

**CREATE Foundation submission to the  
Royal Commission into Institutional  
Responses to Child Sexual Abuse**

**Response to Issues Paper 8:  
*Experiences of Police and Prosecution  
Responses***

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# About CREATE Foundation

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 40,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people in care and developing policy and research to advocate for a better care system.



# Introduction

CREATE Foundation appreciates the opportunity to provide a response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) Issues Paper 8 on Police and Prosecution Responses to reports of child sexual abuse in institutions. CREATE acknowledges and commends the Royal Commission's efforts to highlight that sexual abuse of children in institutions is occurring now and again draws the Royal Commission's attention to the 43,009 children and young people living in out-of-home care across Australia, with 41% in foster care, 49% in relative or kinship care, and over 5% in residential care (AIHW, 2015). CREATE regards the out-of-home care sector as an "institution", regardless of whether children and young people are placed in "home-based" settings such as foster care and kinship care, or more formal institutional care such as a residential setting.

This submission acknowledges relevant findings of the Royal Commission (2014) to date, including:

- Effective responses to reports or allegations of child sexual abuse can help stop abuse.
- Ineffective institutional responses can allow abuse to continue.
- Child sexual abuse is under-reported.
- Disclosure of child sexual abuse is often delayed into adulthood, by over 20 years or more (on average survivors took 22 years to disclose their abuse to the Royal Commission after it happened).
- Lack of training for professionals can lead to child sexual abuse not being identified.


Where sexual abuse is perpetrated on children and young people in out-of-home care the responses must focus on the child or young person's safety, well-being and best interests, through open communication that is age-appropriate and supports children and young people. Ensuring children and young people know what is happening after they have been abused is essential to their recovery and security in the present and future.

CREATE believes that promoting the participation of children and young people in out-of-home care in the decisions that affect their lives is a first step towards enabling them to stay safe or report when they have been abused. Through genuine participation, children and young people can trust that their voices will be heard and acted upon (G-Force, 2014).

## Police and court processes in child protection systems

This submission focusses on questions 8 and 9 directed at professionals' experiences as contained in Issues Paper 8.

It is important to acknowledge that children and young people in out-of-home care will already have had involvement with police and/or the courts. The high incidence of domestic and family violence, mental health issues and drug and alcohol problems in the families of children in the care system makes it likely that children and young people have had some involvement with police prior to their entering care. Young people in care, particularly if they live in residential care, are over-represented in juvenile justice systems and, therefore, highly



likely to have experience with police (CREATE, 2012; McFarlane, 2010). In a small consultation with 16 young people who had been in residential care, they had all experienced police attending in response to an incident (CREATE, 2012). The participants had varying views on how police and youth workers handled incidents, which indicates that the young people may already have a view about whether or not the police will listen to them and act on what they are told.

Similarly, as children enter the care system through a children's court process, they may already have experienced the courts with varying involvement and results. In a look at children and young people and their experiences of the Brisbane Children's Court, children and young people explained that they were not always told prior to attending court that their hearing was proceeding or what to expect (CREATE & DCCSDS, 2014).


Children and young people in the care system are a diverse group. They have different experiences before and while being in care; represent a large age range; varying levels of time spent in care and placement histories, and come from different cultural backgrounds. Police and prosecution responses need to be able to engage children and young people in a way appropriate to their age and cultural background. This requires awareness and training to improve the response to allegations of child sexual abuse and actions needed to support children and young people to be safe and assist their recovery.

CREATE believes that police and prosecutors would benefit from training developed in conjunction with children and young people with an out-of-home care experience to help them respond to incidents involving children and young people in care.

**Question 8: What are your observations of, and suggestions for improvements or reforms to, police processes for receiving reports of allegations, and investigating and responding to reports in relation to allegations of child sexual abuse in an institutional context?**

Interactions with police in response to allegations and investigations of child sexual abuse in out-of-home care should proceed so as not to cause any further harm or distress to the child or young person subject to the abuse from the police process. First and foremost, the safety, well-being and best interests of the child or young person must be paramount. Given that all abuse against a child must be reported to child protection assessment services (as well as police if it is thought that a crime has been or is being committed) then child protection staff should be responsible for ensuring a child or young person is supported through the investigation process. This must be overseen by senior child protection staff to ensure that where the abuse is by someone within the system, that children's best interests are served. An independent oversight body in each state and territory, for example, Child Commissioner, Guardian or Ombudsman, should be told of all allegations of child sexual abuse in out-of-home care and the outcomes so that systemic issues can be addressed.

Young people consulted about their interactions with police in residential care settings (generally in response to a young person's behaviour) highlighted the importance of communication that is open, honest and at a level they can understand (CREATE 2012). It is essential that police training in all states and territories addresses general communication with children and young people but also, communication with children and young people who are in the child protection system and who may have been abused by adults. It is preferable that all allegations are referred to specialist police as early as possible in the process, and that any police interacting with children and young people in care have training in and knowledge



of the issues for them. Historical reports from the Royal Commission (2015) of young people being returned to abusive situations in institutions by police are concerning, as without rigorous and standard approaches of treating allegations seriously in all Australian jurisdictions this could still happen today. While, police and child protection agencies should respond quickly wherever they become aware of an allegation of child sexual abuse, the inconsistency of data collection across the states and territories makes it difficult to know what is happening (SCRGSP, 2015).


Practices that minimise the number of police and other professionals who conduct interviews with children and young people in care about allegations of sexual abuse should guide practice in this area, including limiting the number of times that children and young people need to repeat their story to professionals (DHS, 2012). At all times there should be a trusted adult nominated who can be briefed on the stages of an investigation and are able to explain to the child or young person what is going on and help them to understand the process.

Police need to recognise that if children and young people have had negative experiences with police in their past, it may be difficult for them to relax and cooperate with police to ensure a thorough investigation. Young people have told CREATE (2012) that police treat them in varying ways when called to residential care ranging from being “nice” or “professional” to being dismissive or not caring because they are seen as “departmental kids”. Where police are responding to allegations of sexual abuse the child or young person at the centre of the allegation must be treated with respect and sensitivity to ensure the best outcomes for the child and young person and the investigation.

Where allegations involve sexual abuse of a child or young person by another child or young person in a placement (whether they are both in care or not), the response must ensure that the children or young people both have interventions and that the safety of all children and young people in the placement is maximised. In her research into out-of-home care and juvenile justice, McFarlane (2011) reports that “often, the young person was remanded back to the care of the group home or foster placement where the criminal charge had been laid”. McFarlane refers to this as a cycle where young people “were repeatedly brought before the court for incidents arising from their placement, only to be placed there again.”

While this research mainly relates to property crime, CREATE asserts that it is essential that when allegations and investigations of child sexual abuse in care placements are made that children and young people’s best interests be assessed and responded to by police and child protection. Ensuring children’s and young people’s safety and responding to their trauma, along with open communication about what will happen next is essential and it must be the responsibility of the child protection agency to see that this happens.

Research into disclosure of child sexual abuse, shows that disclosing can have different results ranging from helping children to access safety interventions and emotional support to help with healing, through to further trauma and humiliation that has a detrimental effect on both psychological and physical well-being (Esposito, 2014). Police working on allegations of child sexual abuse also need to be aware of this research and develop appropriate responses that are informed by children and young people with a care experience.



Police responses to allegations of child sexual abuse in out-of-home care must:

- Be communicated openly and appropriately to the child or young person;
- Involve a trusted adult for the child or young person to ensure children and young people are informed of what is happening and what to expect;
- Be conducted to minimise further harm or distress to the child or young person;
- Be overseen by a senior child protection practitioner at the individual level, and an independent oversight body at the systemic level;
- Be improved through training for police in communicating with children and young people who have been abused; and
- Acknowledge that children and young people may already have experience with police to varying levels of satisfaction and requires an emphasis on the part of police to ensure the investigation is sensitive to the rights and needs of the child or young person's safety, well-being and best interests.


### **Question 9: What are your observations of, and suggestions for improvements or reforms to, prosecution processes in relation to charges relating to child sexual abuse in an institutional context?**

CREATE's comments about this question are taken from information shared by children and young people on their experiences within the legal system (CREATE 2012, 2013 and CREATE & DCCSDS 2014). Communication is a key issue for children and young people, as they would like the context and what to expect explained to them in a way that they can understand, preferably from a trusted source. Communication is at the heart of good relationships and young people identified the relationship they have with their caseworker as the most significant factor determining whether they participate in court processes (CREATE & DCCSDS, 2014).

Children and young people in out-of-home care system all have a right to participate in significant decisions being made about them through the Charters of Rights in each state and territory. However, this doesn't mean that children and young people are aware of their rights. CREATE's Report Card 2013 showed that about half of the children and young people interviewed knew how to complain if they needed to about any problems, so it is important that all professionals working in child protection, including in the courts, do more to facilitate children's and young people's involvement in decision making (McDowall, 2013).

This means that prosecution processes should be communicated in age appropriate language and support provided as needed, including legal representation if appropriate. Child protection staff should document in case files any relevant information to court proceedings so that if a child or young person wants access to information at a later date, the information is available and accurate.

When asked, young people expressed different individual views on whether they want to appear in the children's court in relation to their child protection hearings, however, not being told what was going on was highlighted as a problem, regardless of whether children and young people want to attend court (CREATE & DCCSDS, 2014).



Children and young people need professionals in the prosecution process who can explain to them what the prosecution process will involve, where the proceedings are in time, what the outcome of any prosecution means, and what is expected of the child or young person. When young people make suggestions about having to go to court, they mostly emphasise the need to know what will happen and when, and what support they will or can have (CREATE & DCCSDS, 2014).

Generally, young people are very aware that they have different experiences to other young people in care and that they need individual responses.

When asked about independent legal representatives, young people report that they need time to get to know their legal representative so that they can be properly represented in court (CREATE 2013). This goes back to the importance of relationships in human service work and that some time is needed for a relationship to be developed. Young people would like their legal representatives to be passionate about the young person's life, that is, to care about what is happening and getting the details right through listening to the child or young person (CREATE 2013).


Prosecution responses to allegations of child sexual abuse in out-of-home care must:

- Be communicated openly and appropriately to the child or young person;
- Involve a trusted adult for the child or young person to ensure children and young people are informed of what is happening and what to expect;
- Ensure children's rights are supported;
- Include training for staff in the needs and issues for children and young people in out-of-home care and communication skills for working with children and young people; and
- Take into account the views and wishes of children and young people.

## Conclusion

CREATE thanks the Royal Commission for the opportunity to provide input into this important aspect of its inquiry into Institutional Responses to Child Sexual Abuse. Children and young people who have been sexually abused while in care require support to address their physical, psychological, and emotional needs but they also need the right support and intervention with police and prosecution processes.

Specifically, the police and legal profession must recognise that children and young people in out-of-home care, are a diverse group and are entitled to respect and support when they are further abused while in care. Child and young people friendly communication skills are required to engage with children and young people and training is needed for police and prosecutors to improve their responses to children and young people who are sexually abused while in care. This training should include hearing directly from children and young people with a care experience.



Police and prosecution processes for responding to allegations and investigations of child sexual abuse in out-of-home care can be improved through:

- training for police and prosecutors that includes children and young people's views and experiences, and teaches professionals the communication and other strategies needed to work with children and young people who have been sexually abused in care;
- open and age appropriate communication with children and young people;
- a designated adult to support children and young people to explain what will happen as the investigation or prosecution progresses;
- oversight by senior child protection staff of the progress of individual allegations; and
- independent oversight at the systemic level of allegations and prosecutions of child sexual abuse in institutional care.

It is our hope that the outcomes of the Royal Commission will ensure that the police and prosecution processes support justice and recovery for the survivors of sexual abuse in institutions and lead to systemic changes that prevent the occurrence of sexual abuse and respond to it when it occurs in ways that enable children and young people in care to reach their full potential.

For any further information or queries about issues covered in this paper please contact Jacqui Reed, Chief Executive Officer on [jacqui.reed@create.org.au](mailto:jacqui.reed@create.org.au) or Noelle Hudson, National Policy and Advocacy Manager or [noelle.hudson@create.org.au](mailto:noelle.hudson@create.org.au) or call our National Office on (07) 3255 3145.





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