

Preventing Sexual Abuse of Children in Out of Home Care

Re: Issues Paper 4

Submission to the Royal Commission into Institutional Responses to Child
Sexual Abuse

October 2013

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The ALA thanks Dr Andrew Morrison SC for his contribution to this submission. Dr Morrison regularly represents individuals that have suffered abuse within institutions. Dr Morrison also represented Mr John Ellis in the well known case of *Ellis v Pell* [2007] NSWCA 117.



INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse ('the Commission') on Issues Paper 4, Preventing Sexual Abuse of Children in Out of Home Care (OOHC).

We believe that there is considerable room for improvement in the selection, training, supervision and opportunities to complain about carers in Australia.

EXECUTIVE SUMMARY

The ALA believes that new standards for selection, training and supervision of carers need to be uniform throughout the country and associated with regular and irregular opportunities for those who are observing and for individual children to lodge complaints without fear of punishment, pressure or retribution.

WHO WE ARE

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

The ALA is represented in every state and territory in Australia. We therefore have excellent knowledge regarding legislative change and what impact this will have upon our clients.

More information about us is available on our website.¹



OUR STANDING TO COMMENT

The ALA is well placed to provide commentary to the Commission.

Members of the ALA regularly advise clients all over the country that have been caused injury or disability by the wrongdoing of another.

Our members advise clients of their rights under current state based and federal schemes, including motor accident legislation, workers compensation schemes and Comcare. Our members also advise in cases of medical negligence, product liability and other areas of tort.

Many of our members regularly represent victims of abuse, including those who have experienced such abuse within an institution. Many of our members have been involved in high profile cases, such as *Ellis*, *Trevorrow* and others.

Our members also often contribute to law reform in a range of host jurisdictions in relation to compensation, existing schemes and their practical impact on our clients. Many of our members are also legal specialists in their field. We are happy to provide further comment on a range of topics for the Commission.

OUR RESPONSE

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?

Voluntary arrangements are a matter for parents as part of their duty of care. Given the incidence of abuse in all forms of formal out of home care (OOHC), the ALA submits that the selection of carers is the issue upon which the Royal Commission should focus.

As to the evidence of the failure of care in the past, the Salvation Army and the South Australian Legislative Council and Senate Inquiries give further details and specific and graphic accounts.

For example, Graham Rundle – as per evidence given in court² – was 8 years old when placed in full time care at Eden Park in South Australia with the Salvation Army in the early 1960s. There, he was frequently sexually and physically abused by other boys and a supervisor, Keith Ellis, who was a Father and carer. When a

school teacher noticed bruising all over his body and enquired with Eden Park, Mr Rundle was beaten, placed in solitary confinement and refused access to school until he had recovered from his injuries. The person he was supposed to go to with his complaints, Keith Ellis, was himself an abuser.

This home had a history of abuse and complaints from the 1940s until it closed post 1980, but the children had no one to turn to.

Keith Ellis is currently serving a prison sentence for multiple acts of abuse perpetrated in the home.

The fundamental issues for the protection of children involve selection of suitable carers, supervision of care and carers, regular and irregular checks, encouragement of associated persons to report anything untoward, and opportunities for children when not under pressure from institutions and potential abusers to talk freely to those who can assist.

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?

Yes, but they need to conform to the principles set out above.

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

This is better answered by those engaged in such supervision.

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?

Ideally, a well staffed, trained and funded departmental child protection agency. It is not obvious that an independent agency would produce better outcomes.

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?

Clearly, those working with children need training and supervision and an element of this relates to the signs of grooming and/or sexual abuse. It is clear that there have been past failures in all states and territories, but it is also clear that sexual

abuse is only one element of the forms of abuse that may occur. All need to be adequately covered by training and supervision.

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

We have insufficient expertise in this area to comment.

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?

Whilst an exit interview maybe of assistance, many victims lack insight into what constitutes inappropriate behaviour and lack insight into the effect of sexual abuse. An Anglican survey in Brisbane some years ago found that the average time per person, between abuse and first complaint was 19.5 years. This accords with our members' experiences of these cases.

Only if an exit survey was repeated at intervals of perhaps 5 to 10 years for perhaps 30 years after discharge from OOHC would such a method be likely to be of utility and even then would likely understate the incidence.

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?

Whilst complying with the need to give confidentiality to the child and treat the alleged abusive carer fairly (natural justice) it is clear that many institutions, including churches and government and non-government agencies have lacked rigor in their investigations in the past. This may be attributed in some small degree to lack of insight of the long term consequences of abuse, but too many institutions have failed to act on very serious examples of sexual abuse. Carers must be suspended while being investigated, children interviewed in a way which does not lead to polluting their responses, the police contacted in a timely fashion and child witnesses protected from adult pressure to hide abuse.

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?

It is difficult to find a clear measure, particularly given the lack of independent oversight in many past cases, but it must be clear that independent oversight is likely to promote better outcomes for the child and institution.

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

Independent, irregularly timed visits with private communication with children in care will clearly assist.

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

Clearly, records must be retained for institutions and from those providing independent supervision and scrutiny for very lengthy periods. The recent *Trevorrow*³ case goes back to the early 1950s. Clearly, records need to be kept for anything up to and beyond 100 years, and given the recent advances in electronic record keeping, this should be perfectly feasible.

CONCLUSION

The ALA believes that new standards for selection, training and supervision of carers need to be uniform throughout the country and associated with regular and irregular opportunities for those who are observing and for individual children to lodge complaints without fear of punishment, pressure or retribution.

REFERENCES

¹ Australian Lawyers Alliance (2012) <www.lawyersalliance.com.au>

² *Salvation Army v Graham Rundle* [2008] NSWCA 347

³ *South Australia v Lampard-Trevorrow* [2010] SASC 56.