ISSUES PAPER 4 – PREVENTING SEXUAL ABUSE OF CHILDREN IN OUT OF HOME CARE

Thank you for the opportunity to provide a submission in relation to the above Issues Paper. Unfortunately, competing priorities did not allow the ACT Children and Young People Commissioner (CYPC) to provide a comprehensive response to the 11 questions contained in the paper. However, we wish to provide the following brief ‘framework’ comments that may be of interest to the Commission in consideration of matters raised by Issues Paper 4.

I. Terminology
The CYPC has had the opportunity to speak with a large number of children and young people with an out-of-home-care (OOHC) experience. During these discussions, young people frequently indicate a preference for terminology other than ‘out-of-home-care’, saying that they are, in fact, not ‘out of home’ but rather ‘in a safe home’ - a home that many young people see as preferable and permanent. A recent suggestion made to the CYPC by young people was that ‘Out-Of-Home-Care’ would be better referred to as ‘Safe Home Care’, or ‘Supportive Family Care’. In fact, much of the language used to describe the care experience of young people is seen by young people to be inaccurate, stigmatising, and/or creating a sense of ‘us and them’, including, for example, the terms: leaving care; transitioning to independence; foster care; and care plans.

The language used to define and describe the world of children and young people in care can have a profound impact on their sense of worth, and their sense of safety and wellbeing.

To further examine this issue, in early 2014, the CYPC will be undertaking a structured consultation with young people regarding their views on the language used to describe the care system, and we would be happy to share this research with the Commission, as appropriate, upon completion.

For ease of reference, however, we will maintain use of the term ‘OOHC’ in the remainder of our submission.

II. Child-Safe/Child-Friendly approaches in OOHC settings
We refer the Commission to the comments made by the Australian Children’s Commissioner and Guardians (ACCG) in our submission to Issues Paper 3 regarding Child Safe/Child Friendly institutions. In particular, we refer you to the following paragraph in section 2.2 of the submission, which highlights the need for children and young people to be involved in the development of policies and procedures aimed at keeping them safe in OOHC settings:

Participation of children and young people
It is not possible to become a ‘child safe’ organisation without seriously considering the views of children and young people. Children and young people have knowledge and experience which is different to that of the adults in the organisation, and they can make a unique contribution to planning, policy development and decision making.

Consulting with children and young people is an essential task if we are to understand safety issues in organisations, particularly as ‘[c]hildren and young people can identify strengths, weaknesses, risks and dangers in activities that may go unreported’. Organisations should engage children and young people in the review of policies, practices and systems improvement.

We note that children and young people in OOHC settings have unique needs that should be considered in the development of relevant Child Safe/Child Friendly policies for those settings. These needs should guide the way that children and young people are consulted, as well as the content of specific policies and procedures.
As the Royal Commission is no doubt aware, children and young people in OOHC are more likely to have a history of trauma, which may make them less trusting of adults, less likely to disclose abuse, and less likely to be believed or responded to if they do disclose. Further, children and young people in OOHC may be less likely to take steps to keep themselves safe, or may have lower expectations of what they are entitled to, leading to an increased vulnerability to abuse. These circumstances should be directly accounted for in any Child Safe/Child Friendly policies relating to OOHC settings, and in the breadth and nature of the way that children and young people are consulted about the development of these policies.

III. Reconceptualising frameworks for keeping children safe

The Australian Children’s Commissioners and Guardians (ACCG) submission to Issues Paper 3 referenced the National Framework for Creating Safe Environments for Children (‘National Framework’) and the Guidelines for Building the Capacity of Child Safe Organisations (‘National Guidelines’). These Guidelines were developed by an inter-jurisdictional committee in 2005, and are described as ‘nationally agreed good practice’ in building the capacity of organisations to maintain child safe environments.

We recognise that the National Framework and National Guidelines provide helpful, practical guidance for child-safe environments. However, we also recognise that these national documents are considerably less comprehensive than, say, other national frameworks for keeping adults safe.

It is interesting to consider, by way of comparison, the existing framework for keeping people safe in the workplace. Australia has a comprehensive Workplace Health and Safety regime that operates to protect employees. This regime is legislated. It places specific obligations on employers and includes a complicated civil and criminal compliance framework. The Federal Government’s Workplace Health and Safety framework contributes to a culture of risk-identification, safe reporting and rapid response, with the goal of maintaining the physical and mental health of employees. Specific industries are subject to ‘minimum standards’ and compliance regimes include national oversight and complaint bodies.

Ideologically, governments would surely consider the goal of keeping children and young people safe (including, in particular, children and young people living in OOHC settings) as worthy of equal importance as keeping adults safe at work. If so, it is interesting to reflect on why the regulatory and compliance frameworks for these environments are so different in scope and breadth. We recognise that ‘public’ workplaces and ‘private’ homes occupy different space in debates around government regulation of public and private activities. However, the provision and regulation of OOHC bridges these spaces in unique ways, and presents challenging questions regarding what regulatory frameworks should look like. In particular, we pose the question: What would a comprehensive ‘health and safety’ regulatory framework look like for children and young people in OOHC?

IV. Training for those working with children and young people in OOHC settings

Issues Paper question 5 usefully asks: ‘What are the ‘core components’ of the training needs of those working with children who might be sexually abused...?’ Again, in conceptualising a ‘big picture’ approach to the training needs of persons providing OOHC, we find it useful to consider training frameworks that exist in other related fields.

For example, the Council of Australian Governments has recently prioritised the development of National Quality Standards for Early Childhood Education and Care. Among other things, these standards introduce minimum qualifications for professionals providing Early Childhood Care. We understand that these standards apply to all early childhood educators, regardless of whether the children in their care are more or less likely to have particular needs relating to experiences of trauma or abuse.

Interestingly, there are no national quality standards in relation to qualifications for those providing OOHC. This is despite significant research which points to the increased likelihood that children and young people in such settings are likely to have some experience of trauma or abuse, and, accordingly, generally require high level, professional, care and support. The CYPC recently heard one professional say that children and young people entering OOHC ‘have more in common with Vietnam veterans, than the child next door’. To expect these children and young people to be adequately, and safely, cared for by a person will minimal or no professional training is unrealistic.

We do not wish to simplify these matters by suggesting that requiring carers to have a particular qualification will be ‘the key’ to identifying, allocating and sustaining suitable care arrangements for children and young people in OOHC.
However, comparative analysis highlights stark differences between regulatory frameworks across different care environments for children and young people. This leads to the question: What ‘minimum training’ or education would we reasonably expect OOHC providers to have undertaken?

V. Access to independent legal advice

It is essential that where a notification or allegation of abuse is made in relation to a child or young person in OOHC, that child or young person has access to independent legal advice regarding their rights and options.

This is particularly significant where parental responsibility for a child or young person in OOHC sits with the head of a government department. In these circumstances, a conflict of interest may arise where it is not in the interests of the ‘parent’ for the child or young person to pursue legal remedies against their carer, or indeed, the ‘parent’ who is responsible for providing and overseeing a safe OOHC placement. From a practical perspective, legal proceedings may not be the most significant or timely method to secure a child or young person’s safety in relation to an allegation or disclosure of abuse. However, it is essential to ensure that children and young people in these circumstances are supported to exercise their right to independent advice in a timely way.

Similarly, the CYPIC is of the view that if individuals and agencies, including those government individuals and agencies who hold parental responsibility for children and young people in OOHC, were appropriately held to account for any injury or harm caused to a child or young person in their care, those individuals and agencies may well pay greater attention to their obligations to keep children and young people safe.

Again, we thank you for the opportunity to contribute to the Commission’s work on preventing sexual abuse of children and young people in out of home care, and look forward to reading your report on the issues canvassed in Issues Paper 4.

Yours sincerely

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Children & Young People Commissioner

27 November 2013