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26 November 2013

Royal Commission Solicitor
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

By email: solicitor@childabuseroyalcommission.gov.au.

Dear Colleague,

Royal Commission into Institutional Responses to Child Sexual Abuse: Issues Paper 4 - preventing sexual abuse of children in out of home care

I am writing on behalf of the Indigenous Issues Committee of the Law Society of NSW ("Committee"). The Committee represents the Law Society on issues which impact upon Indigenous peoples in NSW, and includes experts drawn from the ranks of the Law Society’s membership.

The Committee thanks Mr Best for the extension of the submission deadline.

The Committee holds serious concerns about the welfare of Aboriginal and Torres Strait Islander (together referred to as “Indigenous”) children in Out of Home Care (“OOHC”). The Committee notes that the statistics in relation to Indigenous children in OOHC are alarming. From the Australian Government’s Australian Institute of Family Studies website:

Australian Bureau of Statistics population projection data for 30 June 2012 indicates that Aboriginal and Torres Strait Islander children would comprise 4.72% of all children aged 0-17 years in Australia (AIHW, 2013), yet in 2011-12 they constituted nearly 33.6% of all children placed in out-of-home care. In all jurisdictions, the proportion of Aboriginal and Torres Strait Islander children on placement orders was higher than that for other children. As of 30 June 2012, there were 13,299 Aboriginal and Torres Strait Islander children in out-of-home care in Australia - a placement rate of 55.1 per 1,000 children. In contrast, the rate for non-Indigenous children was 5.4 per 1,000. This indicates that the national rate of Aboriginal and Torres Strait Islander children in out-of-home care was more than 10 times the rate for non-Indigenous children (AIHW, 2013). There was substantial variation across the states and territories, with the placement rate of Indigenous children varying from 20.7 per 1,000 in the Northern Territory to 83.4 per 1,000 in New South Wales (AIHW, 2013). 1

The Committee’s comments, set out below, are informed by these concerns. The Committee notes that Issues Paper 4 appears to be directed towards obtaining empirical evidence. The Committee has provided responses where appropriate, but has not provided responses where it believes other stakeholders are better placed to respond.

1. **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?**

   The Committee’s view is that it is crucial to ensure that a child or young person is not placed with a carer who might be the subject of investigation or complaint pertaining to either physical abuse or sexual abuse.

   It is suggested that a core strategy that could be implemented would see foster carers who are the subjects of a complaint listed in an internal data base administered by a Government agency. The database should be accessible regardless of the location of the person/organisation making enquiries.

   Any complaint made against a person accused of the sexual abuse of a child should be immediately investigated and reported on a database and to relevant authorities involving Indigenous organisations.

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?**

   No comment provided.

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?**

   The Committee’s view is that regular supervisory visits for some predetermined amount of time to newly accredited OOHC providers will ensure that the necessary obligations of the children’s guardians are met.

   The Committee’s view is that the audit approach allows for notice, which may deny the auditor a “snap shot” into the day to day operation of the OOHC service provider, whether it is an institutional or residential OOHC provider. The Committee suggests that all OOHC providers should be on notice that they may be subject to spot unannounced checks on at least a yearly basis, and that these checks without notice be carried out.

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?**

   In the Committee’s experience, typically checks are performed by a worker with responsibility for the actual foster carer and the foster child. This can create perceived bias or actual bias or both, either intentionally or unintentionally by the community worker.
The Committee submits that an independent body be responsible for unannounced checks on foster carers, and that any complaint of abuse should be investigated by the same body as soon as reasonably possible.

The Committee further submits that the veracity of a complaint should not be determined by the OOHC provider, but rather that any complaint at first instance should be referred to an independent agency for investigation and reporting. A NSW example of an appropriate body (if appropriately resourced) is the Ombudsman. This would allow for independence and transparency during the investigation. The investigation should take place within a regulated timeframe.

While the investigation of allegations of sexual assault takes place, the OOHC provider should be required to act to ensure the safety, welfare and well-being of any children or young persons placed with that carer, whether or not they are the child or children who have brought the complaint. Regular visits to the placement by the OOHC provider should be undertaken.

In addition, the registry of sex offenders should be made instantly available to case workers placing children in OOHC whether it be on an urgent basis, interim basis or long term basis. The Committee strongly submits that the NSW Department of Family and Community Services (FACS) and OOHC providers must ensure the safety of every placement, even if a child is placed on an emergency basis. In the Committee’s experience, children have been placed in unsafe situations. Notably, in one matter, a child was placed with a convicted child sex offender. That child was later removed from that placement as he was sexually abused by that person.

The Committee recommends that all OOHC staff undergo a similar assessment to that operating in Victoria.

The Committee attaches an article by way of example from the *Sydney Morning Herald* titled “Foster children left in care despite serious allegations of abuse” dated 16 November 2013. This article reports on a failure of FACS to properly supervise and investigate allegations of sexual assault made by children in care against their foster carer. Such allegations had been made for a number of years by a number of different foster children. Despite the allegations FACS continuously placed new foster children with that foster parent, and left other children in the placement on a long term basis. This is clearly an unacceptable practice.

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?**

The Committee is concerned that each individual accredited OOHC service has responsibility to approve foster carers. The Committee’s view is that there should be a consistent and rigorous approach taken to approve foster carers. The training provided to caseworkers and staff of regulatory bodies should include an understanding of typical grooming behaviour, typical signs indicating abuse is taking place and typical behavioural traits of victims of sexual abuse, among other things.
6. Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?

The Committee believes that other stakeholders are better placed to respond. However, it notes that organisations and services treating victims are not likely to commence treatment if the victim remains in contact with offender. This creates difficulty in treatment both for the victim and the offender in circumstances where the sexual abuse has occurred amongst siblings and those siblings remain in the same placement.

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.

The Committee submits that sufficient resources should be allocated to allowing ongoing connection and communication with children in OOHC during their experience of foster care. If those children experience abuse, then the Committee’s view is that it is incumbent on the OOHC provider to ensure that during and upon exit of OOHC, there are appropriate and sufficient services available to assist with the experience of abuse. These services should include referral for assistance to make victim’s compensation claims. As quantitative and qualitative evidence shows, much of sexual abuse of children goes unreported and for various reasons does not meet the high bar of substantiating abuse.

The Committee respectfully submits that interviewing children and young people at the end of their OOHC experience is likely to create unnecessary trauma, especially if such an interview is designed purely for the purpose of determining whether any incidences of sexual abuse took place.

The Committee notes that it may assist in capturing more useful statistics if the types of sexual abuse that has taken place is categorised and whether continued support for victims is well managed.

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?

The Committee’s strong view is that any complaint of sexual abuse made regarding a child in care must be investigated in a timely way by an independent body as time is of the essence. The Committee submits that the investigation should not be carried out by the OOHC service or organisation responsible for the employment of the foster carer or foster placement or both).

The child must feel safe, and the process should make the child feel secure enough to be able to disclose instances of abuse, be believed, and be validated. The Committee takes the view that if a child discloses abuse, the child should be immediately removed from the placement during investigation and findings process.
The Committee’s view is that foster carers should be subject to the same investigation and caution process as a natural parent.

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?

The Committee notes that timeliness in investigation is crucial. Attached is an ABC News article titled “FACS boss reveals 500 NSW foster carers are being investigated over alleged inappropriate behaviour” dated 16 September 2013. This article reports that in NSW alone, approximately 500 foster carers are being investigated for inappropriate behaviour, and about half of the allegations under investigation are serious. It is unclear whether children in the care of those foster carers subject to complaint have been removed from those placements, and whether employment of those foster carers has been suspended pending investigation.

As stated above, an independent third party such as the NSW Ombudsman should be given the powers to undertake a complete investigation rather than just a monitoring or oversight role. This will create consistency, transparency and reliability in both the investigation and the outcomes of the investigation.

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

No comment provided.

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

Delayed reporting creates the real risk of further perpetration of abuse. The Committee submits that there should be quick and easy access to a database recording the details of foster carers who have had complaints made against them, and also quick and easy to a national working with children check. As noted earlier, the Committee’s view is that time is of the essence in reporting, investigating and removing the child or children.

Thank you for the opportunity to provide comments. If your office has any questions please contact Vicky Kuek, policy lawyer for the Committee on (02) 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,

John Dobson
President
Foster children left in care despite serious allegations of abuse

Lisa Pryor
Published: September 16, 2013 - 10:06AM

- Abused while in care no care at all

A NSW father who fostered more than 300 children around Sydney confessed to raping a foster child in his care, documents obtained by the Herald show. The man and his wife fostered children for 30 years and had been awarded medals in the Order of Australia for their work. They had also been profiled in an article in The Australian Women’s Weekly celebrating foster carers.

The confession in August last year came two years after the Department of Family and Community Services conducted an investigation into claims that the man was sexually inappropriate with foster children. Children were left in his care after the investigation even though the department found some of the behaviour did occur.

The man was remanded in jail in August last year on charges including nine counts of aggravated sexual assault of the teenager, who had a number of disabilities.

His confession came the day after the girl reported the abuse to friends at her school. The rapes he confessed to occurred over a two-month period last year.

The case was never made public because the man died in custody soon after being charged. The death, understood to be a suicide, is being reviewed by the Coroner.

In 2010 the family was investigated over allegations by another teenager who had left a placement with them. Her allegations included that he had "French kissed" a teenager in his care, appeared naked in front of children with only a small towel covering his genitals, and talked to children about his sex life.

Both parents denied any inappropriate behaviour had occurred.

The Herald has learnt this is just one of many cases where NSW children have been left in the care of foster parents facing serious allegations. A backlog has been building within the department's reportable conduct unit, which manages complaints about foster carers, with hundreds of allegations awaiting investigation.

"This backlog has been years in the making, and clearing it is a high priority for Family and Community Services," the minister, Pru Goward, said. "Close to $1 million has been allocated to maintain and support high standards of care for children, including additional expert investigators and improving the electronic case management system so allegations can be investigated more rapidly."

Department figures show there are 502 current investigations in the unit, most relating to carers, with 272 falling into the "reportable" category that includes neglect, physical abuse and grooming children for sexual abuse.

A spokesman for the NSW Ombudsman, which oversees the more serious complaints against foster carers, said: "The issue of delay ... will be discussed in our office's annual report."
In many cases children remain with the carers who have allegations against them while the case is being decided. The Herald is aware of at least one investigation where foster children are living with a carer even though the woman’s partner has been accused of sexually abusing his step-daughter.

Senior caseworkers in the department have expressed concern that there will be even less oversight of foster care as the department outsources foster care.

One long-time casework manager said: "We know now that carers that we have rejected, and some agencies have rejected, are being picked up by other agencies and used." This includes families that have been rejected due to a history of domestic violence and drug and alcohol abuse. One carer who was dropped after physically assaulting a child in their care was picked up by another agency.

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This story was found at: http://www.smh.com.au/nsw/foster-children-left-in-care-despite-serious-allegations-of-abuse-20130915-2n1h.html
FACS boss reveals 500 NSW foster carers are being investigated over alleged inappropriate behaviour

By state political reporter Liz Foschia

Updated Mon 16 Sep 2013, 11:00am AEST

The New South Wales Family and Community Services department (FACS) has revealed around 500 foster carers are being investigated for inappropriate behaviour.

The head of the department Michael Coutts-Trotter says 36 investigators are working full-time to clear the backlog and he hopes that will occur by the end of the year.

It has been revealed a man accused of sexually inappropriate behaviour was allowed to continue fostering children and later confessed to raping a child in his care.

Mr Coutts-Trotter says about half of the allegations under investigation are serious but in many other cases it would not be appropriate to remove children from their carers.

"Those that are of a serious nature are assessed straight away by caseworkers on the ground," he said.

"If there is deemed a risk to the child the child will be removed and there are occasions where we have removed children from carers straight away."

But Mr Coutts-Trotter has admitted mistakes were made in the case of the man who confessed to rape.

"The investigation was done with diligence, it was done with care," he said.

"It was just unfortunately an occasion where the perpetrator managed to scare the victim and witnesses."

The Opposition's family and community services spokeswoman, Linda
Burney, says the Ombudsman has expressed concern about the situation.

"With the outsourcing of foster care to the non-government sector, the question has to be asked, 'What is the department doing to make sure that carers going into the non-government sector are properly being screened?" she said.

**Topics:** carers, child-abuse, states-and-territories, nsw

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