



TASMANIA

SOLICITOR-GENERAL OF TASMANIA

15 MURRAY STREET, HOBART 7000

Telephone: (03) 6233 3408

Fax: (03) 6233 2510

DX: 15 Hobart

e-mail: solicitor.general@justice.tas.gov.au

Our reference: AEM

Your reference:

Contact telephone: (03) 6233 3286

8 November 2013

Royal Commission
GPO Box 5283
SYDNEY NSW 2001

Email: solicitor@childabuseroyalcommission.gov.au

Dear Sirs

Re: Issues Paper 4 - Preventing Sexual Abuse of Children in Out of Home Care

Please find attached a copy of the State of Tasmania's submission in relation to Issues Paper 4 - Preventing Sexual Abuse of Children in Out of Home Care.

Yours faithfully

AMBER MIGNOT
LEGAL PRACTITIONER
OFFICE OF THE SOLICITOR-GENERAL

Submission by the State of Tasmania

Royal Commission into Institutional Responses to Child Sexual Abuse

Issues Paper 4 – Preventing Sexual Abuse of Children in Out of Home Care (OOHC)

Children's Services in Tasmania

Children and Youth Services (CYS) within the Department of Health and Human Services focuses on the provision of services for children and young people aged 0-18 years old. The Children and Youth Services system delivers services for children, young people, their families and their carers, including early intervention, family support services and child health services, and is responsible for out of hours care. CYS Programs are:

- Child Health and Parenting Service
- Child Protection Services
- Family Violence Counselling and Support Service
- Youth Justice Service
- Adoption and Permanency Services

In addition to the services provided directly via these program areas, CYS also contracts or provides funding for a wide range of additional services. CYS engages community sector organisations through grants and funding agreements to provide specialist support, counselling and information to children, young people, families and carers.

All CYS policies are strongly based on contemporary research and have a robust evidence base. There is a wealth of current research into the issues, challenges and approaches that form the basis for the formal strategies implemented in Tasmania.

I. 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?

Child Protection Services (CPS) is responsible for the oversight of all out of home care placements and carers in Tasmania. This oversight includes approval, review, and the development and management of funding agreements which ensure consistency in standards of care across all placement types. Strategies put in place to keep children safe cover:

a) Checks/Carer Approval

CPS has policies and procedures for the approval, registration and training requirements of foster carers, and other carers responsible for children in out of home care within both government and non-government organisations. Assessments include explorative competency based interview and assessment, health checks, housing checks, background checks and safety checks such as child protection history and criminal history checks. Each approved care placement is subject to an annual review which includes competency based interview and assessment and updating of all relevant checks. In addition to mandatory background checks and assessments in relation to carers, visitors to care placements are also subject to child protection checks and criminal history checks.

A future initiative under the Out of Home Model of Care Review will establish a Carers Approval and Accreditation Panel. This panel will have an advisory role in regards to carer accreditation and approval to the Director of Operations as the primary approving delegate. The panel's role is to introduce a consistent approach to the approval and accreditation of carers across the Government and community sectors, identify and discuss common training needs for carers and other support issues as required. Any issues impacting on the status or approval of carers as a result of a care concern assessment or investigation will be referred to the panel for consideration and amendments as required.

b) Contact with other adults

Children and young people in out of home care are encouraged and supported to attend age-appropriate activities such as school camps or trips as well as cultural, recreational, sporting, musical, and other formal activities. The decision to attend is made on a case by case basis and is contingent on an assessment of safety for that child.

CPS provides direction and advice for carers, child protection workers and non-government providers of out of home care services on decisions in relation to allowing overnight stays for children where the carer is not present. In recognition that children and young people in out of home care should have the right to participate in social activities in the same way as their peers, it is not mandatory for adults living in the home where the child intends to stay to have a police check. However, guidelines are in place which recognise the specific circumstances for children in OOHC, and the need for workers and carers to make professional safety assessments and to be diligent in ensuring safety at all times.

The law of negligence requires staff and carers to act reasonably in all circumstances. This means staff and carers must act reasonably and consider all safety issues to ensure the protection of the child in their care during an overnight stay where the carer is not present. The guiding principle is to act in a way that a good parent would act in deciding whether or not their child should stay overnight with a friend.

c) Opportunity to disclose/seek protection

It is essential for the prevention of abuse that children have access to at least one trusted adult for protection and support. The Charter of Rights for Tasmanian Children and Young People in OOHC requires child protection workers to maintain a relationship with the children they work with to ensure their ongoing safety. All children are provided opportunities to raise concerns through regular meetings alone with their worker. The topics discussed during these meetings include the child's sense of safety and the suitability of the placement. These meetings are mandatory under the policy Visiting Children and Young People on an Order and compliance to the standard is monitored through the Child Protection Information System (CPIS).

d) Child-centred planning to reduce risk

In Tasmania each child and young person involved with CPS must have a case and care plan. The Care Plan identifies the child's needs and describes how these needs will be met while they are in out of home care. The identification of needs is based on the observations, discussions and conversations that have occurred with the child and the key people in his or her life. Those with the most knowledge of and responsibility for the child need to work together to establish shared goals and ways of achieving these based on the child's needs, the strengths of the family and the services and supports available.

It is recognised that some children and young people either through personal attributes or through previous or current extrinsic circumstances, can be at an increased risk of abuse. These factors include previous experiences of sexual abuse, attachment difficulties, intellectual disability and young people experiencing placement instability and/or risk taking behaviours. Identification of children and young people who are at an increased risk of sexual abuse and the development of plans to address this vulnerability and to increase safety are managed through the case and care planning process to prevent abuse occurring.

Child Protection Workers with responsibility for case and care planning for a child in out of home care establish a care team for that child in order to develop and support collaborative responses to that child's needs. A care team approach offers an inclusive practice approach and engages the young person (as appropriate), parents, significant other family members and carers to focus on the common goal which is the best interest of the child/young person. Care teams are integral to the provision of good care. Creating a network of protective individuals and sharing relevant information within the group enhances opportunities for the protection of a child and the prevention of abuse.

e) Complaints in Care/Quality of Care

Tasmanian children in out of home care are to receive a level of care that is consistent with the principles outlined in the *Children, Young Persons and Their Families Act 1997*, and in line with best practice principles. To ensure this happens in practice there are policies and practices related to "Complaints in Care" whereby all reports

of concern that a child may have been abused, neglected or not receiving appropriate quality of care are responded to in a timely and thorough manner that is at all times child-focussed. Concerns related to the provision of care can range from minor quality issues through to severe abuse. The policy for managing Quality of Care concerns and Complaints in Care is based on the premise that all concerns should be treated as serious and should be acted upon expeditiously. This policy aims foremost to prevent abuse, and in the unfortunate circumstance that abuse has occurred, to ensure that intervention prevents abuse recurring.

2. Is there evidence for having different strategies to keep children in OOHC safe from sexual abuse depending upon whether a child is in relative or kinship care, foster care or one of the forms of residential care?

Out of Home Care (OOHC) placements in Tasmania can be categorised into four general categories:

- Foster care – where placement is in the home of a carer who is receiving a payment from a state or territory for caring for a child.
- Relative or kinship care – where the caregiver is a family member or a person with a pre-existing relationship to the child.
- Family group homes/Cottage Care – where placement is in a residential building which is owned by the Department or a community sector organisation and which are typically run like family homes, have a limited number of children and are cared for around-the-clock by resident carers.
- Residential care – where placement is in a residential building purposely set up to provide placements for children and where there are paid staff. This category includes facilities where there are rostered staff and where staff are offsite (inclusive of therapeutic residential care).

Protecting children in out of home care from sexual abuse is of critical importance. Consequently, the strategies used by Children and Youth Services for protecting children and the level of protection they are provided do not vary in purpose, extent or standard depending on placement type, but may have minor variations in delivery due to the form of placement. The following information describes the strategies used.

Carers within all placement types are subject to preliminary checks and assessments prior to approval and to annual reviews which include updated checks. There is some variation between placements in relation to the mechanisms for conducting background checks and assessments depending on the protocols of the organisation managing the placement. However, the strategies for ensuring that the placement is safe and for working to reduce the risk of harm to children are common to all placements.

Further to this, a Carers Approval and Accreditation Panel is to be established in the future. This panel will have an advisory role in in regards to carer accreditation and

approval to the Director of Operations as the primary approving delegate. The panel's role is to introduce a consistent approach to the approval and accreditation of carers across the Government and community sectors, identify and discuss common training needs for carers and other support issues as required. Any issues impacting on the status or approval of carers as a result of a care concern assessment or investigation will be referred to the panel for consideration and amendments as required.

Community sector organisations that provide OOHC services are mandated to ensure that all policies relating to the safety and protection of children in OOHC, as established by Children and Youth Services, are implemented and adhered to within their organisation.

The Secretary of the Department of Health and Human Services has a legislative responsibility to ensure that children in OOHC receive a level of care that is consistent with the principles outlined in the *Children, Young Persons and their Families Act 1997* and in line with best practice principles outlined within Children and Youth Services Policies, Procedures and Practice Advice. All community sector organisations providing OOHC are mandated under the *Children, Young Persons and their Families Act 1997* to report suspected child abuse and neglect. Regardless of placement type, all reports of concern that a child may have been abused, neglected or not receiving appropriate quality of care are responded to in accordance with Agency procedures. Responses must be timely, thorough and at all times child-focussed.

In addition to mandatory requirements, community sector organisations that provide Out of Home Care services are required to work in partnership with Children and Youth Services to apply operational procedures which maximise the safety of children in care. These procedures include managing overnight stays, maintaining a Care Team, managing contact between children in out of home care and their family, and background checks for visitors to the placement.

Children under the custody and/or guardianship of the Secretary who are placed with relatives or significant others in formal kinship care are provided the same level of care as those children who are placed in foster care or any other placement type. As a consequence:

- Kinship carers must be approved as carers.
- Kinship carers receive ongoing support.
- Children placed in kinship care receive ongoing support from a child protection worker.
- Case and care planning requirements apply.
- All standards for the provision of out of home care services apply including mechanisms for managing all allegations in relation to the standards of care provided.

Child-centred strategies relating to the development and monitoring of plans for children in out of home care are also not dependent on placement type. The collaborative development of individualised case and care plans and the development

of care teams are processes which apply to all children subject to Orders under the *Children, Young Persons and Their Families Act 1997*.

Requirements for regular individual contact between Child Protection Workers and children and young people in care do not vary depending on placement type either. It is the right of every child to have access to their Child Protection Worker. Building trusting relationships for children is central to protecting them from harm.

3. What are the strengths and weaknesses of models that check OOHC practices by an audit approach, a regular supervisory visit, or an irregular visit by someone like a community visitor?

Prior to placement in Out of Home Care (OOHC), children often experience significant trauma, distress and confusion. Entering OOHC can be equally as frightening, as children cope with unfamiliar surroundings and uncertainty as to whether they will be reunited with their families. In this light the models used to check OOHC practices need to be particularly robust.

In relation to children's participation in a checking system, the avenues for children in OOHC in Tasmania to obtain support or voice issues related to their living arrangements are currently relatively limited. Children may express their concerns to their carers or a Child Protection Worker but this presents obvious difficulties for the child where the carer or Child Protection Worker is the subject of their issue. Additionally, the opportunity for children to voice their concerns may be limited by the availability of the child's designated Child Protection Worker. This can present weaknesses in this approach. However, increasing opportunities for children to be able to voice issues is an area of work currently being undertaken, with visitors specific to children in OOHC one option being explored.

All concerns relating to the care of a child in OOHC are treated as serious. For the purposes of the policy, concerns relating to the care provided to a child living in OOHC have been defined into two separate pathways. This is in acknowledgement of the fact that allegations of a more severe or chronic nature should be responded to by the most skilled and qualified staff, given the possible impact and implications of such abuse. However, the same approach is used for both pathways, which may use a combination of methods such as supervisory and unscheduled visits.

In order to clearly separate and highlight these two pathways, the Agency has developed two separate schedules of practice - *Responding to Quality of Care Concerns relating to a Child in Out of Home Care* and *Investigations of Severe Abuse and Neglect of a Child in Out of Home Care*.

Allegations of Severe Abuse and Neglect are defined as:

- Allegations of acute or ongoing physical abuse;
- Allegations of sexual abuse;
- Neglect and/or emotional abuse concerns that have been ongoing and chronic;

- Cumulative concerns that are ongoing despite support, training and targeted responses.

Quality of Care Concerns are defined as:

- Inadequate supervision of the child;
- Inappropriate behaviour management (this includes physical punishment unless the severity of the punishment falls within the above definition or a crime and a full independent investigation is warranted);
- Inappropriate management of child sexualised behaviours (including child to child sexualised behaviours);
- Unreasonable expectations about the child's daily routines;
- Child not allowed to participate in appropriate (as identified in the case and care plan) recreational, cultural and spiritual activities;
- Child is not supported to attend school, complete school homework etc;
- Child is not supported to develop life skills;
- Failure to respond to the child's routine health needs;
- Lack of positive regard for the child;
- Preferential treatment of other children in the home;
- Use of language that causes the child to be distressed;
- Negative remarks about the child's immediate family (in the presence of the child);
- Negative remarks about the child's identity;
- Lack of respect for the child's privacy;
- Not providing an adequate diet;
- Not providing adequate clothing;
- Child's hygiene needs are not being met (for example, the child's bedding and clothing are not changed on a regular basis);
- Not allowing the child to have regular meetings alone with his or her worker;
- Any other concern that is likely to undermine the child's capacity to reach his or her full potential; and
- Concerns for the child's wellbeing stemming from the behaviours of other children in the placement including bullying by other children in the carer's home.

All reports of concern that a child may have been abused, neglected or is not receiving appropriate quality of care must be responded to in a timely, thorough manner that is at all times child-focussed and promotes and prioritises their best interests. Responses are consistent with Agency procedures, delegated

responsibilities and guiding principles as set out within CYS policy. Ongoing audit, quality assurance and monitoring of compliance are integral to the policy. However, this is a reactive approach which is activated after the expression of a concern, and so can be limited to preventing future problems rather than preventing occurrences in the first place. The following approaches are, therefore, important additional means to address this weakness.

Regular Supervisory Visits

Children and Youth Services has set standards for visiting children in OOHC in order to ensure that children are given the opportunity to build a relationship with their worker and, critically, to discuss any issues that might be concerning them.

The frequency of visits by Child Protection Workers varies according to the stage and complexity of intervention. Thus, a child placed under an Assessment Order requires more regular visits than a child under Guardianship until 18 years. However, there will be many situations where more regular visits will be required. For instance, a child under Guardianship to 18 years who is in a placement that is at serious risk of breaking down is likely to require more regular visits than once every six weeks; or where reunification with the child's family is being trialled. Children in OOHC are particularly vulnerable by virtue of their history and need someone supportive to talk with about their concerns. Early and ongoing engagement with children through frequent visits, discussions and activities provides the opportunity for children to develop trusting relationships with their workers. Building trusting relationships for children is central to child protection. Case managers must invest time in building a relationship with the child or young person but, if achieved, can have a significant role in ensuring OOHC practices are appropriate and successful.

Standards for Visiting

- A child on an Assessment Order or a Voluntary Care Agreement will be visited in person and talked with no less than once in every week.
- A child on a twelve-month Care and Protection Order and Interim Care and Protection Order will be visited in person and talked with no less than once in every four week period.
- A child on a Care and Protection Order until 18 years will be visited in person and talked with no less than once every six week period. (Please note that this requirement does not apply to children whose guardianship has been transferred to a carer.)
- A child who is under a section 42 (4) (b) (c) and (d) and is living with parents will be visited in person and talked with every week for the first four weeks following reunification and thereafter (providing that there are no major concerns for the child's wellbeing) a minimum of every four weeks until the order is revoked.
- For children in Out of Home Care, a Senior Practice Consultant is authorised to vary the above requirements and must provide a written rationale.

- The above criteria apply to all children and young people on a child protection order, including those in Ashley Youth Detention Centre, mental health facilities or youth shelters.

Building a trusting relationship between the child and the worker occurs over time. All children involved with Child Protection Services have experienced disruptions and trauma. Many children in care have a significant history of disrupted relationships before entering care. For some children the pattern of disrupted relationships continues during their period in care. The greater the level of disrupted relationships, the more time it will take for the child to establish a trusting relationship with a worker.

Research indicates that most children in care desire, and where it has existed have appreciated, a genuine and personal relationship with their worker. This expectation is reflected in the Charter of Rights for Tasmanian children and young people in OOHC. The Charter states that children in care have a right to have regular meetings alone with their worker. Children in care are less likely to raise complaints about the standard of care they are receiving or to discuss issues that are of concern to them if they do not have a personal relationship with their worker, unless they want to be removed from their placement. From this point of view, the use of visiting would be considered an important component in ensuring OOHC is safe and appropriate for each individual child. The following information on the Tasmanian Charter of Rights expands on this.

Charter of Rights for Tasmanian Children and Young People in Out of Home Care

The Tasmanian *Charter of Rights for Tasmanian Children and Young People in Out of Home Care* requires Child Protection Workers to maintain a relationship with the children they work with to ensure:

- their ongoing safety;
- their optimum development;
- the suitability of their placement ;
- access to support services including education;
- opportunities to raise concerns through regular meetings alone with the worker; and
- that all other provisions of the Charter are achieved.

The Charter represents the fundamental rights of all children and young people who have been, or are in, Out of Home Care. As such, it is an essential requirement of child protection practice in Tasmania, to uphold these rights, to ensure that children and young people are aware of them and understand them, and to be an advocate and a support for children and young people in defending their rights.

In November 2012 the Legislative Amendment Review Reference Committee (LARRC) chaired by Dr Maria Harries (Adjunct Professor, School of Occupational Therapy and Social Work, Curtin University), was commissioned to recommend improvements to the *Children, Young Persons and Their Families Act 1997* with regard to matters including present day evidence and the public health approach to the care and protection of children.

The proposed amendments to the *Children, Young Persons and Their Families Act 1997* will be introduced into Parliament in late 2013 and will increase the emphasis on the best interests of the child and will require adherence to such charters and agreements including the Charter of Rights for Tasmanian Children and Young People in OOHC. The role of the Commissioner for Children in the provision of systemic advocacy and independent investigation supports this also.

Commissioner for Children

The Terms of Reference for the Legislative Amendment Review Reference Committee (LARRC) also included consideration of whether the powers of the Commissioner for Children were sufficient to perform the functions associated with the role. The Committee has subsequently recommended a process be undertaken to clarify the expectations of the role, function and powers of the Children's Commissioner.

While the Commissioner for Children currently has a role in systemic advocacy for children, there are a limited number of advocacy services for children in Tasmania which are not focussed on vulnerable children, for example children with disabilities or learning challenges. To address this "Advocacy for Children in Tasmania Committee" (ACTC) has now been established to provide policy advice on:

- **Provision of advocacy services** for all Tasmanian children including those in the child protection and youth justice service systems;
- **Own motion investigation:** whether there is a need for increased capacity to have an external authority undertake an own initiative investigation, if so, what are the options to establish this;
- **Powers:** in order to fulfil the role of advocate for children, what powers are needed to be associated with the function of the Commissioner and, which if any, need to or can be located elsewhere; and,
- **Governance:** including the term of appointment, whether there should be an Office for Children or a Commissioner for Children, accountability, independence / reporting arrangements, Ministerial direction, financial management and reporting, and skills and attributes required for Commissioner.

The report from the ACTC will be made available to the Minister for Children by 4 November 2013. These aspects of the Commissioner's role are, and when enhanced will be even more, an important component of the model used to check OOHC practices.

4. What are the strengths and weaknesses of having OOHC providers regulated by the child protection department, or regulated by a body separate from the child protection department?

There is a continuing, and growing requirement for a sustainable pool of high quality, skilled carers, capable of keeping children in out-of-home care safe. Currently OOHC services in Tasmania are provided through a mixture of non-Government agencies and carers supported by Child Protection Services (CPS), depending on the type of care provided.

CPS is responsible for the oversight of all out of home care placements and carers in Tasmania. This oversight includes approval, review, and the development and management of funding agreements that ensure consistency in standards of care across all placement types. Current policies and procedures cover operational needs in regards to the approval, accreditation and training requirements of foster carers, and other carers responsible for children in out of home care within both government and non-government organisations. Examples of which include the Quality of Care Concerns policy and Carer Assessment Guidelines, all of which support the principles of the National Standards for OOHC.

Carer assessments include explorative competency based interview and assessment, health checks, housing checks, background checks and safety checks such as child protection history and criminal history checks. Each approved care placement is subject to an annual review which includes competency based interview and assessment and updating of all relevant checks. In addition to mandatory background checks and assessments in relation to carers, visitors to care placements are also subject to child protection checks and criminal history checks.

Provision and oversight of OOHC services need to be strongly aligned with CPS, well integrated and co-located where possible. The often extremely complex and unique circumstances of each child, the risks they are or have been exposed to and their ongoing needs regarding safety, wellbeing, development and therapeutic interventions are thoroughly investigated by CPS and results in the need for close ongoing relationships between the Department and carers in the OOHC system. From this point of view, it is considered a strength for regulation to be the responsibility of the CPS.

Nevertheless, work is currently underway in Tasmania to enhance OOHC provider recruitment and training mechanisms. The Carer Portfolio project coordinates a range of related responsibilities and activities including:

- clarification of the carer types required in future;
- recruitment strategies – both general and targeted;
- support and training;
- approval / registration and de-registration;
- carer payments; and
- after care support.

In addition, this project is currently examining the option of establishing non-statutory advisory panels that can provide expert independent guidance when approving carers.

Regardless of where it occurs, the regulation of carers needs to be transparent and fair, with a focus on ensuring quality and mechanisms to ensure that the needs of the child are the focus and not the needs of the agency. Consequently, it is believed that this can be achieved either within government or by an external body provided that the framework is robust and well-articulated. However, there are strengths in the provision of an oversight mechanism for OOHC service providers having a degree of separation from child protection, which can have a vested interest in certain outcomes. For example, the role of the Tasmanian Commissioner for Children, who is independent of the CPS, in being able to conduct an own motion investigation currently provides an external means of oversight of children's services. However, the focus of these investigations is on systemic issues rather than individual service providers, although the Commissioner's role is currently under review and may be expanded in this area.

On the other hand, where there are non-government organisations responsible for the oversight of OOHC providers there arises the issue of how they can work together and with existing statutory bodies at a high level, and more importantly, how the regulating body can best work to augment capacity, rather than simply 'wield a big stick'. It is also worth noting that there is always a natural tension that arises for government in managing independent bodies that hold them accountable within the Westminster system.

5. What are the core components of the training needs of those working with children who might be sexually abused including carers, caseworkers and staff of regulatory bodies? What priority should be given to training in relation to sexual abuse compared to other training needs?

Carers

Shared Stories, Shared Lives (2010) is the carer training package used by the Out of Home Care teams in Tasmania to train new potential carers. The package has been developed by Association of Children's Welfare Agencies (ACWA) and is in use in other jurisdictions.

In addition, Children and Youth Services (DHHS Tasmania) provides funding to three OOHC providers. All three providers also utilise *Shared Stories, Shared Lives (2010)* as their core training package.

The package covers the following modules:

- Foster care in context
- Bonding and attachment
- Grief and loss

- **Abuse and trauma**
- Identity and birth family contact
- **Responding to challenging behaviour**
- Team work
- Maintaining cultural connection
- The story continues (life story work)

The Abuse and Trauma / Responding to Challenging Behaviour modules are designed to enable carers and workers to:

- identify different forms of child abuse: physical abuse, sexual abuse, emotional abuse, neglect and systems abuse;
- understand the impact of abuse and trauma on children, including on brain development; and
- respond appropriately to a child's disclosure of abuse.

The Abuse and Trauma models cover the specific topics:

- What is sexual abuse?
- Normal sexual development and typical behaviours
- Myths of sexual abuse
- Sexual abuse vs. experimentation
- Sexualised behaviour and disability
- What are the comorbid traumas that may exist
- What does it mean for development if a child is sexually abused
- What behaviours might be exhibited by a child who has been sexually abused
- Responses to behaviours of children who have been sexually abused
- How to respond to a disclosure of sexual abuse (true for carers, workers and others)
- What to do with that information – written records, confidentiality
- Understanding court processes and giving evidence if required
- Keeping yourself safe from allegations
- Reporting any incidents
- What happens if an allegation is made against you
- Vicarious trauma

- Interviewing children who have been sexually abused (what and what not to say)

The Foster Carers Association of Tasmania Inc (FCAT) is also funded to provide training sessions to Foster Carers. FCAT is working with specialist organisations such as the Australian Childhood Trauma Group (<http://www.theactgroup.com.au>) in the development of training packages for Carers.

Caseworkers

DHHS Caseworkers receive sexual abuse training (Assessment and Interviewing for child sexual abuse) as part of Beginning Practice training. A Specialist Assessment Guide (*Assessing Children Regarding Problem Sexual Behaviours*) is also available to caseworkers. The Assessment Guide is based on the following assumptions:

- Reports of sexualised behaviour regarding a child should be taken seriously.
 - Such behaviours pose a significant risk to other children, and the potential for serious damage to those children is real.
- A disclosure from a victim is highly likely to be truthful and under-represent the extent of the sexual abuse.
 - Incidental observation by an adult will usually be under-representative of the number of times that the behaviour is occurring.
 - Younger children are more likely to be victims, and their capacity to disclose is very limited due to their own developmental stage.
 - Increasingly sexualised behaviour over a longer period of time can be expected from a younger perpetrator compared with an adolescent.
- The information gathering role of the child protection worker in relation to the perpetrating child's family history is critical.
 - There are commonly multiple disrupting factors (e.g. parental substance abuse, parental mental illness) in a perpetrating child's background.
 - Obtaining comprehensive information about the parents' histories in the initial stages of intervention will greatly enhance appropriate protective planning in relation to the safety of other siblings and children, and will also assist the effectiveness of any referral for the perpetrating child for appropriate treatment.
 - It is not necessarily appropriate to close a case because a disclosure is not obtained during the first or second interview with the child.
- The child protection worker should be mindful, when interviewing a child perpetrator, that the child will be fearful and will minimise his/her behaviours.
 - It is important for the child protection worker to interview the perpetrating child for disclosure, for information about the child's

behaviours in relation to other children, and about the source of those behaviours to establish whether the perpetrating child has experienced sexual abuse him/herself.

- The younger the child, the more likely there has been contact, or other serious, sexual abuse of the child.
- However, the aim of the first interview is primarily to engage the child; to establish a relationship of trust.
- It may take several (e.g. up to 3) interviews to engage the child and it is therefore not necessarily appropriate to seek a disclosure during the first interview.
- It is not appropriate to close a case because a disclosure is not obtained during the first or second interview with the child.
- The child protection worker should also be mindful that the parents of the perpetrating child will tend to minimise the significance of their child's behaviours.
 - The worker will need to assist the parents to be clear about what behaviours are acceptable.
 - The worker will also need to liaise closely with his/her supervisor and refer to relevant educative materials to ensure that the parents, particularly those who are apparently well-functioning, do not stymie an investigation process.
- Child perpetrators pose significant risks to other children and have significant needs of their own.
 - The presence of very persistent sexualised behaviours indicates that the child has sustained serious developmental damage.
 - The worker should expect to find disturbances in the child's emotional well-being and psychological and intellectual development.
 - Deficits in the functioning of the child's family are also highly likely.
- A protective assessment of a perpetrating child is not the same as, and does not substitute for, a therapeutic assessment.
 - The child protection worker should be clear, as with any assessment, on the purpose of the current assessment being undertaken.
- Protective supervisors and key protective workers should undertake specialist training to orient to the issues and needs of these children.
 - Specialist training should facilitate more accurate assessment of a child who shows problem sexual behaviours and minimise the possibility of abusing the child through the very process of contact assessment (i.e. interviewing the child).

Children who have been subjected to abuse can display a number of comorbid traumas and as such training packages for Carers place much more emphasis on a range of traumas and their impacts.

Training in relation to sexual abuse is a very important component of the carer training package used by the OOHC teams in Tasmania and the Beginning Practice training for DHHS caseworkers. However, it is one of a number of important training modules for carers and case workers and is given equal priority.

6. Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?

Extended and ongoing training should be provided to Carers to assist in maintaining competency and to develop further skills in relation to caring for these children.

Some carers who do not have adequate training in this area can react adversely to any sexualised behaviour and subsequently placements are at risk. On other occasions, carers without adequate training may not have the information to see potential risk to other children in the placement.

A therapeutic plan for children, who have experienced trauma, including sexual abuse, is developed alongside the carer and case managers work with carers in response to the particular identified needs of the child in care.

While caseworkers are provided with adequate training, it is generally acknowledged that trauma specialists in each service centre could assist in the identification of trauma (whatever type) and could help in the development and implementation of an intervention plan that could assist carers, staff and service providers and provide more immediacy of intervention and support.

This is supported by the outcome of the Pathways to Change research project. In 2012 the Tasmanian Sexual Assault Support Service (SASS) received funding from the Department of Families, Housing, Community Services & Indigenous Affairs (FaHCSIA) to conduct a research project (Pathways to Change) which focussed on recommendations for the development and implementation of a comprehensive state-wide approach to Problem Sexualised Behaviour (PSB) and Sexually Abusive Behaviour (SAB).

The project reported that between April 2011 and April 2012, 88 clients between 3 and 16 years of age were referred to SASS who were displaying Problem Sexualised Behaviour (PSB) and Sexually Abusive Behaviour (SAB) as their presenting issue. SASS reported that most of these referrals came from child protection, school social workers/counsellors, or parents/other family members/carers.

The Pathways to Change project report referenced the 2010 Australian Crime Commission (ACC) Report - Australia's Response to Sexualised or Sexually Abusive Behaviour in Children and Young People which stated that Children displaying PSB or SAB are likely to have experienced, or to be experiencing, a combination of childhood trauma, compromised educational outcomes, adverse socio-economic conditions, homelessness, intellectual impairment or developmental delays, social isolation, and exposure to drug or alcohol misuse.

The report highlights the need to develop a consistent response to these children across a range of settings, including therapeutic interventions, child protection services, schools and community education and suggests that a failure to provide high quality early intervention increases the likelihood that the child may follow a pathway into adult sex offending and family violence. Effective early intervention on the other hand can reduce that risk and thereby reduce the risk that other children or adults may become the victims of sexual abuse or other forms of interpersonal violence, and so the availability of effective training and information to Carers on this issue is of great importance.

7. 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?

Determining the rate of abuse of children in OOHC

Children and Youth Services have a responsibility and commitment to continuous quality improvement and transparency and are required to monitor and report data and trends that relate to concerns for children in out of home care. Data relating to all types of abuse and neglect of children in out of home care in Tasmania is currently recorded through the Child Protection Information System (CPIS). CPIS has the capacity to identify 'abuse type' and to identify incidents of alleged and substantiated sexual abuse. This data is recorded and can be analysed and reported on.

Qualitative data collection is also a valuable mechanism for identifying issues and trends. Children and Youth Services don't currently use formal exit interviews in relation to children and young people leaving out of home care. However, the introduction of a sensitive process for such interviews is likely to have the following benefits:

- Understanding and resolving the types and nature of concerns impacting on the quality of care experienced by children in care exposes the required system change and improvements that need to be made.
- Harnessing consumer feedback as a critical part of system improvement strategies. Ensuring the voice of the child is heard in relation to the implementation and impact of relevant policies is vital to ensuring their effectiveness.

It is appropriate to calculate the rate of sexual abuse of children in OOHC as part of National Standards for Out-of-Home Care. Currently the existing indicator only reports all types of abuse for children in OOCH without disaggregating by different

types of abuse or neglect (Physical, Sexual, Emotional and Neglect). In Tasmania it is possible to report the rate of substantiated notifications of sexual abuse for children in OOHC, however it should be noted that due to small numbers, much of this data may need to be suppressed if reported publicly.

What could be introduced to ensure information gathered results in changed practices?

Quality Improvement and Workforce Development, in conjunction with the Director of Operations, Children and Youth Services chair the Care Concern Monitoring Group. A meeting of this Group is held every six months to monitor and analyse whether the management of care concerns is thorough, robust and in line with policy principles and desired outcomes.

The Care Concern Monitoring Group includes the Commissioner for Children, the Tasmanian Facilitator of CREATE Foundation, a representative from the Foster Care Advocacy Support Team (FAST), the Senior Quality and Practice Advisor who has portfolio for such matters, operational front-line staff from within Children and Youth Services and members from involved Community Sector Organisations.

Quality Improvement and Workforce Development are responsible for the appraisal of the Care Concern Policy and compliance with agreed Quality Indicators as articulated in the Quality and Safety Framework. Outcomes from appraisals conducted by the Quality Improvement and Workforce Development Unit are tabled at the Care Concern Monitoring Group to allow for thorough discussions regarding performance and the development of Quality Improvement Plans and strategies for continuous improvement.

8. What is the usefulness and validity of different ways to address allegations of sexual abuse brought against carers? In particular, which approaches enhance participation by the child particularly approaches best suited to seeking possible disclosures of abuse (including disclosures that might be inferred from behavioural changes) from children? Are the current processes fair? What appeal processes should be available for carers?

Children and Youth Services currently have a policy for *Responding to Care Concerns impacting on a child in Out of Home Care*. The policy and supporting procedures reflects the important commitment and undertakings detailed in the *Charter of Rights for Tasmanian children and young people in Out of Home Care*, the *National Standards in Out of Home Care* and the Best Interest considerations within the *Children, Young Persons and Their Families Act, 1997*.

Processes to address allegations brought against carers

Any report of sexual abuse is managed under the *Investigations into Allegations of*

Severe Abuse and Neglect of children in Out of Home Care procedure. All allegations of sexual abuse are coordinated independently of the child's care and case management by a Senior Quality Practice Advisor and managed through the Quality Improvement and Workforce Development Team. Any allegation of a criminal nature is referred to the Tasmania Police and managed under the *Joint Investigation* procedures. There is a very high level of monitoring any allegations of severe abuse and neglect and the final report requires the approval of the Area Director.

Approaches to enhance participation by the child and disclosure of abuse

The *Charter of Rights for Tasmanian children and young people in Out of Home Care* sets out what children and young people can expect in care. Children and young people are made aware of their rights when they first enter care and as part of their ongoing care planning. These rights include; the right to be safe and feel safe, to be consulted and listened to seriously, to have regular meetings alone with their worker so that they have someone to talk to if they are unhappy or don't feel safe, to have their privacy respected, and be treated fairly and with respect.

To support this Charter, Children and Youth Services have a policy that every child in care must be visited by their worker:

- No less than once a week for a child on an Assessment Order or a Voluntary Care Agreement;
- No less than once every four weeks for a child on a twelve month or interim Care and Protection Order;
- No less than every six weeks for a child on a Care and Protection Order until 18 years.

In cases of sexual abuse allegations; the child must be interviewed within five working days of the allegation with a familiar support person, and be given weekly updates on the assessment progress where appropriate. The child or young person must also be provided with an outline of the findings if deemed in their best interests within two weeks of the assessment being initiated.

Natural justice and appeal processes

The policy position expects that carers are treated with respect, are listened to and supported throughout the process. Carers are provided with the opportunity to access their Out of Home Care support worker, Community Sector Organisation and/or Foster Care Association to support them through the process. Carers are kept fully informed of the nature of the allegations and the process for conducting the assessment, including weekly updates on progress. Carers must be advised of the outcome and key recommendations of the assessment in writing.

Carers are informed of their right to make a formal complaint if they believe that due process has not been followed or to seek a review of the decision. The Deputy

Secretary can convene an independent advisory panel to review decisions under dispute.

Tasmania also operates a Care Concern Monitoring Group responsible for providing a quality assurance function associated with the current policy and procedures. This group monitors trends and outcomes for continuous quality improvement across Children and Youth Services and the Out of Home Care Community Service Sector. Membership includes the Commissioner for Children and representatives from CREATE (advocacy group for children in care), FCAT (Foster Carers Association), and Out of Home Care service organisations.

9. What measures could be used to assess whether the safety of children from sexual abuse in OOHC is enhanced by independent oversight of the handling of allegations of sexual abuse?

Measures that may be useful in assessing whether children's safety is enhanced by independent oversight (as opposed to oversight by CPS) of the handling of sexual abuse might include:

Measures related to accessibility of the service:

- Numbers and proportions of notifications that are referred for investigation, compared with numbers and proportions of notifications referred for investigation prior to the formation of an independent body.
- Measure of the amount of time between the incidence of abuse occurring and the notification of abuse being received, compared with timeframes prior to the formation of an independent body. (These measures could be used to demonstrate an increase in levels of confidence in the investigative process.)

Measures relating to processes for handling allegations:

- Timeframes for completion of investigations, as compared with timeframes prior to the formation of an independent body. (May be used to demonstrate increased efficacy in processes.)
- Qualitative measures relating to the experience of the client in making their allegation, as compared with similar measures prior to the formation of an independent body. (May be used to measure both process efficiency and the quality of the outcome from the client's perspective.)

Further measures could be obtained through the proposed 2015 National OOHC survey; however these results would only serve to show data for comparison across jurisdictions, as opposed to comparing before and after the implementation of an independent oversight mechanism.

It should be noted that these measures represent an ideal scenario and are not necessarily representative of data currently collected for Tasmania in this area.

It is also necessary to take into consideration some of the potential limitations of measures such as these, including:

- External factors that may confound the data, for example, the introduction of a new Carer Selection Panel could result in changes to the incidence of sexual abuse in OOHC.
- Ascertaining the statistical significance of any comparison undertaken. The sample size in Tasmania is low, which can make interpretation of data difficult.
- The omission of outcome measures, especially regarding securing the safety of a child following an allegation. Ideally, any changes in oversight mechanisms would positively impact outcomes for victims. However, this continues to be something that is extremely difficult to measure with any accuracy.
- A current lack of differentiation between lower level sexual abuse and more serious abuse.
- Nomenclature discrepancies e.g. is 'allegation' synonymous with 'notification'.

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

Children and Youth Service utilise a range of strategies and oversight mechanisms to protect children and young people in out of home care. It is recognised that no strategy alone is likely to provide absolute protection. Therefore, efforts directed at protecting children from sexual abuse must simultaneously target the potential perpetrator, the potential victim, and address all other aspects of a child's life domains which increase their vulnerability and likelihood of suffering abuse.

The process of conducting background checks and risk assessments in relation to prospective and current carers within all out of home care placements has the clear benefit of applying mandatory checking standards to all carers. This is a critical first step in preventing a known, and in some cases, a suspected perpetrator of sexual abuse to secure a position whereby they can access children through a caring role.

The limitations to using a checking and assessment process as an oversight mechanism are:

- That not all perpetrators of sexual abuse have previously offended. Consequently there will be no records located through the background checking process.
- Not all perpetrators of sexual abuse have been previously convicted of an offence. Consequently there may be no records located through the background checking process.

Child Protection background checks in Tasmania draw upon all available file material relating to the individual making an application. This process has the benefit of drawing upon all available data intelligence to alert the Agency to a potential risk, as

opposed to relying on a search which only locates a history of substantiated abuse by that individual.

In addition to carers, children come into contact with other community members. Children are supported to safely and appropriately maintain connection with family, whether birth parents, siblings or other family members. Children and young people in care are also supported to participate in social and/or recreational activities of their choice, such as sporting, cultural or community activities. Children and Youth Services have a range of policy, procedures and practice advice which include strategies to protect children from potential harm in a variety of situations. Policies include managing overnight stays, managing contact between children in out of home care and their family, and background checks for visitors to the placement. These strategies mitigate risk to children to some degree. The limitation of these strategies in mitigating risk to children is that some perpetrators may not be exposed through the checking process due to not having prior criminal convictions or substantiations as a perpetrator of child abuse.

Despite the application of all background check and assessment strategies for protecting children and young people from abuse, research indicates that perpetrators can and do find avenues to access children. Children cannot be monitored around the clock. Children and young people have a right to enjoy age-appropriate levels of independence. Therefore the need to combine a second layer of strategies aimed at prevention of circumstances where abuse might occur, strengthening communication with the child and behavioural observation of the child are of critical importance for their protection.

There is evidence that the safety of a child will be maximised by allowing the child access to and the opportunity to seek protection from safe adults. It is the right of every child to have access to their Child Protection Worker. It is a core role of the Child Protection Worker that they prioritise contact, as early and ongoing engagement with children through frequent visits, discussion and activities provide the opportunity for children to develop trusting relationships with their child protection worker. There is evidence that potential perpetrators can be deterred from abusing a child when they know that a child has a protective adult that they are likely to speak to.

Educating and empowering children and young people in relation to the risk of sexual abuse, their right to safety, and what action to take if they find themselves at risk is an effective primary strategy in preventing abuse. However, children cannot be expected to take responsibility for their own safety alone.

By the nature of their age alone, children and young people are vulnerable and rely on adults for their care and protection. Children in out of home care have often experienced adversity and are more likely to have characteristics which increase their vulnerability in comparison to the general population. Quality case and care planning must always identify when a young person has increased vulnerability through special needs or circumstances. The plan for each child must include actions which reduce their vulnerability and increase their safety.

Diligence and vigilance by carers and workers in relation to the safety of children is critical in the prevention and early detection of abuse. There is evidence that the safety-net for children is expanded through the development and use of Care Teams. The Care Team approach has the benefit of offering a range of protective adults for the child to engage with for protection and support. This can mitigate the risks of a weak relationship between the child and their key worker and it can reduce the risk of key worker dependence. Information sharing, planning and monitoring by a Care Team comprised of a group of protective adults maximises opportunities to detect risks and signs of abuse, and to act protectively.

Tasmania's current oversight mechanisms relating to abuse whilst in care vary depending on whether the perpetrator of sexual abuse is the child's carer, or whether the perpetrator is another individual in the child's life. In the case of the latter the issue is managed in the same way as any other notification of abuse and is referred through the Child Protection Intake and Response teams to investigate, assess and carry out appropriate action to mitigate future risk. Where the perpetrator of abuse is the child's carer, the Quality of Care Concerns policy is applied. CPS has oversight of both of these mechanisms and is responsible for ensuring that appropriate action is taken to protect the child and to prevent the perpetrator from accessing further opportunities for abusive behaviour where possible.

The issue of independent oversight and accountability in the area of Child Protection and OOHC is currently being explored further in Tasmania. The Advocacy for Children in Tasmania Committee (ACTC) is focussing on the functions and powers of the Commissioner for Children and the Ombudsman in relation to independence, advocacy, investigatory capacity, complaints management, oversight of services for children and young people, and their focus on all children, vulnerable children and/or those involved with statutory systems. Whilst this work is still ongoing, it is already clear that there is a need for a more robust system whereby the Department of Health and Human Services and other departments are held to account for their work with vulnerable children and where children, young people and their families can take their individual complaints for investigation.

While there is ongoing concern about the needs for better support, oversight and monitoring of statutory child protection services in Tasmania, the strengths and weaknesses of the potentially different mechanisms for addressing these concerns successfully in the Tasmanian context are still being assessed by the ACTC. Mechanisms that are under consideration include the role of the existing Commissioner for Children and the Ombudsman as well as consideration of the potential need for a Children's Guardian role and the role of independent Children's Visitors.

Throughout the investigation into this issue and the consultation undertaken, the issue of sexual abuse has not been treated any differently to that of any other form of abuse. It is important to maintain consistency in regulating responses to abuse in OOHC in order to reduce confusion in the community about the various roles and to avoid the duplication and overlap of functions, particularly where more than one type of abuse may be present.

11. What implications exist for record keeping and access to records, from delayed reporting of child sexual abuse?

The use of good record keeping practices supported by legislation, policies and procedures forms the foundation for effective risk management. This is particularly so when reporting of child sexual abuse is delayed, as is often the case as the vulnerability of children has shown that they may not have the capacity to disclose at the time. Comprehensive records and information become a vital link in assessing claims, accounting for what happened, taking action, preventing further abuse and implementing strategies to protect children in care.

State Government Record keeping in Tasmania is governed by the *Archives Act 1983*, the *Electronic Transaction Act 2000* and the *Evidence Act 2001*. In particular the *Archives Act 1983* requires that all state agencies create 'proper' records which must be accurate, authentic, have integrity and that the records must be accessible and useable whilst in the custody of the Agency. The purpose of proper records management is to provide evidence and accountability of the Agency's actions and responsibilities. In addition, the Department has policies and procedures relating to record and information management which includes record creation, access and disposal. The Department of Health and Human Services manages records through a number of systems including HP TRIM, Digital Medical Record (DMR) and a number of other business information systems including the Child Protection Information System (CPIS).

Tasmanian State records may only be destroyed under the authority of the State Archivist (e.g. a Disposal Authority or Disposal Schedule), unless subject to potential legal action. Child Protection records are not currently destroyed (as they are not covered by a disposal authority); however other supporting /related documents (for example medical and related administrative records) may be destroyed if covered by a disposal schedule. The longer the delay in notification of child sexual abuse, the greater potential loss of related supporting evidence that will be accessible.

In line with a Cabinet requirement that all Departments produce an Information Assets Register by the end of 2014, the Department of Health and Human Services is currently developing a register of all DHHS information assets including information on custodian and access details.

In Tasmania, the importance of record keeping was highlighted through the Abuse in State Care Review Program which gave those who had been in care access to both recognition and ex gratia payments in compensation for abuse suffered whilst in state Government care. Historical records spanning many years, were critical in assessing claims and determining facts but created challenges where records were incomplete, damaged or unable to be located.

The implications for record keeping and access to records from delayed reporting of child sexual abuse, or of any type of abuse for that matter, are:

- A requirement for appropriate records management frameworks with robust policies, procedures and disposal schedules for all types of records.

- The need for official systems for managing records that are used by all as failure to capture records into official records systems makes them difficult or impossible to locate when needed. They may even end up lost or destroyed.
- Effective linkages between all record types (e.g. paper and electronic formats) so they can be accessed as a whole to ensure that users understand their full context.
- The need for access to policies, procedures, organisational, administrative and other relevant records to provide an environmental context at the time of the alleged abuse.
- Appropriate storage facilities that preserve records for the length of time they are required, particularly old hardcopy files.
- Appropriate security and access provisions to ensure personal and confidential information is not disclosed to unauthorised persons.
- A Register of assets to enable efficient and timely access to those required records.
- Ensuring that any funding agreements or contracts for services contain provisions in relation to information capture and record keeping.