having an agency representative present  &lt;br&gt; • referring requests for legal information or services  &lt;br&gt; • explaining the appraisal process  &lt;br&gt; • providing information on how to appeal an adverse finding  &lt;br&gt; The manual gives specific consideration to appraisals where harm is caused by another child or young person and there is a significant difference in age or power between the children or young people concerned</td>
<td>Policy and procedures for appraising allegations of abuse and neglect in out of home care is currently under review  &lt;br&gt; Internal Assessment Unit and private practitioners used  &lt;br&gt; Centralised Intake Service to commence in May 2004</td>
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| Recording of reports, actions taken and outcomes    | Family Services Manual – Ch. 12 Special Appraisals refers to:  
  • recording of all allegations and decisions  
  • providing an Outcome Report on completion of the appraisal.  
  • providing written advice of the concerns, appraisal outcome and any interventions required is provided to the care agency or facility, all other appropriate parties including the person allegations were made against and the Office of the Community Advocate | Information recorded on electronic client information database  
  Allegations of abuse in out of home care must be reported to the Office of the Community Advocate                                                                 |
| Responding to harm                                   | Family Services Manual – Ch. 12 Special Appraisals refers to:  
  • identifying strategies to safeguard, improve or rectify the situation for the child or young person, relevant staff member or carer, and facility or agency  
  • giving consideration, where appropriate, to continued placement with the foster carer or facility, to additional training or support for the carers, and to whether the carer or staff member should continue care activities  
  • informing parents if the child or young person is removed from the care of the person believed responsible unless it is contrary to the child or young person’s best interest  
  • consulting the parents of a child or young person placed by Voluntary Agreement and seeking agreement if a placement change is required |                                                                                                                                                                           |