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into Institutional Responses
to Child Sexual Abuse

CONSULTATION PAPER

Institutional Responses to Child Sexual Abuse in Out-of-Home Care

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March 2016

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Executive summary

Our Terms of Reference direct us to examine how to better prevent, report and respond to child sexual abuse in institutional contexts. This consultation paper addresses child sexual abuse in out-of-home care (OOHC) settings.

We made a decision early in our work to examine OOHC because it was apparent in our private sessions, public hearings, research and consultation work that sexual abuse in OOHC has been, and remains, a concerning issue. In addition, we have also drawn on the many previous inquiries into child protection and OOHC systems across Australia over the past decade, and examined care systems of the past.

We have heard numerous accounts of the significant sexual, physical and emotional abuse of children that occurred in these institutions and its detrimental impact on many people's lives. To date we have held over 4,700 private sessions, in which OOHC was the largest category of institutions identified, constituting over 40 per cent of all reports of child sexual abuse.

According to the Australian Institute of Health and Welfare (AIHW), 43,009 children were in OOHC on 30 June 2014 in Australia. Nationally, the 82 per cent growth in the number of children in care over the past decade, reflects the growth in demand on child protection systems and the vulnerability of many children. Over 51,000 children in Australia were in OOHC during 2013–14, of whom 35 per cent were children from Aboriginal and Torres Strait Islander backgrounds. Over the past decade, the number of children entering the OOHC system has been steadily increasing, and the period of time that children stay in care is also increasing.

We have heard concerns that the current OOHC system does not adequately protect children from sexual abuse, or consistently respond as well as it should when abuse occurs. Private sessions, public hearings, research and our consultation work indicate that children in OOHC are at a heightened risk of sexual abuse.

To better protect children from sexual abuse in OOHC, service providers and carers need to have a thorough understanding of the grooming and offending dynamics of perpetrators, and the needs of children who have been sexually abused, or who have exhibited sexually harmful behaviours. We are concerned that inconsistencies between the states' and territories' OOHC systems may mean that children receive differing levels of protection, care and support depending on their circumstances and geographical location.

Improve data collection and reporting

One of the key issues first brought to our attention was the poor state of knowledge nationally in relation to the current incidence of child sexual abuse in OOHC. This consultation paper considers:

- the lack of consistency in definitions and thresholds across states and territories
- the limitations as to what information is recorded in data systems
- the lack of capacity for the information to be aggregated and monitored nationally.

At a national level, many of the facts remain unknown: the number of children who are sexually abused in care; the circumstances of the abuse; the relationship between the child and the offender; when or where the abuse occurred; and the response to the abuse. This makes it difficult for governments and services to review the systems in place and to prevent and respond to child sexual abuse.

The data we summonsed from jurisdictions and OOHC services, although not comparable across jurisdictions, did allow for some qualified observations about reporting rates for sexual abuse of children in different types of care. Some data available to us shows:

- 33 per cent of the sexual abuse reports over the period 2012–13 and 2013–14 we received from government and non-government organisations were about children in residential care. According to AIHW data, only five per cent of all children in OOHC in Australia were in residential care as at 30 June 2014.
- 20 per cent of reports we received pertained to children in kinship or relative care, noting that 49 per cent of all children are in a kinship or relative care placement.
- 39 per cent of reports were from foster care settings. This is proportional to the number of foster care placements, which is 41 per cent of the total number of placements. It should be noted that the alleged perpetrators in the 'foster care' category could be foster carers, other householder members, family friends, other children or adults outside of the household.

We are also concerned that sexual abuse in OOHC is under-reported, as most children do not disclose abuse at the time it occurs.

Child sexual abuse by carers and staff

We have heard people's experiences of being sexually abused by their carers when they were a child living in OOHC. We seek your views on how government agencies, regulators, oversight bodies and service providers can improve, and provide adequate screening checks, assessments and re-assessments of children's placements, carers and other household members.

We have been told that the current focus on child sexual abuse in OOHC is often limited to sexual abuse perpetrated by carers, residential care staff, other professionals and volunteers. Notwithstanding the importance of remaining vigilant about these risks, two other forms of child sexual abuse also require more attention in order to properly protect children in OOHC contexts: these are child sexual exploitation and child-to-child sexual abuse.

Child sexual exploitation

Child sexual exploitation is where children are coerced or manipulated into engaging in sexual activity in return for something (such as alcohol, money or gifts). The perpetrator often initially 'grooms' them for this abuse online. The sexual exploitation of children in care, particularly in residential care, is a serious issue in OOHC in Australia and internationally.

Data systems could record sexual exploitation as a specific type of child sexual abuse. We are considering the need for integrated, state and territory-wide responses from the relevant

government agencies, service providers and police, such as those that continue to be developed in Victoria. Carers and professionals could be educated about this problem and how to respond.

In the context of current responses to the sexual exploitation of children in OOHC at a national level, we are considering the following issues:

- jurisdictions poorly identifying and reporting child sexual exploitation in OOHC
- the absence of recording this form of child sexual abuse and the consequential lack of available data to show its incidence and prevalence
- the lack of coordinated and cross-sectorial protocols, procedures and responses particularly among OOHC service providers, child protection services and the police
- the lack of preventative measures; for example: strategies for when children are missing from their placement; and the enforcement of social media policies and education within OOHC, child protection services and the police
- the need to address the barriers to children disclosing sexual exploitation.

Child-to-child sexual abuse

We have heard evidence in public hearings that child-to-child sexual abuse is a serious and common problem in contemporary OOHC. In this paper, 'sexually harmful behaviours' refers to children who have harmed other children, or may be at risk of doing so. This term is non-stigmatising to the child while recognising the harm these behaviours can cause to others. We seek your views on this terminology.

In private sessions and in several of our public hearings, key issues raised in relation to child-to-child sexual abuse within care included:

- poor supervision within OOHC placements
- inadequate responses from carers and professionals
- inadequate training of carers
- carers lacking timely information about a child's background
- the pressures of high demand on the OOHC system, and the compromised decision making that may result when matching children to their placements
- caseworkers being unavailable to regularly visit children in OOHC.

We have been informed that when a child first enters care, trained professionals need to make thorough assessments and placement matching decisions. We understand that children with sexually harmful behaviours, and their carers and families, need adequate and timely access to specialised trauma-informed services and support programs.

Evidence before us suggests that placement and treatment options for children need to be identified, strengthened and implemented in every state and territory, to address the complex needs of children with sexually harmful behaviours.

We have been told that more needs to be done to better protect children from, and respond to, issues of child-to-child sexual abuse in OOHC. We are specifically considering:

- the shortage of home-based care for children with sexually harmful behaviours and the inappropriate matching of these children with other vulnerable children in residential and home-based care
- the insufficient treatment responses for children across Australia who display sexually harmful behaviours
- the lack of policies, procedures and/or best practice guidelines for preventing and responding to child-to-child sexual abuse in OOHC
- the lack of nationally consistent accreditation and professional development training for counsellors working in this field
- the shortage of expert advice and assistance for foster and kinship/relative carers
- carers receiving insufficient information about the child's background
- the lack of nationally consistent identification and terminology in relation to child-to-child sexual abuse in OOHC, and the resulting impacts on data collection and knowledge.

Strengthen regulation and oversight mechanisms

Each jurisdiction's OOHC systems – including regulation and oversight measures – are complex. We have looked at these OOHC systems as they currently operate and considered where they can be strengthened to reduce the risk of child sexual abuse.

There is little national consistency in the regulation and oversight of OOHC systems across Australia, despite the adoption of the National Standards for Out of Home Care. The disparate network is made up of different service provider accreditation systems, mandatory reporting requirements and complaint management systems.

We are considering whether regulation and oversight of OOHC in each jurisdiction should include:

- core oversight functions being conducted by a body external to, and independent of, the relevant jurisdiction's lead department and all service providers
- independent oversight of complaints handling, conducted by a body independent of the lead department and all service providers. That is, a 'reportable conduct scheme' be implemented in each jurisdiction
- nationally consistent minimum standards for assessing and authorising all carers
- the accreditation of all government and non-government OOHC providers, to a nationally consistent minimum standard
- a body that is responsible for assessing and granting applications for accreditation, independent of the relevant jurisdiction's lead department
- the accreditation body retaining ongoing responsibility for monitoring accredited providers to ensure their continued compliance with the conditions and standards of their accreditation
- all carers being reassessed on a regular basis
- a register of carers in each jurisdiction, containing relevant information about all applicant and authorised carers, and accessible by all jurisdictions' accredited OOHC service providers and appropriate regulatory and oversight bodies.

Improve information sharing

We have been informed that information about a carer's background or a child's previous sexual trauma needs to be more easily shared within jurisdictions and across jurisdictional borders. This would enable the prevention of some child sexual abuse in OOHC and would also allow service providers and carers to make more informed decisions about placements.

At present, there are limited avenues for institutions to share information across jurisdictional borders. Children in care have a right to be told information that promotes their safety, wellbeing and helps them participate in the decision-making processes that affects them.[1]

We seek your views on how information sharing in OOHC contexts could be improved by the following developments:

- all jurisdictions having nationally consistent arrangements, modelled on Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), for intra-jurisdictional and inter-jurisdictional exchange of information related to the safety and wellbeing of children, including information related to child sexual abuse in OOHC contexts
- sharing information related to child sexual abuse with children in care being enabled and strengthened. Children being better informed, especially where they have been or may be directly affected by such abuse. Children's participation in decision making that affects them being better promoted
- sharing of information related to child sexual abuse with carers being strengthened. This will assist carers in making informed decisions to accept placements. Carers could then provide appropriate care for children who have been sexually abused and for children with sexually harmful behaviours
- all jurisdictions subject to information sharing arrangements working together to ensure implementation is supported with adequate education and training for those responsible for sharing information.

Child safe organisations

OOHC can be a high risk environment for child sexual abuse. These risks can be reduced by creating a culture of safety where child safe organisational principles are consistently practised and the behaviour of staff is monitored. The care environment, no matter what service type (kinship/relative, foster or residential care) should be a safe place free from abuse and harm, where children play a key role in decisions that affect their lives. We are considering whether the following child safe elements could be promoted and structured within the OOHC sector:

- organisational leadership, governance and culture
- human resources management
- child safe policy and procedures
- education and training
- children's participation and empowerment
- family and community involvement
- physical and online environment
- review and continuous improvement

- child focussed complaint process.

Better approaches to preventing child sexual abuse

We have been informed that there are variable approaches to the prevention of child sexual abuse in OOHC. There are limited evidence-informed strategies for educating children and carers about sexuality, sexual health, perpetrator behaviours and sexual abuse. We consider that specialised training programs for children, carers and staff within OOHC may be required and seek your views on this. We are also considering how to address the barriers children in OOHC face when making complaints and when disclosing sexual abuse when it occurs.

In examining the development of a national OOHC education strategy, we are considering whether such a strategy should include:

- raising awareness about children in OOHC being vulnerable to sexual victimisation and revictimisation
- developing an education prevention program focused on child sexual abuse, targeting children, carers and practitioners in OOHC
- developing and distributing resources that are culturally sensitive and suitable for young people with a range of special needs, including learning problems and/or disability
- developing and distributing resources that include material for same sex attracted and gender questioning young people
- developing an education and training framework for all foster, kinship/relative and residential carers and practitioners
- mechanisms for implementing, reviewing, evaluating and improving the prevention strategy and its components.

Improve support for children and carers

Therapeutic care and treatment services provided to children who have been sexually abused in OOHC vary in quality and scope across states and territories. We have been told that existing programs are not tailored to support children from Aboriginal and Torres Strait Islander backgrounds, children with disability and children from culturally and linguistically diverse backgrounds. Access to trauma-informed care is limited, and services do not always effectively meet individuals' needs.

Many children in OOHC move between multiple placements, which disrupts their schooling and limits their opportunities to build and maintain relationships with trusted adults. We have been informed that expert support and training is needed for the increasing number of kinship and relative carers to prevent placement breakdown.

Improving support for young people after they leave care, including better access to care leaver records and information, are other key areas under consideration.

We seek your feedback on the need to:

- develop a nationally consistent therapeutic framework for OOHC service delivery, outlining the essential elements

- embed consistent evaluation of child outcomes and conduct longitudinal research, to inform the development of therapeutic residential care
- expand therapeutic and trauma-informed advocacy and support services
- provide systemic training for carers and practitioners, in the areas of therapeutic care and responding to trauma, and impacts of sexual abuse.

We also seek your feedback on whether placement stability and reducing the number of 'strangers' in a child's life could be improved by:

- offering a wider availability of placement options – including professional carer models
- better workforce planning and development for residential care staff
- increasing casework support and oversight of children in kinship/relative care
- increased support for individuals when they leave care and post-care, including better access to care leaver records.

Next steps

We acknowledge that there are many dedicated carers, practitioners, advocates, policy specialists and skilled front-line staff supporting children in OOHC. We welcome submissions on the issues outlined in this consultation paper. Feedback will help inform recommendations we may make in order to better protect children in OOHC from child sexual abuse.

We invite all interested parties to make written submissions in response to this consultation paper. Written submissions should be made by **Monday, 11 April 2016**:

- electronically to OOHC@childabuseroyalcommission.gov.au
- by filling out the online submission form at
- http://childabuseroyalcommission.gov.au/policy-and-research/out-of-home-care/have-your-say
- by mail, addressed to **GPO Box 5283, Sydney, NSW, 2001**.

Submissions can be anonymous.

1. Introduction

1.1 Background

In line with our Terms of Reference (see the Letters Patent in the Appendix) we, as Royal Commissioners, are required to examine institutional responses to child sexual abuse and to identify how children can be protected more effectively against such abuse. This consultation paper is focussed on the institutional responses to one of the most vulnerable groups of children in our society at risk of sexual abuse; those children who, for various reasons, cannot remain in the care of their parents.

Each state and territory in Australia has a system known as out-of-home care (OOHC), whereby children who cannot live at home safely can be cared for outside of their families. The decision to place a child in OOHC should be matched by rigorous efforts to ensure that the child is placed in an environment that at the very least offers safety from further abuse, neglect or ill treatment. This duty of care is a basic responsibility of every state and territory, and every non-government agency that acts on behalf of our society in providing OOHC for children.

The rights of children in care are central to our considerations. Australia ratified the United Nations Convention on the Rights of the Child ('UNCROC') in December 1990. Australia therefore has a duty to ensure that all children in this country enjoy the rights set out in the UNCROC.

Historically, the rights of children in OOHC have not received the respect or protection they require. We have heard extensively from victims and survivors about the trauma caused by their childhood sexual abuse in OOHC, and the painful legacy this has caused throughout their lives. Over 40 per cent of the Royal Commission's private sessions related to child sexual abuse in OOHC. It is clear that this sector requires attention.

We have heard evidence and received information about the importance of institutions' responses for children in OOHC, including what they do to prevent and report sexual abuse. We are aware of the pressure caused by unprecedented demand in contemporary OOHC systems. According to the Australian Institute of Health and Welfare (AIHW), on 30 June 2014 there were 43,009 children in OOHC throughout Australia.[2]

Nationally, there has been an 82 per cent growth in the number of children in care over the past decade.[3] This reflects the growth in demand on child protection systems across Australia and the vulnerability of many children. Given this context, we acknowledge the responsiveness of all individuals, government bodies and non-government organisations that have provided information and expertise to assist us in our work to date.

This consultation paper presents the key issues for children in OOHC that we have considered to date. We have not examined the whole OOHC system, but rather focused on those aspects of the system that fit within our Terms of Reference. We are undertaking this consultation process to assist us in developing recommendations for our final report.

1.2 Our work on OOHC

Why we are examining this issue

We have heard that the current OOHC system does not adequately protect children from sexual abuse, or consistently respond as well as it should when abuse occurs. Private sessions, public hearings, research and our consultation work indicate that children in OOHC are at a heightened and unique risk of sexual abuse.[4]

We are concerned that inconsistencies between the states' and territories' OOHC systems, and how those systems protect against and respond to allegations and instances of child sexual abuse, may mean that children receive differing levels of protection, care and support depending on their circumstances and geographical location. We have also been told that these inconsistencies create unnecessary difficulties and frustrations for service providers working in multiple jurisdictions.

Of the 43,009 children in OOHC as at 30 June 2014, approximately 95 per cent are in one of three types of care or placement types: foster care, kinship/relative care or residential care.[5] These placement types are best described as follows:[6]

Foster care	Home-based care where the carer is authorised and reimbursed (or has been offered reimbursement but declined it) by the state or territory and is supported by an approved government or non-government agency.
Kinship/relative care	Home-based care where the carer is a relative (other than parents), is considered to be family, or is a member of the child or young person's community (in accordance with their culture). The carer is reimbursed (or has been offered reimbursement but declined it) by the state or territory.
Residential care	Care is provided in a residential facility, where children are supported by paid staff.

In 2013–14, five per cent of all children in OOHC in Australia were in a residential care facility, 41 per cent were in foster care, and 49 per cent were in kinship/relative care arrangements.[7] The remaining five per cent of children were in other care arrangements, for example in a private board arrangement, tenant households, independent living or boarding schools.

How we have examined this issue

We heard particular concerns about child sexual abuse in OOHC early in our work. From the commencement of our private sessions, many people shared with us their personal experiences of being sexually abused as a child in care. In September 2013, we released *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*. Our first policy roundtable discussion, held in April 2014, was about the prevention of sexual abuse of children in OOHC.

We have obtained information and evidence about the prevention of, and responses to, child sexual abuse in OOHC, through the following areas of our work:

Private sessions	During our private sessions, many people recounted their experiences of child sexual abuse in OOHC. We have conducted more than 4,700 private sessions to date, and OOHC represents the largest category of institutions identified during private sessions, representing just over 40 per cent of all allegations of abuse.[8] We have also heard from some young people currently in OOHC who have experienced sexual abuse.
Public hearings	Of our 36 public hearings held to date, 11 examined child sexual abuse in OOHC, including both historical and contemporary cases. We also conducted a public hearing focused on the OOHC system (*Case Study 24: Preventing child sexual abuse in OOHC*) during March and June 2015.
Input from stakeholders	**Issues paper** *Issue Paper 4: Preventing Sexual Abuse of Children in OOHC* was released in September 2013. We received 63 submissions from a range of stakeholders in response to this paper. **Roundtable discussion** Building on the responses to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*, we held an OOHC roundtable discussion in April 2014. Participants who attended the roundtable discussion included survivor advocacy and support groups, faith-based organisations, non-government service providers, government departments, oversight bodies, industry peak groups and academics. **Commissioned research** Research relating to OOHC published to date include: • Evaluations of out-of-home care practice elements that aim to prevent child sexual abuse • History of institutions providing out-of-home residential care for children • Implementation of recommendations arising from previous inquiries

More information about the above can be found at our website.

Previous inquiries into OOHC

There have been many inquiries into the child protection systems in the states and territories over the past 15 years, which we have taken into account in our work. Many of these reviews have dealt with OOHC, and some have focused on the particular issue of child sexual abuse within OOHC. Some of the recent inquiries we considered include:

Commonwealth[9]	• Senate Community Affairs References Committee, *Inquiry into Out of Home Care*, 2015

	• Senate Community Affairs References Committee, *Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, 2015
New South Wales[10]	• J Wood, *Special Commission of Inquiry into Child Protection Services in New South Wales*, 2008
Victoria[11]	• Commission for Children and Young People, *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, 2015. • Family and Community Development Committee, *Inquiry into the handling of child abuse by religious and other non-government organisations,* 2013 • P Cummins, *Protecting Victoria's Vulnerable Children Inquiry,* 2012
Queensland[12]	• T Carmody, *Queensland Child Protection Commission of Inquiry*, 2013
Western Australia[13]	• Public Sector Commission, *Review of the Commissioner for Children and Young People Act 2006*, 2013
South Australia[14]	• Select Committee on Statutory Child Protection and Care in South Australia, *Interim Report*, 2015 • E Mullighan, *Children in State Care Commission of Inquiry*, 2008
Australian Capital Territory[15]	• Public Advocate of the ACT, *Review of the emergency response strategy for children in crisis in the ACT*, 2012
Tasmania[16]	• Select Committee on Child Protection, *Inquiry into Tasmania's Child Protection Systems*, 2011
Northern Territory[17]	• P Bamblett, Board of Inquiry, *Inquiry into the Child Protection System in the Northern Territory,* 2010.

These inquiries have resulted in legislative changes, as well as changes to policies, practices and procedures. We have considered this material and the progress of reforms, with particular regard to aspects of the OOHC system that are most relevant to our Terms of Reference.

The rights of children

Australia is a State Party (a signatory) to several international instruments that oblige it to respect the rights of children and to provide them with appropriate support and assistance throughout childhood.[18] Arguably, the most relevant instrument is the UNCROC, under which States Parties such as Australia are obliged to uphold the rights of all children in their jurisdiction, without discrimination on any basis.[19] Noting that, we heard from a number of recent care leavers who gave evidence in *Case Study 24: Preventing child sexual abuse in OOHC*, that children in OOHC feel that

their placement in care is, of itself, a basis of discrimination. We were told that many children in care are treated differently to their peers due to their status as 'foster kids'.

> You get stereotyped … that's still there in the community and it's still there in our carers and many of our caseworkers. Caseworkers' opinions as well – it's always there in the back of the head of the community. It makes it really hard for us and it makes it really hard for us to be able to speak out if something is happening.[20]

Several Articles of the UNCROC are particularly relevant to children in OOHC and child sexual abuse, and we have had regard to these in our work. These include:

- **Article 3**, which provides that, in all actions concerning children, including those undertaken by public or private social welfare institutions, the best interests of the child shall be a primary consideration. States Parties shall also ensure that children receive care and protection necessary for their wellbeing, and that institutions, services and facilities responsible for such care and protection conform with standards established by competent authorities, including in relation to safety, health, number and suitability of staff and competent supervision.[21]
- **Article 8**, which provides that States Parties must undertake to respect the right of the child to preserve their identity, including nationality, name and family relations.[22]
- **Article 9**, which provides that a child shall not be separated from their parents against the child's will, except where competent authorities decide in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In any such case, the decision must be subject to judicial review, and all interested parties must be afforded an opportunity to participate in proceedings and make their views known.[23]
- **Article 12**, which provides that a child who is capable of forming their own views has a right to express those views freely in all matters affecting them, which will be given due weight according to the child's age and maturity.[24]
- **Article 19**, which provides that States Parties shall take all appropriate legislative, administrative, social and educational measure to protect children from all forms of violence, abuse and neglect, including exploitation and sexual abuse.[25]
- **Article 20**, which provides that a child who is deprived of their family environment, whether temporarily or permanently, is entitled to special protection and assistance provided by the State. In such circumstances, States Parties must ensure alterative care for the child, for example, by way of foster care or placement in a suitable institution.[26]
- **Article 34**, which provides that States Parties must undertake to protect children from all forms of sexual exploitation and sexual abuse.[27]

Despite the widespread recognition of the rights of children and the importance of children in OOHC having a voice, through our work we have been informed that these are not always evident in practice.

What we have learnt so far

Our examination of the OOHC systems in Australia has shown that children in OOHC continue to face unique and heightened risks of sexual abuse. We are aware that these risks are increased for children with disability who also experience more barriers to disclosure. We also understand that at a national level, the OOHC system lacks coordination, data to inform practice and consistency in the services available in different locations. These problems undermine the protections afforded to children in OOHC.

Risks to children in OOHC

Children in OOHC are particularly vulnerable to sexual abuse due to previous sexual harm and other victimisation, social or economic deprivation, family trauma and dislocation from family.[28] Unlike children who are victimised in other institutional settings, many children in OOHC face additional disadvantage because they have lost their connection to family, community and culture (noting that this may not always be the case for children in kinship/relative care). The cumulative harm that many children experience prior to entering care can adversely affect their development. It can also affect their capacity to form trusting relationships conducive to disclosing abuse and promoting their safety.

Due to the growth in the number of children in OOHC over the last decade, there is unprecedented pressure to find and support appropriate placements, and to provide experienced practitioners who can visit and build meaningful relationships with children in care. We have been told that the limited placement options contributes to placement decisions and circumstances that, despite aiming to be in the best interests of children, may in the end heighten the risk of harm.

We have heard that pressures on different placement types include:

Foster care	• foster carers exiting the system faster than they can be recruited • lack of specialised and professional foster care placements (where carers are trained and supported to respond to traumatised children, including those who have sexually harmful behaviours) • variation in remuneration to carers across jurisdictions, which may deter suitable carers • difficulties for carers in facilitating contact visits with children's families.
Kinship/relative care	• lack of robust carer assessment, case management, caregiver support and overall monitoring of children in kinship/relative care • unreasonable expectations on carers to manage complex family dynamics during contact visits with children • higher rates of voluntary care placements which may lead to reduced oversight of the child's wellbeing and safety • some grandparents and younger carers being overburdened and/or not remunerated.
Residential care	• some residential carers receiving little or inadequate training, supervision and support

- high turnover of staff, resulting in high use of casual labour hire firms, and vulnerable young people experiencing what has been referred to as the 'parade of strangers' in their lives[29]
- inconsistent and limited access to therapeutic support for both young people and carers
- pressure on agencies to reach targets – funding agreements with governments may result in children with challenging behaviours being matched with unsuitable placement types.

We heard in *Case Study 24: Preventing child sexual abuse in OOHC* that the challenges of high demand have also contributed to inadequate responses to child sexual abuse in OOHC. Children in OOHC do not uniformly have an allocated or consistent caseworker. Caseworkers play a central role in a child's care team, and advocate for their safety and development. Research clearly shows that the quality of the relationships that professionals and carers form with children in care are key to good outcomes.[30]

It is clear to us that listening to children, and being informed about the impact of trauma and the manipulation and grooming patterns of perpetrators, are fundamental to increasing the safety of OOHC systems.

It is also clear to us that OOHC service providers and carers have a responsibility to develop and foster a culture that encourages disclosure and promotes safety for all children in OOHC. There are many constraints that prevent children in OOHC from disclosing sexual abuse. Systems of care need to be alert to changes in children's behaviours, and to sensitively respond to individual children. As we heard in evidence during *Case Study 24: Preventing child sexual abuse in OOHC*:

> You really need to listen to children, and by that I mean listen to what their behaviour tells you as well.[31]

To protect children from sexual abuse in OOHC, carers and OOHC service providers need to have a thorough understanding of the grooming and offending dynamics of perpetrators, and the needs of children who have been sexually abused, or have themselves exhibited sexually harmful behaviours. However, we have learnt that many carers and people working in the OOHC sector lack in-depth understanding about the grooming and offending dynamics of perpetrators, which exacerbates the risks to children.

Children from Aboriginal and Torres Strait Islander backgrounds

The over representation of children from Aboriginal and Torres Strait Islander backgrounds in every jurisdiction in contemporary OOHC is a concerning issue. The rate of children from Aboriginal and Torres Strait Islander backgrounds in OOHC has almost doubled over the past decade. Some 14,991 children, or 35 per cent of the total number of children in OOHC, were identified as Aboriginal and Torres Strait Islander.[32]

According to data compiled by AIHW, which is also reported in the Report on Government Services (RoGS), throughout Australia, there were 51.4 children from Aboriginal and Torres Strait Islander backgrounds in OOHC for every 1,000 Indigenous children in the general population, as at 30 June 2014. This compares to 5.6 children from non-Aboriginal and Torres Strait Islander backgrounds[33] in

OOHC for every 1,000 children in the general population as at 30 June 2014. Put simply, the rate of representation in OOHC is almost 10 times higher for children from Aboriginal and Torres Strait Islander backgrounds.

We acknowledge the importance of connection to culture and community and the role this plays in healing trauma for children from Aboriginal and Torres Strait Islander backgrounds currently in OOHC. However, we have been told that access to culture and community is not consistently evident in practice. We have been informed, for example, that comprehensive plans for children in care to remain connected to their culture are often not developed and/or implemented. We heard in evidence during *Case Study 24: Preventing child sexual abuse in OOHC* that:

> when [Aboriginal] children are placed in a mainstream agency we need to have accountability on a cultural level… Who are they connected to? ...they may not be getting any culture whatsoever. That's the right of the child. That's part of their identity. That makes up who they are. How do they become proud Aboriginal people if they don't even know what being Aboriginal means?[34]

Furthermore, while the Aboriginal and Torres Strait Islander Child Placement Principle[35] (the Principle') helps to ensure that a child's connection to family and culture is maintained, placement decisions must be made in accordance with the best interests of the child. In some circumstances, complying with the Principle may not be in the child's best interest. As explained during *Case Study 24: Preventing child sexual abuse in OOHC*:

> … [Q]uite often kinship placements are used for expedience when, in reality, they aren't suitable.[36]
>
> I would say there's no ramifications for not adhering to the policy, either. So I would say my experience of working with the Aboriginal Child Placement Principles is that they aren't something that is used in the best interests of the child; they are used in the best interests of a placement.[37]

We have also been told about the lack of Aboriginal and Torres Strait Islander people's involvement in policy making, service delivery and decision making in OOHC and the need for these issues to be addressed. For example, in *Case Study 24: Preventing child sexual abuse in OOHC* Mr Andrew Jackomos, Victorian Commissioner for Aboriginal Children and Young People said:

> There is a lack of Koori policy makers in the department. The department needs to have an active strategy to build the Aboriginal capacity within its organisation, and I think that will be one of the ways for us to get better outcomes for our children.[38]

Children with disability

We are aware that children with disability are at a heightened risk of sexual assault by professionals, non-parental figures and other children, compared to children without disability.[39] We have been told that children with disability in OOHC face unique challenges as a result of services and support not being adequately tailored to their individual needs.

Although accurate and comprehensive data is not available at a national level, we understand that a large number of children in OOHC have some form of disability. We know that some children with disability live in OOHC placements not because they were neglected or abused, but because their

parents were no longer able to cope, and their family resources had been exhausted or overwhelmed.

There is limited research in Australia about the prevalence of abuse of children with disability. International studies demonstrate that children with disability, particularly those with intellectual disability, communication impairments, behaviour difficulties, and sensory disability, are at significantly increased risk of a range of maltreatments, including sexual abuse.[40] With what we know about the high proportion of children in OOHC with disability, this is a concerning issue.

Children from culturally and linguistically diverse backgrounds

Approximately 45 per cent of all Australians were born overseas or had at least one parent born overseas.[41] Although there is no national data about the number of children in OOHC who come from culturally and linguistically diverse backgrounds,[42] a significant number of children come from diverse communities and refugee backgrounds. We have been told these children may be more vulnerable to child sexual abuse than other children for various reasons, as discussed below.

In its submission to the Senate Community Affairs References Committee's Inquiry into OOHC, Settlement Services International estimated that, in New South Wales, 25 per cent of children in OOHC were from culturally and linguistically diverse backgrounds.[43] A study undertaken in Victoria found that approximately 13 per cent of children and young people in OOHC were from culturally and linguistically diverse communities or refugee backgrounds.[44]

Compared to their peers, children in OOHC who are from culturally and linguistically diverse communities and refugee backgrounds are likely to face additional challenges when they enter care, which may affect their capacity to disclose sexual abuse. These challenges may include:

- language and literacy barriers
- lack of understanding of the child protection system
- the need to deal with traumatic events, such as displacement, internment, torture, loss of home and family members
- limited access to culturally sensitive or appropriate placement options and support services.

The Senate Community Affairs References Committee's Inquiry into OOHC acknowledged that children and families from culturally and linguistically diverse backgrounds have specific needs that are not supported by current child protection frameworks and models of care.[45] The Senate Committee found, for example, that there are few home-based care options for children and young people entering Australia for humanitarian reasons as unaccompanied minors, resulting in the majority of these children being placed in residential care facilities.[46]

We acknowledge there is very limited Australian research about the needs of children from culturally and linguistically diverse backgrounds and more work needs to be done to better support these children in care. We are in the process of undertaking work more broadly regarding children from culturally and linguistically diverse backgrounds and the risks of sexual abuse.

The national perspective

Under Australia's federal system of government, and the territories' powers of self-government, responsibility for administering, funding and delivering child protection services rests with the states and territories, rather than with the Commonwealth Government. The Commonwealth Government has a relatively minor role with respect to child protection, although with the adoption of the *National Framework for Protecting Australia's Children 2009–2020* (the National Framework), it has taken on a greater responsibility for the national coordination of child protection services.[47]

The Commonwealth, states and territories committed to a national approach through the National Framework, in an effort to bring some consistency to the policies and practice aimed at protecting children. The National Framework identifies six broad outcomes[48] implemented through a series of three-year action plans. An outcome of the first action plan was the development of the aforementioned National Standards for OOHC. These 13 National Standards aim to improve the quality of OOHC and promote a nationally consistent approach.[49]

The National Standards, although encouraging in their content, are not mandatory and there are no accountability mechanisms in place to ensure or monitor their implementation. Evidence provided to us during *Case Study 24: Preventing child sexual abuse in OOHC*, together with information highlighted by the Senate Community Affairs References Committee's Inquiry into OOHC, has indicated that the National Framework and National Standards have so far resulted in little progress to improve outcomes for children in OOHC.[50]

Our examination of OOHC to date has identified some key areas where we see inconsistencies and inadequacies in state and territory systems causing children to receive different levels of protection depending on the jurisdiction they are in. These include differences with respect to:

- identification of, responses to and prevention of certain forms of child sexual abuse (such as child-to-child sexual abuse and child sexual exploitation)
- recording details of allegations, instances of and responses to child sexual abuse in OOHC differently, resulting in inadequate or incomplete national data about the extent of the problem, and a poor evidence base on which to establish a best practice approach
- regulation and oversight of OOHC systems
- processes for and the extent to which institutions can share information with children, carers, staff, volunteer and other institutions (noting that avenues for institutions to share information across jurisdictional borders are also limited, and mechanisms currently in place do not sufficiently facilitate information exchange to ensure the protection of children in OOHC from sexual abuse)
- the extent to which state and territories have implemented the *National Framework for Protecting Australia's Children 2009–2020*[51]
- implementation of formal child safe standards
- regulation of physical and online environments relevant to OOHC facilities
- education for OOHC service providers, carers and children in OOHC about child sexual abuse
- treatment and support provided to children who have been sexually abused in OOHC or to those children who have sexually harmful behaviours.

1.3 OOHC in Australia

Historical context

Over the past few decades there have been significant changes in the OOHC system and models of OOHC care across Australia. The system has shifted from a reliance on residential care to the placement of children in home-based settings, preferably with kin.

Broadly speaking, children and young people who grew up in the orphanages, children's homes, training schools, industrial schools, family group homes, foster care and other types of OOHC institutions of the past had a different experience of care than those children living in OOHC today. In private sessions and public hearings concerning historical OOHC institutions, we have heard descriptions of harsh military-style discipline and control; rigid rules and strict punishment; and little or no privacy.

> [Children] were placed where beds were available, moved when institutional efficiency demanded, cut off from kin whom the authorities judged as neglectful, and all too often left with no-one to whom they could turn for support as they navigated their way into adulthood.[52]

A major development within the OOHC system was the shift in the 1970s and 1980s from a reliance on large residential institutions that housed many children to more home-based, family-orientated models of care. Following this trend, around 90 per cent of children living in OOHC today are in family or home-based care, such as kinship, relative or foster care.[53]

Shifting attitudes

Over the years, child protection advocates and academics have argued for the voice of the child to be heard, and for the child's rights to be recognised and realised. Many advocates today are concerned with focusing on the actual experience of children and the harm that can be inflicted upon them within the child protection and OOHC contexts.[54]

We recognise the tension between the rights of children to be protected from harm and the rights of parents to raise their children as they see fit. These tensions are reflected in the polarised views regarding child protection, family services and the OOHC system. Child protection workers are frequently criticised for intruding too much into the family, or for not doing enough to remove children from abusive or neglectful family and place them in OOHC.[55] International research has demonstrated the correlation between poverty and child abuse[56] and the lack of social support services available to families in need.

Parallel debates about how to manage the unprecedented demands on the 'front-line' of child protection services have occurred in all Australian states and territories, as well as in the UK and the USA. What has colloquially become known as the 'refocussing' or 'rebalancing' debate looks at how systems can adopt a holistic approach to child welfare that strengthens family support, and prevents children from being placed into OOHC.[57] In other words, it is a move away from reactive and crisis-driven responses, and towards a focus on early intervention and prevention.

Contemporary OOHC

The objectives and operations of the child protection systems across Australia's states and territories are broadly similar, but no two systems are wholly alike. Each state and territory has adopted its own complex suites of inter-connected legislation to meet its unique social, economic, demographic and geographic circumstances. In the case of OOHC, each jurisdiction has a complex framework of legislation[58] supplemented by regulations, standards, policies and procedures. These stipulate the conditions for placing a child in care, recruiting carers, deciding placement, making funding arrangements, and regulating and overseeing service providers and service delivery.

We are aware of a growing trend for jurisdictions to transfer responsibility for OOHC service delivery from government to non-government organisations. This can include engaging non-government organisations to operate residential care facilities, recruit residential care staff and foster carers, and manage children's placements with foster carers and kinship/relative carers.

Policy makers and service providers consider placing children in OOHC a measure of last resort, after all other support and early intervention options have been either exhausted or ruled out. Although families can place children in OOHC on a voluntary basis (for example, for the purposes of respite), children are generally placed in OOHC pursuant to a 'care and protection order' (a legal order or arrangement providing the relevant state or territory child protection department with responsibility for the child's welfare) on the basis that it is considered unsafe for them to reside at home.[59] This is often referred to as 'statutory OOHC'.

Voluntary OOHC is usually arranged between a parent and a non-government organisation where there are no or minimal child protection concerns. We understand that many children in voluntary OOHC have disability. This type of care can take various forms, including overnight, centre-based respite, host family care, residential placements, and camps that provide respite or address challenging behaviour.[60] A substantial number of children in Australia are in supported, voluntary or informal/private (non-statutory) placements but little is known about the exact numbers.[61] Voluntary OOHC is an area of care we have not examined in detail, although we welcome submissions on this.

The ratio of government to non-government OOHC service delivery varies considerably across the jurisdictions. In Victoria, almost all foster care and residential care delivery is managed by non-government organisations, while in the Northern Territory, South Australia and Western Australia, most OOHC is delivered by government. Delivery in the remaining jurisdictions varies: Queensland, Tasmania and the Australian Capital Territory have transferred a significant portion of OOHC delivery to non-government organisations, and New South Wales is undertaking a gradual transition to delivery primarily by non-government organisations.

The differing ways in which OOHC is delivered and managed by government and non-government organisations across the jurisdictions in part accounts for the different regulatory and oversight systems in place, as discussed further in chapter 4.

Current challenges in OOHC

Over the last decade, the growth in the number of children in OOHC has placed increased pressure on governments and service providers to find placements; support children in placements; find and support carers; and provide experienced practitioners to regularly visit and build meaningful relationships with children in OOHC. We have heard that time and resource pressures have made it difficult for caseworkers, carers and other professionals to build and maintain strong relationships with children in care, which we know are key to good outcomes for children.[62]

Although the overall child population in Australia increased by just nine per cent between 2004–05 and 2013–14,[63] as mentioned previously, the number of children in OOHC across Australia increased by 82 per cent over the past decade.[64]

Over the past decade, the largest increase in the OOHC population by jurisdiction was in the Northern Territory (180 per cent), Western Australia (104 per cent) and New South Wales (97 per cent). The lowest increases were in Victoria (75 per cent) and Queensland (45 per cent).[65]

Victoria has the lowest rate of children in OOHC in Australia, with 6.1 children in care per every 1,000 children aged 0–17 in the general population. This is compared to the national average rate of 8.1 children living in OOHC for every 1,000 children in the general population. The states and territory with the largest rate of children in OOHC are New South Wales (10.8 children in OOHC for every 1000 children in the general population) and the Northern Territory (14.3 children in OOHC for every 1,000 children in the general population).[66]

In addition to the greater number of children entering OOHC, the length of time that children have been spending in OOHC has also been increasing over the past decade. In 2004–05, only 26 per cent of children had been in care for five years or longer,[67] but by 2013–14 that number had risen to 41 per cent (almost 18,000 children).

Within Australia, there is no detailed or consistent national measurement or information collected on the different reasons why children are removed from the care of their parents and placed in statutory OOHC.[68] This makes it difficult for systems to adequately analyse and respond to emerging trends about the harm and maltreatment of children, including children who come into OOHC.

In 2013–14, Australian child protection figures (rounded up to the nearest percentage) indicated that on average within the total population, the most common types of substantiated[69] primary child abuse or neglect were:[70]

- emotional abuse (40 per cent)
- neglect (28 per cent)
- physical abuse (19 per cent)
- sexual abuse (14 per cent).

However, sexual abuse, both in familial and institutional settings, is often under-reported to authorities – a fact that has been reflected in numerous private sessions and public hearings. Different practices with respect to how reports are ‘substantiated’ may also affect the totals expressed above.

A number of stakeholders also told us about the many pressures and challenges facing the OOHC system within Australia, such as:

- the growing number of children entering the OOHC system
- children staying in OOHC for longer
- the over-representation of children from Aboriginal and Torres Strait backgrounds in the OOHC system
- the lack of early intervention support services
- a lack of resourcing
- instability of some placements resulting in children and young people regularly moving between different placements
- limited models of care placements and support options
- the limited pool of carers and support services for carers to deal with complex placements and needs
- the complex needs of children in OOHC and the lack of targeted or appropriate support, including for children with disability.

Foster care

Over past decades, policies have shifted away from residential care in favour of foster care and kinship/relative care. Although more children entering care are now being placed with kinship/relative carers, foster care is still a valued, important and high-demand service type for thousands of children across Australia.

Foster care as an OOHC care type has its own challenges and risks concerning the safety and wellbeing of children. For example:

- jurisdictions are seeing more emergency and crisis placements, and placement breakdowns. This is compounded for sibling groups; children with emotional, behavioural, cognitive or health problems; and children from ethnic minorities[71]
- agencies need to have appropriate options for matching particular cohorts of children to foster carers
- a balance is needed regarding the scrutiny of and accountability requirements for foster carers on the one hand, and not placing too many pressures on carers and other family members on the other
- remuneration for foster carers is inconsistent across jurisdictions
- there is a need for more support and quality training to better support foster carers about sexual abuse.

The Senate Community Affairs References Committee's Inquiry into OOHC highlighted many of the above issues in its report and recommended:

> …that COAG [the Council of Australian Governments] include in the third action plan (2015–2018) of the National Framework a nationally consistent strategy to support and accredit foster carers to improve recruitment and retention. This should also address nationally consistent rates of financial support, case-worker support and training of foster carers.[72]

1.4 Child sexual abuse in OOHC

Perpetrators of sexual abuse against children in OOHC may be carers or staff members; other adults in the household; or other adults external to the placement. Some children who are living in care or other children living in the household may act out with sexually harmful behaviours and may harm other children in OOHC settings.

Adult perpetrators

With regard to adult perpetrators, research[73] has posited that opportunities for offending usually involve a combination of:

- the particular vulnerabilities of the individual victim or victims
- the level of contact a perpetrator has with the victim or victims
- the motivation and determination of the perpetrator.

In OOHC (as is evident in some other institutional settings, such as schools), there is an imbalance of power between adults and children. Adults are in positions of authority, while we are told that children often feel disempowered, unimportant and disbelieved. Children are generally not consulted about OOHC placements and have limited recourse to refuse, complain or negotiate. In this situation, children who are already vulnerable are rendered even more so. Without strongly established relationships and systems to support them, children can struggle to know how to speak about sexual abuse.

This power imbalance and lack of strong relationships with trusted adults may be exacerbated through a child's:

- physical or social isolation (which could be temporary or more chronic)
- physical, intellectual or cognitive disability
- care and social circumstances (including absent, weak or problematic attachment to adult guardians/carers)
- disconnection from their culture.

This is particularly the case for children who are in OOHC who have had multiple carers, and have experienced instability, abuse and neglect in their lives.

Carers

Where the perpetrator of sexual abuse against a child is the child's carer (or a friend or relative of the carer), children may be concerned that if they report sexual abuse they will not be believed, or they will be moved from the placement. This can be a major dilemma for a child who, beyond the abuse they have suffered, wants to remain in the relevant placement. This may be the case if they have formed good relationships with others they have met through their placement; have attachments to their schools; or do not want to be removed from siblings or a home environment they may have known for many years.

Many perpetrators are skilled at manipulating children to feel responsible for the perpetrator's feelings and for what might happen to the perpetrator if the child discloses the abuse. This can cause children to be confused about their loyalty to perpetrators and to remain silent. A child may be silenced because of fear that violent threats from a perpetrator will be carried out, or that a perpetrator's aggressive behaviour in other contexts, which the child has witnessed will be acted out on them if they speak out about the abuse.

Children may also remain silent because they are ashamed; fear getting in trouble; believe they are responsible for their own abuse; or are concerned that others will think they deserved or encouraged their abuse, or were 'willing participants'. The victim may have been groomed by the carer via drugs and alcohol; manipulated into witnessing or producing pornography; forced to act out sexually with other children; or made to recruit other children in care for the perpetrator. In these cases the child may fear the consequences and may remain silent.

We have heard in many private sessions of situations where the carer who was sexually abusing a child deliberately and systematically sabotaged the child's positive relationship with other carers and undermined the child's attachment to his or her family of origin. The carer in these cases frequently cultivated a special relationship with the child, accompanied by a mix of privileges, rewards and fear to maintain the child's silence.

Many perpetrators can 'talk the talk' and impress the professionals who assessed them as accredited foster carers – or as suitable kinship/relative carers – as well as the other professionals with whom they interact. They are often able to deceive and use their role as a carer to promote themselves as socially acceptable, and some may even be perceived as a 'heroic' carer.[74]

Other adults

Through *Case Study 24: Preventing child sexual abuse in OOHC,* we have been made aware of adults external to placements actively targeting and sexually exploiting children in OOHC. This can be because these children are generally vulnerable, needy for adult attention and willing to test limits. The children's traumatised behaviour can be misconstrued as normal adolescent development and indicators of their sexual exploitation may therefore be overlooked. In our consultations, practitioners have told us that children in care are often initially targeted and groomed online, and that this has increased since the profusion of ready access to smart phones, social media, and pornography in recent years.

Children with sexually harmful behaviours

Through our private sessions, public hearings, research and consultation work, we have received considerable information about the prevalence of child-to-child sexual abuse in contemporary OOHC. It is now more widely recognised that children with sexually harmful behaviours have often been the victim of various forms of abuse themselves, including experiencing family violence, neglect and sexual abuse. Child-to-child sexual abuse is discussed in further detail in chapter 2.

Barriers to disclosure

Based on information obtained in private sessions, we have found that on average it takes survivors 22 years to disclose the abuse perpetrated against them when they were a child.[75]

OOHC service providers, their carers and related staff members need to respond effectively to disclosures of child sexual abuse, and to be proactive in responding to the behavioural indicators commonly associated with sexual abuse.

In addition, complaint processes in OOHC are not always child friendly and the notion of making a complaint may be foreign to children.

The evidence presented in *Case Study 24: Preventing child sexual abuse in OOHC* from recent care leavers highlighted the fact that the barriers to disclosure are often connected to the child's lack of power and authority.[76] Analysis of the themes articulated in evidence included their sense of disempowerment, compounded by the child's:[77]

- awareness of the power imbalance between the child and the institution or individual to whom the complaint might be made. This barrier is perhaps the most challenging in the OOHC context, where the child is often dependent on the person, employee or organisation, the child is seeking to make a complaint about
- lack of knowledge about child sexual abuse
- lack of knowledge about the law and their rights
- sense of not feeling safe enough to disclose abuse
- lack of trust in authority figures and complaint systems
- fear that confidentiality of disclosure will not be maintained
- feelings of embarrassment about the incident
- lack of awareness of disclosure or complaint processes
- fear of not being believed
- fear of repercussions
- fear of being moved to another placement
- fear of being seen as a trouble maker
- need for support and the confidence of a trusted person
- concern about caseworker turnover or the caseworker being too busy.

Additional barriers may exist for children in some circumstances, such as in small or remote communities where it is difficult to prevent knowledge of the complaint from spreading, or where the child is in kinship or relative care and may not feel able to report a family member. Children with disability can experience additional barriers such as difficulty relaying complex information themselves, or reliance on others to communicate on their behalf. It is also extremely difficult if the child has already experienced instability and multiple placement changes, and is otherwise happy and settled in the current placement.

What we know about the rates of sexual abuse in OOHC

One of the key issues first brought to our attention was the poor state of knowledge throughout Australia in relation to the incidence of child sexual abuse in OOHC. Data currently available fails to give us an accurate or complete picture of the experience of children who have been sexually abused in OOHC, or the extent or prevalence of the problem across the nation.

There is no nationally consistent approach to recording data[78] about sexual abuse of children in OOHC. This presents a significant obstacle in responding to this issue, because the true shape and size of the problem is not known. Furthermore, due to OOHC services being transferred from government to non-government providers, the information we have received shows that data collection within jurisdictions is varied and not always centrally collated.

Data that assisted us in *Case Study 24: Preventing child sexual abuse in OOHC* came from two sources: first, the annual data provided by jurisdictions for collation by the AIHW; and second, from reports and/or allegations of sexual abuse of children in OOHC (reports) that were produced to the Royal Commission under summons from all states and territories, and from 12 non-government organisations.[79]

The summonsed data on reports of sexual abuse were not comprehensive, were not representative of the total OOHC population and did not allow for comparisons to be made between jurisdictions. However, the data did allow for some qualified observations that are pertinent to our understanding of reporting rates for sexual abuse of children in different types of care.

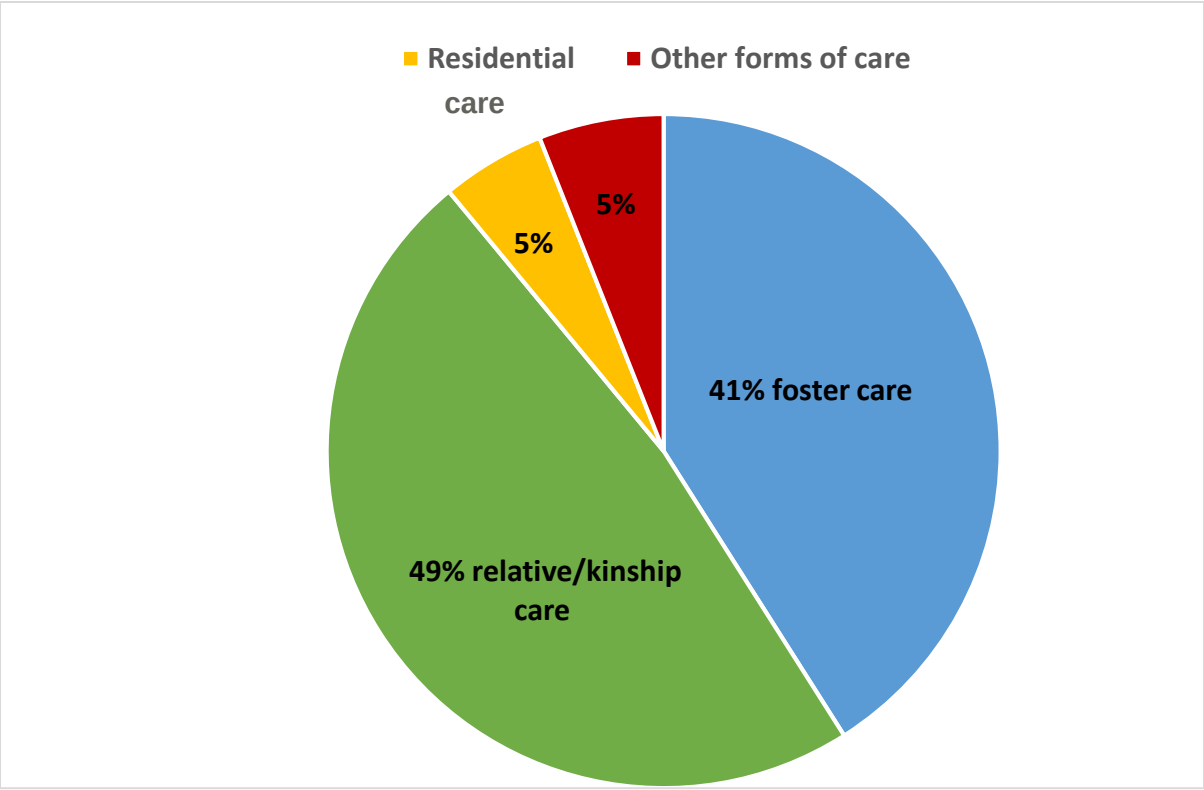
According to AIHW data, only five per cent of all children in OOHC in Australia were in residential care as at 30 June 2014. However, 33 per cent of sexual abuse reports we received from government and non-government organisations pertaining to the period 2012–13 and 2013–14 were about children in residential care (where the care type was known).

In relation to reports of child sexual abuse in kinship or relative care, 20 per cent of reports we received pertained to children whereas 49 per cent of children are in a kinship/relative care placement.

From the data we received, the highest number of reports of sexual abuse came from foster care settings. Child sexual abuse reports in foster care represented 39 per cent of the total number of reports. This is proportional to the number of foster care placements, which was 41 per cent of the total number of placements. It should be noted that the alleged perpetrators in this 'foster care' category may have been foster carers, other householder members, family friends, other children, or adults outside of the household.

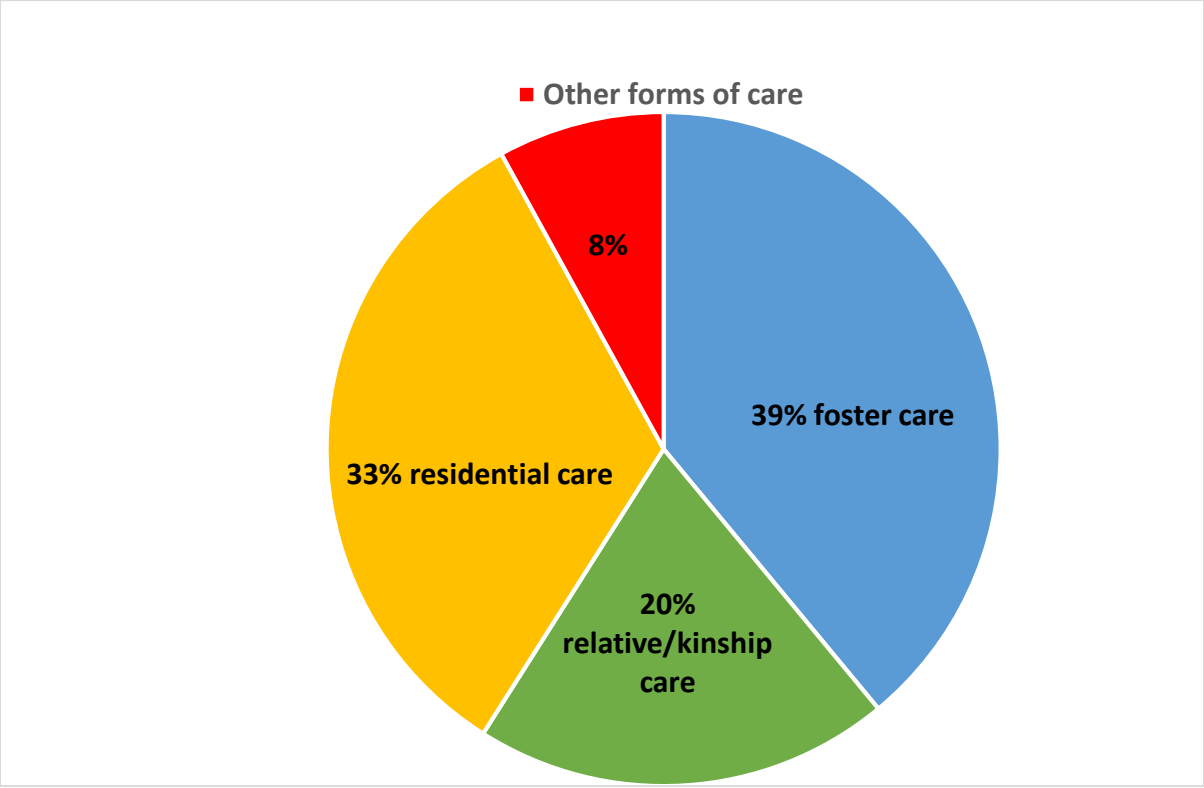
Refer to Charts 1.1 and 1.2 below for further information.

Chart 1.1: Distribution of children in OOHC by care type as at 30 June 2014



Source: Chart derived from data in the Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Service, Table 15A.21.

Chart 1.2: Distribution of child sexual abuse reports by care type, 2012–13 and 2013–14



Source: Data summonsed by the Royal Commission from state and territory governments and 12 non-government organisations on reports of child sexual abuse between 1 July 2012 and 30 June 2014. This data represents a sample only and is not representative of the total OOHC population.[80]

Although there are limitations with data comparisons, when we compare the sexual abuse reports we received from a sample of service providers against the total number of children in different care types, the percentages do not match. There may be a number of reasons for this, such as the paucity of data and significant reporting anomalies. Some of the differences include:

- the relative robustness of reporting and oversight mechanisms in different care types
- differing rates of incidents of sexual abuse in different care types, noting that this may be influenced by the environment and the complexity of children's needs in some care placements
- the differing reporting mechanisms in different settings
- children in residential care being more likely to report sexual abuse to a staff member or another child in the residential care facility
- different barriers to disclosure (including family loyalty) in some settings over others
- kinship/relative carers being less likely to report sexual abuse because of family loyalty and fear of losing the child to the 'system'
- children possibly being safer in some types of care.

1.5 This consultation paper

The purpose of this consultation paper is to present our analysis of the relevant issues examined to date, as they relate to the prevention of, and response to, sexual abuse of children in care. We provide our considerations on key aspects of contemporary OOHC that may be improved and seek your responses, in an effort to better protect children from sexual abuse.

Our Terms of Reference are specific to institutional child sexual abuse and we have not examined every aspect of the OOHC system in each state and territory. While we acknowledge the interconnectedness of the broader system and other pressures on the OOHC system, our focus is on examining child sexual abuse in OOHC, and the responses of governments, service providers and other institutions that make up the OOHC system.

We seek your feedback on a number of specific matters:

- adequate data collection and information sharing
- elements of a child safe organisation
- regulation and independent external oversight of the OOHC system
- strengthening sexual abuse prevention education
- therapeutic care and support for children and carers, including those who are leaving care and those who sexually harm other children
- access to care leaver records.

We invite written submissions on the issues outlined in this consultation paper. We particularly welcome responses on how the system can better uphold the rights of children, and how to more effectively prevent and respond to child sexual abuse in OOHC.

2. Child sexual exploitation and child-to-child sexual abuse

We have been told that the current focus on child sexual abuse in OOHC is often limited to sexual abuse perpetrated by carers, residential care staff and professionals. Notwithstanding the importance of remaining vigilant about this risk, two other forms of child sexual abuse also require more attention in order to properly protect children in OOHC contexts:

- child sexual exploitation[81]
- child-to-child sexual abuse.

We are informed that the categories of sexual exploitation and child-to-child sexual abuse are not necessarily discrete, and that children can sexually harm other children in the OOHC placement in order to recruit them for adult perpetrators external to the placement.

Practitioners, child protection experts and others have told us that neither of these issues are new to the OOHC sector. However, across Australia there appear to be few policies, procedures or educational programs that acknowledge and address these forms of sexual abuse, despite their harmful impact on children in OOHC contexts.

Children who display sexually harmful behaviours should have access to effective treatment options. We understand the therapeutic treatment programs that are currently available are limited and under-resourced. We note that there is little evidence of risk and prevention strategies for these forms of sexual abuse. It is acknowledged that there is little Australian research on these forms of abuse, and limited published reform or policy agendas by most jurisdictions.

2.1 Child sexual exploitation

Nature of problem

Child sexual exploitation is where children are coerced or manipulated into engaging in sexual activity in return for something (such as alcohol, money or gifts). Evidence in *Case Study 24: Preventing child sexual abuse in OOHC* from the Victorian government, Children's Commissioners and non-government organisations providing OOHC services around Australia – as well as from young people themselves – indicated that some children in care are being sexually exploited. We note that most child sexual exploitation occurs within the general population of children outside of the OOHC system.[82] However, we understand that child sexual exploitation is an issue for children in residential care and is happening to some children in home-based care.

… the young people in our care are incredibly vulnerable to sexual exploitation.[83]
… [the] sexual exploitation of children is a significant problem.[84]
We have certainly had an increase in the notifications about sexual exploitation.[85]

Article 34 of the UNCROC provides that States Parties 'should protect children from all forms of sexual exploitation and abuse'. For these purposes, States' Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- the inducement or coercion of a child to engage in any unlawful sexual activity
- the exploitative use of children in prostitution or other unlawful sexual practices
- the exploitative use of children in pornographic performances and materials.[86]

To our knowledge, Victoria is the only state to identify and respond to this form of sexual abuse by way of centrally collating data and developing a pro-active strategy with child protection, police and OOHC service providers. The Victorian agencies' responses to child sexual exploitation are discussed in more detail later in this chapter.

We are interested to understand the apparent absence or limited attention from other jurisdictions, and the lack of data systems that record sexual exploitation as a child protection issue. We note the challenges in collecting data about child sexual exploitation, as many young people initially protect the perpetrator, may not identify that they are being abused, and are therefore unlikely to report the abuse to authorities.

How prevalent is it?

The difficulty in obtaining prevalence data on the sexual exploitation of children has been well recognised internationally. Increased awareness leads to increased recognition and reporting, helping bring this previously 'hidden' problem to light, a phenomenon that was noted in the UK.[87] The extent to which child sexual exploitation is hidden will depend on the extent to which it is acknowledged and understood by those working with young people and especially those supporting the most vulnerable. While there are gender specific issues for girls, it is increasingly acknowledged in the child protection sector that the sexual exploitation of boys is underreported.

Reporting rates for sexual exploitation have increased in Victoria over the past five years, following state wide training and efforts to raise awareness within the OOHC and child protection system.[88]

In *Case Study 24: Preventing child sexual abuse in OOHC* we heard evidence from Mr Bernie Geary, then Victorian Principal Commissioner for Children and Young People,[89] about his inquiry into child sexual abuse within residential care in Victoria.[90] He stated that:

- 3 per cent of perpetrators were carers
- 63 per cent of perpetrators were other adults (external to the placement) who were sexually exploiting children they had targeted in residential OOHC.

We also heard evidence from Ms Katy Haire, Deputy Secretary of the Victorian Department of Health and Human Services, that in one particular case of child sexual exploitation that commenced in late 2013, there were 31 individual investigations for sexual exploitation, investigating 28 different suspects. Nine matters resulted in arrests and briefs of evidence being prepared for the court.

Twelve matters were still under investigation at the time, with charges being laid for offences including grooming, sexual penetration of a child under 16, and rape.[91]

Child sexual exploitation in OOHC

The international literature and practice leaders tell us that children, including children in care, are increasingly being targeted and groomed for sexual exploitation (initially online, in many cases), and that this has increased since the profusion of electronic devices in recent years.[92]

In child sexual exploitation matters, we understand that adult perpetrators external to the care placement exhibit a range of predatory behaviours. They may engage initially through online contact, particularly through social media, and then move quickly to arrange a meeting with a child in OOHC. They often present as a 'boyfriend' to the child in care and may provide the child with a mobile phone, or a second phone so that the child is contactable without the carer's knowledge.

We are told that perpetrators use a range of other grooming strategies, for example they may:

- initiate and encourage the development of a 'friendship'
- send taxis to pick up children from their placements to take them to 'parties'
- provide tickets to sporting events
- entice the child with notions of becoming a model or an actor
- provide driving lessons to children in residential care
- provide drugs, alcohol and money in return for sexual acts.

We have been told that perpetrators have trafficked children interstate and provided airline etickets on mobile phones to facilitate access to interstate victims. We have been told that perpetrators deliberately manipulate children to recruit their friends who, not uncommonly, are also children in OOHC. The friend is asked to look out for or 'spot' for the child who is then coerced into sexual exploitation.

Perpetrators of sexual exploitation can use a powerful combination of flattery, feigned friendships or relationships, threats and overt violence to gain compliance. Children can be de-sensitised to what is happening due to alcohol and other drugs. The perpetrator may also use pornography to normalise the abuse. This can be accompanied by filming the child and using those images to ensure the child's silence, or to commercially exploit the child to produce child pornography.[93]

We have heard that children in residential care who are being sexually exploited are frequently missing from their placement for extended periods of time and on multiple occasions. 'Missing from placement' is a key red flag indicator of sexual exploitation for service providers and child protection authorities.[94]

Children who are victims of sexual exploitation are highly unlikely to volunteer information about where they have been when they have been 'missing from placement'.

> I think the idea of looking at it [child sexual exploitation] as not an individual child's responsibility but more the responsibility of state agencies is really very critical.[95]

The Victorian experience

The Victorian response identifying and disrupting the sexual exploitation of children, including children in OOHC, has developed over the past eight years. We have been told that in a Victorian analysis of children who have been sexually exploited, many had also been sexually abused within their family context before entering the care system. Some children had been relinquished into care because of their own sexually harmful behaviours towards siblings. It is noted that these children are themselves traumatised, may be self-harming and frequently go missing from their care placements.[96]

We have been told that former, common misunderstandings by carers, practitioners and police included the idea that:

- child sexual exploitation was not sexual abuse but rather 'adolescent sexual experimentation'
- engaging in sexual exploitation was a choice young people made and just 'what some kids in resi care do' to the point of labelling it as prostitution
- the unwillingness of the child to fully disclose or to make a sworn statement to police rendered the system powerless to intervene to stop perpetrators.

State-wide forums and cross-disciplinary joint training sessions began in Victoria in 2007, which led to greater awareness and understanding of the issues. Senior child protection practitioners started to provide expert consultation on complex cases of child sexual exploitation in OOHC. These initiatives also led to system-wide changes including:

- joint training between child protection, police, and OOHC service providers in local regions and community networks. In 2013–14, approximately 2,000 practitioners from OOHC, child protection, police and disability services received joint training in smaller regional workshops
- disruptive policing approaches that focus on the perpetrator's actions, networks and criminal behaviours, which has enabled more effective investigation into grooming and exploitation of young people in care
- the development of practice guidance and resources
- the establishment of a formal protocol and governance structure between child protection and police services, to clarify roles and responsibilities in responding to child sexual exploitation in OOHC
- the development of a data gathering template to facilitate the state-wide collection of information about the incidences of child sexual exploitation and persons of concern
- central co-location of child protection senior staff with the state wide police sex crimes squad, which enabled timely information sharing and data compilation
- the appointment of four regionally based senior practice leaders who oversee and coordinate local responses to sexual exploitation of children in OOHC
- proactive engagement with young people at risk of sexual exploitation including actively searching for children when they are missing from their placement and engaging them in innovative ways when they return
- assertive investigative methods including, issuing harbouring notices and civil intervention orders to prevent perpetrators who were grooming children in OOHC from contacting their victims.

We have also been informed that several measures – including innovative engagement practices; a tightly co-ordinated and multi-disciplinary approach; creative engagement with young people's families, and police disruption strategies – have resulted in some positive outcomes for children in OOHC.

> The work that we do together to protect children from that [child sexual exploitation] is very important…in terms of taking a joined-up approach… so that community service organisations are working very closely with government, with the police, and that they're seen as a shared responsibility is critical. I think that doesn't always happen as well as it could, that there isn't necessarily always equal respect about all of the partners and the parts that they play and the information that they can bring. Information sharing is absolutely critical because what often happens is there are bits of information scattered across the system and it is only when you map those and bring it together that you realise what's actually occurring.
>
> Having that in an environment that recognises the incredible vulnerability of the children in our care and that they will be preyed on, often in a very organised way, and that we all have responsibility to respond to that, is a critical piece of work for all of us.[97]

The UK experience

Over the past 15 years, the UK has been implementing improvements[98] to safeguard children from sexual exploitation. UK national government policy has been developed and a lead minister has been appointed to the portfolio of child sexual exploitation. Various House of Commons' inquiries, national strategies and action plans have also been developed.

The UK strategy has targeted prevention and whole communities. While the rate of sexual exploitation may be higher among young people who are defined as 'looked after' (the equivalent of children in OOHC),[99] the reviews and inquiries found that local authorities were not aware of the majority of children affected.

The UK Independent Inquiry into Child Sexual Exploitation in Rotherham (1997–2013),[100] highlighted the importance of a centralised coordinated response to sexual exploitation. The Rotherham experience suggests that without central co-ordination, local, disjointed responses to sexual exploitation are not robust enough to succeed on any meaningful level.

In the UK, Barnardos[101] has set out a four point 'national action plan' that calls for a centralised government response co-ordinated with local agencies, in particular police and local authorities. The plan involves the following steps, which may also be relevant in the Australian contexts:

Raise awareness to improve early identification of child sexual exploitation	Professionals in universal services require further training so they can raise awareness and better identify sexual exploitation for what it is. This would enable children, parents and carers to access the right type of information in a timely manner. Similar training should be applied for frontline staff in child and youth services, with particular focus on child protection procedures, and improving understanding of grooming and coercion techniques used by child exploiters.

Improve statutory responses and the provision of services	Local government agencies should undertake a cross-agency risk assessment of child sexual exploitation to determine the level of need across their local areas. Resources should be pooled, with an accountable, responsible central co-ordination point across voluntary and non-government and statutory authorities. Additionally, sexual exploitation must be explicitly recognised as child sexual abuse within local child protection procedures.
Improve the evidence	There is a need to improve data regarding the prevalence of child sexual exploitation, in order to improve the evidence base and information-sharing. Additional measures include national reporting mechanism, and improved processes between police and local authorities. Roles and responsibilities at each level should be 'explicit'.
Improve prosecution procedures	Improving police, prosecution and court practice – particularly with regard to supporting victims to become witnesses – would increase prosecution opportunities. The welfare, support and protection of child witnesses is a priority before, during and after the court process.

2.2 Child-to-child sexual abuse

We have listened to many participants in private sessions who told us of the trauma they experienced as a child being harmed by another child in OOHC and the importance of carers and professionals responding appropriately. We have also heard evidence in public hearings that child-to-child sexual abuse is a serious and common problem in contemporary OOHC. Placement and treatment options for children need to be identified, strengthened and implemented in every state and territory, to address the complex needs of children with these behaviours.

In private sessions and in several of our public hearings, key issues included:

- poor supervision within OOHC placements
- inadequate training for carers
- carers not receiving timely information about a child's background
- the pressure of high demand for OOHC and the resulting compromise in decision making when matching children to placements
- the lack of caseworkers available to regularly visit children in OOHC.

> …the issue around child on child [sexual abuse] is a real concern in regards to child sexual abuse and we often focus on, obviously, the adults as the perpetrators, but actually we have to manage this dilemma that we have around a younger child being the victim and another younger child perhaps engaging in sexually harmful behaviour.[102]

Terminology

The Australian Crime Commission's *Response to Sexualised or Sexually Abusive Behaviours in Children and Young People Report*[103] states that there is no agreement on terminology used across Australia. We have identified the most common descriptors used by service providers, government departments and schools:

- for children under the age of 10 – 'problem sexual behaviours'
- for children aged 10 to 18 – 'sexually abusive behaviours'
- for all children under the age of 18– 'sexually harmful behaviours'.

We note that making an age distinction does not always reflect the nature and harm caused as a consequence of the behaviour. It is our view that the term 'sexually harmful behaviours' is preferable, as it is non-stigmatising to the child but still recognises the harm these behaviours can cause to others.

Nature and extent of the problem

Although reliable data is not available on a national scale, Mr Bernie Geary, former Victorian Principal Commissioner for Children and Young People, gave evidence in *Case Study 24: Preventing child sexual abuse in OOHC*, stating that 31 per cent of the sexual abuse in residential care in Victoria, was perpetrated by other children. This was based on his Inquiry's analysis of Category 1 incident reports for Victorian children in residential care.[104]

In his evidence, Dr Joe Tucci, Chief Executive Officer of the Australian Childhood Foundation identified the growth in demand on his service:

> Victoria has introduced legislation, as part of their Child Protection Act that makes it mandatory for young people who engage in problem sexual behaviour to be diverted to a therapeutic service within the child protection context rather than to have to be prosecuted in the justice area… When we first started our first program 15 years ago, we had about 10 referrals a year. We are now up to about 250, and that is just for two regions of the State in Victoria. We're seeing those numbers replicated across the country. I think there are a number of factors as to why that is occurring, especially for children in OOHC, if we concentrate on those in particular. These are kids who are vulnerable, traumatised, and their trauma specifically has them either looking to resolve it through their own behaviour, or replicating it over and over again, because that's part of the way the trauma has had an impact on them. It requires a very specialist response to these children and to this behaviour in order for that behaviour to stop. In OOHC, unfortunately, that response is not always handled as well as it should be and, therefore, the children who are in care with those children often get hurt and abused as well.[105]

Children in OOHC who develop sexually harmful behaviours have generally experienced cumulative harm. The key correlation identified in the research literature is the child's experience of family violence[106] and many of these children may have been victims of earlier intra-familial sexual abuse.

The Wood Special Commission of Inquiry into the Child Protection System in New South Wales identified the need for prevention programs to address children's sexually harmful behaviours.[107]

This need has also been highlighted in a number of documents endorsed by the Council of Australian Governments (COAG), including the *National Framework for Protecting Australia's Children* and the *National Plan to Reduce Violence Against Women and their Children*.[108]

Treatment programs

Some jurisdictions have specialist therapeutic treatment services for children that aim to prevent future offending. These include Sexually Abusive Behaviour Treatment Services in Victoria (which has 12 funded services in every region of the state); New South Wales's *New Street Adolescent Services* and the *Griffith Youth Forensic Service* in Queensland. We note that in contrast to Victoria, the services in New South Wales and Queensland have a more limited capacity and limited geographical reach. Other jurisdictions respond to children through a range of generalist counselling services.

We have heard from academics and service providers that further effort and attention needs to be directed towards strengthening and resourcing programs across Australia that have the expertise to treat children with sexually harmful behaviours.

We are informed that many of the services providing treatment to children do not have sufficient capacity to keep up with demand. We have also learnt that generalist services can be ill equipped and often lack the requisite expertise to respond effectively to the needs of children with sexually harmful behaviours and their carers and families. The lack of appropriate treatment services puts pressure on carers and this can contribute to the breakdown of the placement which compounds the difficulties.

Some treatment programs are delivered as part of a criminal justice response, and are delivered through the various youth justice government agencies. These treatment programs can be delivered as a consequence of sentencing for a sexual offence conviction; via a community based order; or while the child is in custody. Other treatment programs are delivered via a 'voluntary' model in the community, where a child (and sometimes their family or carer) will access treatment as a consequence of the child's sexual behaviour being identified as problematic. Children under the age of 10 (and therefore under the age of criminal responsibility) fall into this category.

Community based treatment services and programs also differ in approach and modality. Some jurisdictions rely on private practitioners to provide case management and therapeutic treatment to children, and in some circumstances these services extend to the child's family and/or carers.

It also seems that programs have a limited capacity to meet the needs of specific population groups, such as children from Aboriginal and Torres Strait Islander backgrounds, children from culturally and linguistically diverse backgrounds, and children with disability.

We are continuing our research and examination of this important area of work and welcome submissions.

Efficacy of current service models

Studies from Australia and overseas indicate that early intervention treatment programs have the potential to achieve positive outcomes for children who display sexually harmful behaviours. For

example, children who complete a specialised treatment program may experience a reduction in sexually harmful behaviours.[109] Clinical studies indicate that recidivism rates are low for individuals who complete a full program of specialised counselling compared to those individuals who access 'usual community services' or individual, non-specialised counselling.[110]

In 2010, the Australian Crime Commission conducted a comprehensive review of Australian treatment programs for children with sexually harmful behaviours.[111] The Australian Crime Commission report identified a range of issues with the programs that existed at the time. In summary, these issues include:

- disparity regarding the theoretical underpinnings of various programs
- demand for services outweighing capacity to respond
- varying effectiveness in addressing the behaviour
- varying qualifications, skill sets and lack of training for service providers
- limited residential placements available for children with these behaviour types
- lack of services across rural and remote areas
- developmentally targeted programs involving a child's family rather than treating the individual only
- demographic gaps in service provision, including programs being unable to address diversity in the sense of culturally and linguistically diverse communities, children from Aboriginal and Torres Strait Islander backgrounds, and children with disability
- difficulties with eligibility criteria.[112]

We have heard that jurisdictions need to review existing systems, legislation, policies, procedures and organisational cultures, and embrace evidence-informed ways of preventing and responding to child-to-child sexual abuse.

Innovative approaches

We are aware of some current models in place that aim to address this issue, and we are considering the potential to apply them more broadly, to support more children in need. Two examples include:

Victoria: Therapeutic Treatment Orders (TTOs)[113]	TTO's are used for children aged 10 to 14 who exhibit sexually abusive behaviour. Sexually Abusive Behaviour Treatment Services have been established to provide treatment services for children on TTOs or on a voluntary basis (including for children under 10 and up to the age of 18).
New South Wales: New Street Adolescent Service program[114]	The New Street Adolescent Service is a specialised therapeutic treatment program that provides a coordinated response to children aged 10–17 who have sexually harmed others. The program also works with the families of the children. It is located in a select number of Sydney metropolitan areas and in some rural areas within New South Wales.

2.3 Addressing the problem

Child sexual exploitation and child-to-child sexual abuse within OOHC are challenging and sensitive topics. We understand that these forms of abuse are less likely to be reported to child protection authorities. We seek your submissions on what changes may be required in OOHC to address these issues.

Identifying and responding to child sexual exploitation and child-to-child sexual abuse

Child sexual exploitation

1. We have heard that current responses to the sexual exploitation of children in OOHC around Australia are inadequate. We are specifically considering:
    - jurisdictions' poor identification of, and reporting of, child sexual exploitation in OOHC
    - the lack of coordinated and cross-sectorial protocols, procedures and responses particularly among OOHC service providers, child protection and the police
    - the lack of preventative measures – for example, strategies when children are missing from placement – and the enforcement of social media policies and education by OOHC, the police and child protection
    - the absence of recording this form of child sexual abuse and the consequential lack of available data to show the incidence and prevalence
    - the need to address the barriers to children disclosing sexual exploitation in OOHC.

We seek submissions from the Commonwealth, all state and territory governments, all OOHC service providers and other interested stakeholders on these issues, including details of any action or strategies in place to respond to child sexual exploitation in OOHC.

Child-to-child sexual abuse

2. We have heard that more needs to be done to better protect children from, and respond to issues of, child-to-child sexual abuse in OOHC. We are specifically considering:
    - the shortage of home-based care for children with sexually harmful behaviours and the inappropriate matching of these children with other vulnerable children in residential and home-based care
    - the lack of nationally consistent identification and terminology in relation to child-to-child sexual abuse in OOHC and the resulting impacts on data collection and knowledge
    - the lack of adequate and sufficient treatment responses for children across Australia who display sexually harmful behaviours
    - the lack of policies, procedures and/or best practice guidance for preventing and responding to child-to-child sexual abuse in OOHC
    - the lack of adequate nationally consistent accreditation and professional development training for counsellors working in this field
    - the lack of expert advice and assistance for foster carers and kinship/relative carers
    - carers being given insufficient information about the child's background.

We seek submissions from the Commonwealth, all state and territory governments, OOHC service providers, carers and other interested stakeholders on these issues, including details of any action or strategies in place to respond to child-to-child sexual abuse in OOHC.

3. Data limitations

This chapter outlines the current data limitations across Australia, and the problems arising from inadequate reporting of and data systems for, child sexual abuse in OOHC. We have learnt that knowledge about the incidence and prevalence of child sexual abuse in OOHC is poor. Consequently, we seek submissions on a proposed national approach to data collection and analysis.

3.1 Why is data important?

Our work has consistently shown that it is not healthy for any system to keep details of the sexual abuse of children out of public view. If systems do not accurately measure the size and shape of the problem of child sexual abuse in contemporary OOHC settings, we are concerned that current stakeholders may not learn from the mistakes of past institutional responses.

There is a lack of accurate and accessible information about the current rates of child sexual abuse in care; the proportions and profiles of different perpetrators who abuse children in OOHC; and where and when abuse occurs. We have been told that to accurately measure the effectiveness of different programs in preventing and responding to child sexual abuse is not currently possible.

We recognise the need to carefully balance the amount of time practitioners spend recording information for the purposes of monitoring, with the time they spend doing casework. Experts have stressed that increasingly complex and procedure-driven care and protection processes create the risk that the child's individual experiences becomes lost.[115]

Notwithstanding the difficulties of balancing these issues, we have been told that the capacity to publicly monitor the safety of children in OOHC is fundamentally important. Proper data collection provides transparency, making it possible to conscientiously and regularly review emerging trends and the impact of practice initiatives.

3.2 Current approach

Each jurisdiction records a different range of information about children in OOHC. We are concerned about:

- the inconsistent definitions and thresholds across different states and territories
- the limitations as to what information is recorded in data systems
- the lack of capacity for this information to be aggregated and monitored in a nationally consistent manner.

The current data deficiencies regarding child sexual abuse in OOHC include:

Sexual abuse not being recorded as a separate category	• Reports of sexual abuse are counted together with other forms of abuse, such as physical abuse and neglect.

Inconsistent definitions	• The term 'substantiation' is defined or treated differently across jurisdictions. This can be the result of different thresholds or because of the subjective nature of this assessment. • Different jurisdictions have different definitions depending on whether the person responsible lives in the household and this definition ranges from being narrow to broad.
Inconsistent timeframes for reporting abuse	• Disclosures about earlier intra-familial or extra-familial sexual abuse, or abuse in a previous placement, might only be made when the child feels safe in their current placement. This can distort the data at hand, because the timing of the substantiation (such as while a child is in a different placement) may not reflect the timing of the actual abuse and its context.
Other limitations	• There is little available data to identify specific types of sexual abuse of children in OOHC, including information about child-to-child sexual abuse and child sexual exploitation. • There is no data about the treatment of or support services for children in OOHC, nor about their health or wellbeing outcomes. • Children with disability are thought to be disproportionately represented in the OOHC system, but there is a lack of reliable data about this group of children. • There is inadequate data regarding children from culturally and linguistically diverse backgrounds.

Although the AIHW compiles data from the states and territories for use in the Reports on Government Services (RoGS),[116] and the Productivity Commission releases this data annually, there is no national body that collects and publishes statistics on the number of children in OOHC who have reported sexual abuse, or on the outcomes of any investigation into those allegations as a discreet category.

Inadequacies of current OOHC data

The AIHW has collected child protection data from the states and territories every year since 1993. However, the different counting rules and variations in definitions and categories of OOHC across different states and territories, makes it impossible to draw comparisons or see the national context.

A significant change in data collection occurred in 2009, when COAG endorsed the *National Framework for Protecting Australia's Children 2009–2020* and recommended the collection of national child protection data on a *unit record basis*.[117] The development of a unit record approach has facilitated a better understanding of what a child may experience in OOHC, because it captures a broader range of information about the individual child – including child protection notifications, substantiations, and movements in and out of care during a financial year.

However, we have learnt that these improvements have not solved the data issues for children in OOHC in terms of reporting on sexual abuse in care. Other strategies are required.

We understand that for many years, COAG has been discussing the inability of jurisdictions to easily access data from their records and systems regarding the details of child sexual abuse reports.

In 2012, the United Nations Committee on the Rights of the Child, in reporting on Australia's progress in implementing UNCROC, commented critically on the inadequacies of monitoring and data collection regimes in Australia's child protection and OOHC system.[118]

The lack of quality data on child sexual abuse in care was also noted in *Case Study 24: Preventing child sexual abuse in OOHC* by both the NSW Children's Guardian, Ms Kerryn Boland and Ms Megan Mitchell, the National Commissioner for Children:

> I'd say it's a gap in our knowledge. There is data that is held by the Ombudsman, but there is certainly a gap.[119]
>
> There is some data at the national level that indicates the numbers of children in out-of-home care who were abused while they are in care. However, it's not comprehensive across all states and territories, and there are different definitional issues and data collection methods. So I would say there is absolutely a gap in our knowledge. Nor does it indicate accurately who the perpetrator is, nor whether they are in residential or other arrangements. So at a national level we don't have that picture, nor do we have that picture, consequently, over time. Little nested studies that are around indicate – from my perspective, to my knowledge – that there hasn't been a great deal of change in that area.[120]

While there is information available about the number of substantiated cases of abuse of children in OOHC, there is no national data about:

- why children enter OOHC
- how many children in OOHC are the victims of child sexual abuse, and the demographics of those children
- who perpetrated the abuse
- when and where the abuse occurred
- the response to the abuse.

Data is not captured in a way that allows answers to these questions. Consequently, it is not possible to monitor progress against the National Framework and the National Standards for OOHC.

3.3 Addressing the problem

In summary, the data currently collated at a national level is incomplete, subject to a significant number of caveats and not comparable across jurisdictions. This makes it impossible to identify any trends over time, or to even determine the prevalence of child sexual abuse in OOHC. Furthermore, the information is not disaggregated into types of abuse (for example sexual abuse); the child's relationship with the perpetrator; outcomes or responses; circumstances of abuse; the demographics of children who have been abused; or the type of placement where abuse occurred.

To establish an evidence base that can inform best practice and enable monitoring of responses to the sexual abuse of children in OOHC, we have been told by experts that it is essential to develop a solid data system to enable informed analysis. Noting that practitioners are already spending considerable time on record keeping and report writing, we are interested in systems and methods that can achieve better outcomes for reliable cross-jurisdictional analysis and monitoring.

Improving the quality of data on child sexual abuse in OOHC

We seek your views on whether there should be a nationally consistent approach to the collection of data, including agreement on key terms and definitions across jurisdictions, in relation to child sexual abuse in OOHC.

Following what we have been told, we are considering that the data model proposed below would improve the understanding of the extent and nature of child sexual abuse in OOHC. The proposed data model would enable an informed analysis to develop an evidence base about the safety of children from sexual abuse and the performance of the system in responding to abuse.

Proposed data model

1. All allegations of sexual abuse concerning children in all forms of OOHC should be extractable as a unit record data file with a unique identifier for each child.

2. For each allegation of sexual abuse, data should be recorded in fixed-response fields that describe:
    - the date of the incident
    - the date of the report
    - the location where the incident took place
    - the relationship of the perpetrator to the victim.

3. Each allegation should include demographic descriptors for the child and the perpetrator, including:
    - disability (including the type of impairment)
    - mental health
    - Aboriginal or Torres Strait Islander background
    - culturally and linguistically diverse background.

4. Data should be disaggregated by placement type.

5. Data should be used to monitor treatment and support provided, and life outcomes.

6. Data should include police reports, and outcomes of criminal and civil justice responses.

We seek submissions from the Commonwealth, all state and territory governments, OOHC providers and other interested stakeholders on the proposed data model above.

4. Regulation and oversight

Australia's state and territory governments are responsible for administering, funding and delivering OOHC. In some cases, governments outsource delivery of OOHC to non-government service providers. While each state and territory shares the broad objective of promoting child protection and wellbeing, they have different approaches to delivering, regulating and overseeing their OOHC systems. Each jurisdiction's system has developed against the backdrop of its social, economic, demographic and geographic circumstances, as well as critical incidents and inquiries.[121]

In each state or territory primary responsibility for child protection usually rests with a single agency – often referred to as the 'lead department'[122] – which works in partnership with other departments or agencies including health, education, justice and the police.

In relation to OOHC, the lead department often has a range of responsibilities, including:

- undertaking assessments or investigations concerning individual children
- delivering OOHC
- engaging third party (non-government) service providers to deliver OOHC
- managing OOHC service delivery by third party providers
- case managing children's placements
- working directly with children, carers and families to provide the best outcomes for children in the OOHC system.

In some jurisdictions, lead departments perform regulatory and oversight functions, while in others they might perform regulatory functions only, with external agencies performing the oversight functions. In New South Wales, agencies external to the lead department have primary responsibility for regulating and overseeing OOHC. (Due to the various approaches across jurisdictions, we have categorised the various functions as 'regulatory' or 'oversight', depending on the context in which we have discussed them. We recognise that others may characterise these functions differently).

We have identified some features of regulation and oversight arrangements that are present in some jurisdictions but not others, and have been told that some are particularly valuable for protecting children from sexual abuse in OOHC. In this respect, we note the view of the CREATE Foundation in its submission to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*:

> [R]egardless of which agency regulates out-of-home care, transparency of processes and external accountability is crucial. This is particularly important as the child protection system involves dealing with a particularly vulnerable cohort of the population and is also a 'closed' system due to the confidential nature of the content and the information the system deals with.[123]

4.1 Regulation

Regulation includes the rules, statements or legislative provisions that specify, require, permit or prohibit certain courses of action set out by the government. It may also include economic

incentives, best-practice standards, accreditation, education and industry-led approaches that peak bodies, industry boards and others use to generate social, attitudinal and behavioural change.

Australia's states and territories use various regulatory mechanisms to protect children from sexual abuse in OOHC, including:

- requiring and providing accreditation for OOHC service providers
- requiring 'working with children checks' (referred to as WWCC and considered in our *Working with Children Checks Report*)
- authorising carers, including probity checks for adult household members
- administering of carer registers
- requiring mandatory reporting.

Responsibility for these mechanisms may rest with lead departments, regulatory bodies, and/or non-government service providers engaged by the government.

Accreditation of OOHC service providers

In most jurisdictions, only non-government organisations must be approved, authorised, licensed, registered or accredited (a process we refer to as 'accreditation') before they can provide or administer OOHC.[124] New South Wales, by contrast, requires that government and non-government OOHC service providers meet the same standards in becoming provisionally or fully accredited.[125]

In responses to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* and evidence given in *Case Study 24: Preventing child sexual abuse in OOHC*, a number of non-government service providers and others advised us that they considered government providers should always be held to the same standards as their non-government counterparts. In its submission to *Issues Paper 4: Preventing Sexual Abuse of Children in Out of Home Care*, Berry Street, a Victoria-based non-government provider, expressed concern that the Victorian Department of Health and Human Services had a dual role as a regulator for the registration of non-government OOHC service providers, and as an (unregistered) service provider itself.

> Unlike all other out-of-home care providers, the Department is not required to meet the service standards that form the basis of registration as a Community Service Organisation. Hence the most rapidly expanding form of care in Victoria, kinship care, is predominantly provided by an agency (the Department of Human Services) that is not subject to independent scrutiny and periodic auditing against service standards. This is not in children's best interests.[126]

In most jurisdictions, OOHC service providers are accredited for a set period of time. Accreditation may be subject to conditions and must be renewed when the accreditation period expires.[127] The renewal process usually requires the provider to demonstrate that it meets the relevant conditions for accreditation. This provides an opportunity for self-assessment and review, and helps assure the government that standards are being maintained.

Responsibility for accreditation usually rests with the lead department.[128] This may raise a conflict of interest, particularly where the lead department also has a role in providing OOHC services. As a number of submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* have noted, it

is not appropriate for an agency to assess and grant its own accreditation.[129] In particular, the Queensland Commission for Children and Young People and Child Guardian stated in its submission that:

> One of the perceived weaknesses of the [lead department or agency] having regulatory responsibility for OOHC providers is that the [lead department or agency] also has a business interest in the work of providers which can conflict with [its] responsibilities to promote the safety, wellbeing and rights of young people in care.[130]

At present,[131] only New South Wales vests responsibility for accreditation of OOHC service providers in a body independent of the lead department, namely, the NSW Children's Guardian.[132] In considering applications for, or renewal of, accreditation, the NSW Children's Guardian:

- assesses the applicant's capacity and suitability to provide care against the NSW Child Safe Standards for Permanent Care[133]
- assesses the applicant's policies and procedures (including policies specific to child protection)
- seeks the advice of the NSW Ombudsman on whether it has received any reportable conduct reports in relation to the applicant or its employees, in the Ombudsman's capacity as the oversight body for the reportable conduct scheme (see below).[134]

Accredited service providers (both government and non-government) that provide statutory care are referred to as 'designated agencies'.[135] A designated agency can be granted full, provisional or interim accreditation,[136] and its accreditation may be subject to conditions. We understand that currently in New South Wales, the NSW Department of Family and Community Services is the only OOHC service provider with 'interim accreditation' for most of its OOHC services; while seven of its units providing OOHC are accredited for three years.[137]

After granting accreditation, the NSW Children's Guardian retains responsibility for monitoring designated agencies' compliance with accreditation standards and any applicable conditions (an oversight function). The NSW Children's Guardian can visit designated agencies to review their policies and practice, and observe how they are carrying out their responsibilities.[138] If the NSW Children's Guardian considers that a designated agency has failed to satisfy its responsibilities, or to comply with standards or conditions of accreditation, the Children's Guardian can shorten the period of accreditation, or cancel or suspend it.[139]

We are considering the possibility of a mandatory accreditation scheme for all OOHC service providers – both government and non-government – as a regulatory mechanism that helps protect children in OOHC from sexual abuse. We have been told that such a scheme promotes transparency, objective decision-making, and public confidence in the quality of service delivery.[140] The New South Wales system, which requires all OOHC service providers to be accredited to the same standards – and in which accreditation is administered by an independent body – appears to help protect children from child sexual abuse. This view is shared by a number of stakeholders, as outlined in response to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* and *Case Study 24: Preventing child sexual abuse in OOHC*.[141]

Carer authorisation and carers registers

Residential and foster carers

Depending on the jurisdictions, individual OOHC carers are subject to varying requirements for authorisation or registration.[142] Responsibility for granting and administering registration or authorisation of carers might rest with the lead department; specific OOHC service providers engaging or proposing to engage individual carers; or an independent body.

In New South Wales designated agencies (accredited OOHC service providers) are responsible for authorising the carers they engage, and for registering that authorisation with an independent, central body. An applicant carer cannot be authorised unless the designated agency has determined that the applicant is capable and suitable to be a carer, and:

- the applicant – and any other household member/adult residing on the same property as the applicant – has complied with WWCC requirements
- the applicant – and any other person residing on the same property as the applicant – has completed satisfactory suitability assessments
- the applicant has undertaken relevant education or training
- the applicant has certified that they have read, understood and will comply with the code of conduct for authorised carers
- nationwide criminal record checks have been completed for the applicant and others at the same property (beyond the targeted criminal history check conducted as part of the WWCC assessment)
- the designated agency has considered:
    - the functions of an authorised carer and any risk that the applicant would be unable to properly perform these function
    - any risk to a child if the applicant were to be authorised (including risks from persons residing on the same property)
    - any other relevant information available to the agency.[143]

Probity checks and suitability assessments play a key role in protecting children in OOHC from sexual abuse, and we are considering whether they should be a pre-requisite for authorising of all carers. We recognise that this may create some difficulties when authorisation is required for an urgent placement, but arrangements in New South Wales and elsewhere provide for emergency or provisional authorisation in such circumstances.[144]

We are interested in submissions on whether existing checks for the authorisation of carers, and carer households in each jurisdiction adequately contribute to protection of children from sexual abuse in OOHC. We would also like to know whether screening processes, including the information that must be considered prior to authorisation, should be uniform across all jurisdictions.

Kinship/relative carers

Like the processes for the assessment, authorisation and/or approval of residential and foster carers, those in place for kinship/relative carers vary across jurisdictions. In some jurisdictions, the processes for all carers are effectively the same[145] while in others, the processes for kinship/relative carers appear to be less stringent than for residential and foster carers.[146]

We are mindful that kinship/relative carers often need to take children into their care at short notice or due to a family crisis,[147] which can make lengthy assessment and training processes impossible or inappropriate. Furthermore, we note that placing a child with a family or community member can often be very beneficial – less disruptive, more familiar and apt to promote continuity of existing relationships.[148] We have heard the concerns of some stakeholders that imposing more stringent assessment requirements on prospective kinship/relative carers (described by one as 'overregulation')[149] could be a deterrent, potentially diminishing an already-insufficient pool of people who are willing to provide kinship/relative care,[150] and leading to an increased reliance on other forms of care.[151]

Bearing in mind the above, we note the concerns of some stakeholders that kinship/relative care placements can carry the same risks as foster and residential care placements, and can also pose some additional risks to children.[152] These stakeholders consider that to protect children from those risks, prospective kinship/relative carers should be subject to assessment and authorisation processes as robust as those that apply to foster and residential carers.

As we outlined in our *Working with Children Check Report*, we are of the view that all carers, including kinship/relative carers, should be required to undergo a WWCC. We are also considering whether all carers should be subject to national minimum mandatory pre-authorisation checks. Although the process for conducting these checks might be adapted to reflect the different nature of kinship/relative care,[153] particularly in the context of emergency or crisis placements, these checks should nevertheless be sufficient to meet a basic threshold for safety.

We are interested in views on what minimum checks and assessment (in addition to WWCC) should be required for authorisation of kinship/relative carers, and whether and how these should account for particular characteristics and risks relevant to this type of care.

Chapter 8 provides additional discussion of kinship/relative care.

Carers registers

In *Case Study 24: Preventing child sexual abuse in OOHC* and in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* we heard that the NSW Carers Register supports decision making about the authorisation of carers in a way that improves the protection of children in OOHC.[154]

Several jurisdictions maintain carers registers, of varying complexity, and containing varying levels of detail. These registers operate as a central index of information about, or relevant to, people who have applied for or are authorised to care for children within that particular jurisdiction's OOHC system.[155] They allow government agencies and non-government service providers to quickly and easily access information, so they can confirm whether a particular individual into whose care they

intend to place a child is authorised to provide OOHC. The NSW Carers Register also contains other useful information, including:

- details about authorisation applications that are awaiting a decision
- details about refused applications, including when the application was made and why it was refused
- details about suspended, cancelled and surrendered authorisations
- details about ongoing and completed investigations into complaints against or the conduct of authorised carers (including reportable conduct investigations; see the section on 'mandatory reporting' below)
- information about others residing on the same property as an applicant and or and authorised carers.[156]

In New South Wales all designated agencies (as well as the NSW Children's Guardian, NSW Ombudsman and NSW Department of Family and Community Services)[157] can access the Register to view information about individuals they intend to authorise or engage as carers, and from whom they receive applications to become authorised carers. Law enforcement agencies, and child protection bodies in other jurisdictions, can also be granted access to information on the Register, as required.[158]

Designated agencies, both government and non-government, are responsible for entering onto the Register any details about applications for authorisation they receive, as well as the outcomes of those applications (such as approvals or refusals of authorisation). Designated agencies also have an ongoing responsibility to keep applicant and authorised carers details up to date on the Register. This may include updating administrative details such as changes of address, as well as more significant details such as cancellation, suspension or surrender of authorisation.

Under the New South Wales system, a designated agency cannot authorise a person as a carer until it has confirmed on the Register that all the mandatory carer checks (including checks for others residing on the same property) have been conducted and resulted in a satisfactory outcome.[159] As part of the authorisation process, a designated agency must undertake an 'other designated agency check' if it is known (for example, based on information already on the Register) that a second ('other') designated agency has previously authorised the person as a carer; has previously received an authorisation application from the person; or has known the person to regularly reside on the same property as another applicant or authorised carer.[160] The 'other designated agency check' requires and allows designated agencies to share information about applicant and authorised carers, in accordance with Chapter 16A of the *Children and Young Persons Care and Protection) Act 1998* (NSW) (discussed further in chapter 5). This helps the agency to build a more complete picture about the suitability of a particular applicant or authorised carer to provide care to children. The information designated agencies may exchange includes:

- a carer's previous initial assessments for suitability to provide care
- the outcomes of prior suitability and probity checks
- details of current and prior periods and conditions of authorisation
- records of carer conduct (including personal strengths and weaknesses as a carer, and compliance with organisational policies)

- training histories
- performance reviews and risk assessments
- prior suspensions, cancellations or surrenders of authorisation
- details of ongoing investigations into carer conduct, (and outcomes of completed investigations), including investigations into allegations and instances of reportable conduct (discussed further below).[161]

We seek submissions on carers registers, and what effect they have in practice with respect to protecting children from the risk of sexual abuse in OOHC. We appreciate the relatively recent implementation of the NSW Carers Register and that its effectiveness has not yet been independently tested.

Based on information provided to date, it appears to us that of the existing registers in various jurisdictions, the NSW Carers Register, administered by the NSW Children's Guardian, best protects children and is of the greatest utility to OOHC service providers and other bodies involved in protecting children from sexual abuse in OOHC. We seek your views on this.

Carers registers, such as those currently operating in a number of jurisdictions, can be an effective central hub of information relevant to the protection of children in OOHC from child sexual abuse. We have been informed that providing their counterparts with information contained within their registers – or granting their counterparts access to their registers – jurisdictions can help prevent applicants and authorised carers who pose risks to children moving between jurisdictions undetected.

We note that some jurisdictions are already undertaking work to improve mechanisms for inter-jurisdictional information exchange about carer deregistration.[162] Sharing a broader range of information about carers and carer applicants (beyond mere deregistration status), would help agencies make more informed decisions about whether particular individuals pose an unacceptable risk to children.

We are interested in submissions about the strengths and weaknesses of existing carers registers, and whether a carers register should be established in every jurisdiction. We welcome submissions on whether individual jurisdiction registers should contain the kind of information held on the NSW Carers Register, and whether this information should be accessible by all accredited OOHC service providers, as well as appropriate regulatory and oversight bodies.

Mandatory reporting

Mandatory reporting is a regulatory tool common to all Australian states and territories. Under mandatory reporting schemes, certain individuals (often by way of their professions) are legally required to report suspected cases of child abuse and neglect to a nominated government department or agency. The specifics of these reporting systems – the individuals that are mandated reporters; the definitions of the kinds of abuse or neglect that must be reported; the threshold required to activate a reporting obligation; and whether penalties apply for failures to report – vary considerably across jurisdictions. Given the application of mandatory reporting across a range of contexts relevant to our work, we are also undertaking a separate analysis of this regulatory tool.

4.2 Oversight

Oversight in the context of service delivery and public administration, carries a number of functions, including ensuring that:

- operational processes are functioning appropriately
- organisational objectives are being met
- risks are recognised and mitigated
- errors are uncovered and addressed
- opportunities for improvement are identified and acted upon.

Oversight functions often require the overseeing individual or body to:

- monitor operations and outcomes
- review the quality, compliance and defensibility of processes and decisions
- investigate critical incidents and complaints about service delivery
- develop recommendations to improve processes, correct errors, and compensate for identified failings.[163]

In the context of OOHC, oversight typically involves:

- service providers self-assessing and continually reviewing their own policies, procedures and service delivery against relevant standards[164]
- lead departments reviewing their own service delivery and that of non-government agencies they engage
- independent systemic monitoring and review
- independent investigation and complaints handling.[165]

In relation to this final point, as the Victorian Commissioner for Children and Young People observed in his submission to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*:

> independent oversight of the [complaints handling] process is very important to prevent conflict of interest occurring when a [non-government service provider] or departmental agency is put in the position of investigating itself.[166]

Independent systemic monitoring and review

Each Australian state and territory has at least two oversight bodies – independent of the lead department – responsible for promoting, representing and defending the rights and interests of children, whether in general, or in OOHC specifically: an Ombudsman; and a Children's Commissioner or Guardian. This role is one of general, systemic oversight.

The Ombudsman reviews and investigates the administrative actions and decisions of governmental departments, agencies and public authorities (and the individuals these bodies engage to act on their behalf). In most jurisdictions, this includes the lead department for child protection.[167] The Ombudsman may commence investigations in response to complaints of individuals, or on the

Ombudsman's own motion. Investigations typically result in recommendations to improve the quality of decision-making and administrative practices.[168]

Children's Commissioners or Guardians are typically responsible for promoting and monitoring the wellbeing of children and young people; reviewing existing laws, policies and practices affecting children; and providing advice to ministers or the government on the provision of services to children (whether generally, and/or in OOHC specifically).[169] Commissioners and Guardians may also:

- provide advocacy and support for individual children
- receive, investigate and respond to the complaints of individuals or about the care of individual children
- conduct investigations into specific issues (either on their own initiative or at the request of the relevant minister)
- issue reports following these investigations, and make findings and recommendations for change or improvement.[170]

Finally, some jurisdictions also have a Public Advocate, an Advocate for Children and Young People, who:

- advocates for the rights, safety and welfare of children
- promotes children's participation in decision making
- promotes high quality services to children
- makes recommendations to government and non-government agencies on legislation, policies and practice.[171]

We are considering whether the functions of each of these oversight bodies are valuable in addressing the risk of child sexual abuse in OOHC, and should be exercised by at least one independent body in every jurisdiction. These functions help ensure that decisions affecting children are transparent, and that children's services are of a high quality, and are subject to scrutiny conducive to continuous improvement. We welcome submissions on whether the operation of different oversight bodies with similar, related and intersecting functions may create confusion about where particular complaints or concerns should be raised and how they will be addressed. We also welcome submissions about how any potential areas of duplication might be addressed.

We also note the National Children's Commissioner's role in overseeing children's services at the national level. This includes:

- promoting discussion and awareness of the human rights of all children in Australia
- undertaking research, education and other programs for the purposes of promoting respect for children's rights
- examining existing and proposed Commonwealth enactments, and reporting to the Commonwealth Government about, whether those enactments recognise and protect the human rights of children.

Official visitors schemes

A small number of jurisdictions have implemented 'official visitors' schemes. Under these schemes, officially appointed visitors (variously termed) – independent of the lead agency and OOHC service

providers – are empowered to visit children in OOHC placements, inquire into their wellbeing and confirm that their needs are being met.[172] Queensland has the most expansive and established official visitors scheme – the Community Visitors Program, administered by the Office of the Public Guardian. Community Visitors visit children in residential care, foster care, and kinship/relative care (as well as in youth detention), and are tasked with:

- forming trusting and supportive relationships with children
- listening to children's concerns
- confirming children's placement needs are being met
- inquiring into children's physical and emotional wellbeing
- helping children connect with the support services they may need.[173]

Both Western Australia and New South Wales also have official visitors schemes, but both are considerably more limited in scope than the Queensland program. In Western Australia, the Chief Executive Officer of the Department for Child Protection can appoint 'assessors' to visit residential facilities and secure care facilities only. Assessors are empowered to enter and inspect facilities; inquire into the operation and management practices; and speak to the children and inquire into their wellbeing.[174] Similarly, under the NSW Official Community Visitors scheme – coordinated by the NSW Ombudsman, Official Community Visitors can visit children in residential OOHC only – a cohort comprising around 2.8 per cent of all children in OOHC in the state.[175]

We have heard strong views in support of, and strong views against, official visitors programs as mechanisms to protect children in OOHC from sexual abuse. Some people see the value in having an adult – independent of the carer, OOHC service provider or lead agency – to oversee children's care experiences and to whom children can disclose any sexual abuse.[176] Others have argued that official visitors' interactions with children are infrequent and insufficient to establish the level of familiarity and trust that would be likely to support disclosures.[177] Some stakeholders have suggested that official visitors constitute a further unjustifiable intrusion in the lives of children who are already subject to considerable state intervention.[178]

At this stage, we are uncertain about the value of official visitors schemes in reducing or facilitating disclosure of child sexual abuse. We note that children in OOHC are already routinely visited or contacted by their caseworkers, who are responsible for monitoring their needs and wellbeing.[179] Children in OOHC placements can also contact their caseworkers themselves if they have any issues or concerns. To date, we have not received compelling evidence to suggest that children are more likely to disclose sexual abuse to an official visitor than to their caseworker, or, indeed, that they are likely to disclose sexual abuse to an official visitor at all. We were advised in *Case Study 24: Preventing child sexual abuse in OOHC* that there had been no disclosures of sexual abuse to any assessor in Western Australia since they were first appointed in 2012.[180]

We welcome submissions on whether official visitors schemes are useful, efficient and cost effective, and whether they yield demonstrable benefits for children in OOHC with respect to preventing and identifying sexual abuse. We are interested in feedback on whether more frequent caseworker visits or contact (with the additional resourcing this would require) might provide a better safeguard.

Oversight of complaints handling – reportable conduct schemes

We are examining how complaints of child sexual abuse are handled more generally in a separate piece of work. In every jurisdiction there are processes for handling such complaints in the context of OOHC. New South Wales is alone in having a dedicated system for *overseeing* how these complaints are handled.

The New South Wales reportable conduct scheme is outlined under Part 3A of the *Ombudsman Act 1974* (NSW) and administered by the NSW Ombudsman. Reportable conduct includes any sexual offence or sexual misconduct committed against, with or in the presence of a child, whether or not it was committed with the consent of the child. (Reportable allegations and reportable convictions are allegations and convictions of such conduct, respectively).[181]

Under the scheme, the NSW Ombudsman is required to 'keep under scrutiny' the systems for preventing reportable conduct by employees of designated government and non-government agencies and other public authorities. It must also keep under scrutiny the systems for handling and responding to reportable allegations and reportable convictions involving those employees. For the purposes of Part 3A of the *Ombudsman Act 1974*, 'designated agencies' include all accredited OOHC service providers in New South Wales.[182] The definition of 'employees' includes all individuals engaged by designated agencies to provide services to children in both paid and volunteer capacities. This includes authorised carers[183] [184], and adults who reside on the same property as an authorised carer for three weeks or more.[185]

Under the scheme, designated agencies' employees must notify their agency heads of any reportable allegations or convictions they become aware of, and the agency head must then notify the NSW Ombudsman of the allegation or conviction within 30 days. The agency head must also advise the NSW Ombudsman whether the agency intends to take disciplinary or other action against the relevant employee and give a reason for this decision.[186] The NSW Ombudsman may disclose to the NSW Children's Guardian any information about an employee of a designated agency that the Ombudsman[187] believes may cause the employee to become a disqualified person for the purposes of WWCC, together with information about investigations into the relevant reportable conduct.[188] This may result in a person's WWCC clearance being cancelled, disqualifying them from continued engagement as a carer.

The NSW Ombudsman may monitor the progress of any reportable conduct investigation by a designated agency, and request relevant information from the agency head concerned.[189] Heads of agencies must provide a copy of the investigation report to the NSW Ombudsman and advise of the resulting or proposed action in response.[190] Alternatively, the NSW Ombudsman may undertake the investigation directly, or may conduct an investigation into any inappropriate handing of or response to reportable allegation or conviction by the relevant agency, then make recommendations for action to be taken.[191]

Under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (discussed further in chapter 5), the NSW Ombudsman can share the information it receives about persons subject to reportable conduct investigations with designated agencies and other public bodies (including the NSW Children's Guardian, the police and others). It can also advise designated

agencies undertaking investigations into their employees to seek further information from other agencies if the second agency may be able to assist with an investigation.

We have heard views that together – the reportable conduct scheme, the WWCC, information sharing provisions and the carers register – provide effective oversight mechanisms to promote the protection of children. We have also heard from some service providers that the scheme could be enhanced by expanding it to cover the conduct of others associated with a child's OOHC placement who may not currently fall within the definition of an 'employee' (for example, a carer's partner who may not live at the placement property, or other children in the carer's household).[192]

We note that Victoria is currently exploring options for developing and implementing a scheme similar to the New South Wales scheme in the near future in accordance with the recommendations of the *Betrayal of Trust* Inquiry.[193] We have also heard that the New South Wales scheme has the support of Ombudsmen in several other jurisdictions.[194]

We welcome feedback about the value of reportable conduct schemes, and whether such schemes should be established in all states and territories. We are also interested in feedback on what features a reportable conduct scheme should include, and whose conduct should be subject to its oversight.

4.3 Concluding remarks

In this chapter we have not discussed all the regulatory and oversight mechanisms operating in every Australian jurisdiction relating to child sexual abuse in OOHC. We have instead provided a brief overview of some of the tools most commonly used, and those that appear to be the most effective in protecting children in OOHC from sexual abuse. We welcome submissions on whether there are any other mechanisms that you consider particularly effective and that we have not already included in this chapter.

Improving regulation and oversight to better prevent and respond to child sexual abuse in OOHC

The regulation and oversight of each Australian jurisdiction's OOHC system differs, although there are some common features. Uniform OOHC regulation and oversight across all jurisdictions may not be achievable, or necessarily appropriate, at this time. However, we are considering whether the safety of children in OOHC would be advanced by greater consistency in some areas of regulation and oversight. Regulation and oversight of OOHC in each jurisdiction could include:

1. accreditation of OOHC service providers, whereby:
   - all OOHC providers – both government and non-government – are required to be accredited to a minimum, nationally consistent standard (for example, the National Standards for Out-of-Home Care or equivalent)
   - in each jurisdiction, a body independent of the relevant jurisdiction's lead department has responsibility for assessing and granting applications for accreditation
   - the accreditation body retains ongoing responsibility for monitoring accredited providers' continued compliance with conditions and standards of accreditation.

2. authorisation of carers, whereby:
   - all carers are assessed and authorised according to minimum, nationally consistent standards (including satisfactory probity checks for carers and household members over the age of 16 years, and comprehensive criminal background checks and WWCC)
   - all carers are reassessed on a regular basis. This reassessment process would include an opportunity for the child/children in care to provide feedback about their placement.

3. oversight of the OOHC system, with:
   - core oversight functions conducted by a body external to, and independent of, the relevant jurisdiction's lead department and all service providers.

We are also considering whether the following regulatory and oversight mechanisms may enhance the protection of children in OOHC:

4. Independent oversight of complaints handling conducted by a body independent of the lead department and all service providers. That is, a 'reportable conduct scheme' in each jurisdiction.

5. A carers register in each jurisdiction, containing relevant information about all applicant and authorised carers, accessible by all jurisdictions' accredited OOHC service providers and appropriate regulatory and oversight bodies.

We seek submissions from all interested parties, in particular OOHC service providers and regulatory and oversight bodies, on these issues.

5. Information sharing

Evidence in public hearings and information in submissions to issues papers, and in private sessions demonstrate the need for information sharing[195] to identify, prevent and respond to child sexual abuse in OOHC contexts.

This chapter outlines some of the key information sharing arrangements in the OOHC sector in Australia and impediments to information exchange to protect children in care.

We seek submissions about opportunities to improve information sharing through legislation, policy, practice and cultural change, to better protect children from child sexual abuse in OOHC contexts.

5.1 Current approach

Information sharing, as part of a collaborative approach to child protection, is necessary for effective, integrated and therapeutic responses to risks and incidents of child sexual abuse. The importance of information sharing, in OOHC and other contexts, has been highlighted by a number of inquiries and reviews, as well as in the commitments and initiatives of Australian governments under the National Framework.[196]

It has also been recognised that effective information sharing reduces trauma and distress to abuse victims and survivors because it limits the need for them to repeat their stories and experiences.[197]

Evidence and information before us[198] indicate that options for improving information sharing arrangements and practice should be considered. We heard evidence in *Case Study 1: Response of institutions to the conduct of Steven Larkins* and *Case Study 24: Preventing child sexual abuse in OOHC*, and submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC, Issues Paper 1: Working with Children Check*, and private sessions that:

- institutional failures to share information have resulted in missed opportunities to identify, prevent and respond to child sexual abuse in OOHC contexts[199]
- weaknesses in inter-jurisdictional information sharing arrangements create risks for the safety of children in OOHC[200]
- information sharing with carers about the sexual abuse histories of children in their care is sometimes inadequate; this places children in care and other children in carer households at risk.[201]

We have been told that improvements are needed in information sharing, within and across jurisdictions, to prevent and respond to child sexual abuse in OOHC contexts.[202]

The sharing of personal information is a particular matter of concern.[203] Institutions often need to share such information in order to prevent and respond to the abuse of children in OOHC contexts. This includes, but is not limited to, information concerning:

- children who have been abused or are at risk of abuse in OOHC contexts
- children in OOHC contexts who have engaged in sexually harmful behaviours
- carers and others who have abused or may pose a risk to the safety of children in OOHC contexts.

The sharing of personal information related to child sexual abuse in OOHC contexts may be restricted by privacy[204] and confidentiality[205] obligations under privacy legislation,[206] child protection legislation,[207] and elsewhere.[208] It is also worth noting that information related to child sexual abuse may be classified as sensitive information under privacy laws, and subject to higher privacy standards than other types of personal information.[209]

Generally, personal information which has been properly collected by an agency or organisation for lawful purposes may be disclosed for those purposes.[210] In some cases, information relevant to the safety of children in OOHC contexts may have been acquired for purposes other than child protection.

Restrictions on the disclosure of personal information may be overcome in different circumstances by consent to disclosure,[211] laws which permit or require information sharing, or other lawful reasons for disclosure.[212]

Across Australia, information sharing arrangements (under legislation, intergovernmental agreements and other administrative arrangements) have been established to facilitate the sharing, by institutions and others, of information, related to child sexual abuse in OOHC contexts. However, it appears that some of these arrangements may not adequately facilitate sharing of personal information to prevent and respond to child sexual abuse. It also appears that concerns about privacy, and confusion about the application of complex laws, sometimes results in a reluctance to share information. In these cases, the barriers to information sharing may be more perceived than real.

This chapter will outline some key issues with regard to institutions sharing information with:

- children
- carers
- other institutions, and in some cases individuals, within and across jurisdictions.

We will also discuss our considerations of potential information sharing improvements.

Sharing information with children

The rights of children to express their views and participate in decisions that affect their lives[213] are generally recognised and well accepted in the OOHC sector.[214] However in *Case Study 24: Preventing child sexual abuse in OOHC*, we heard that more needs to be done to share information with children in care when decisions which affect them are being made. In her evidence, the President of the Australian Foster Care Association highlighted the need to consider how children should be informed 'about the decisions that are being made about their life **at the time**' [emphasis added]:

> Somebody within the system - and I don't necessarily believe it should be the carer, I think it should be the decision maker - should be explaining this to the child, whether it be, say, by

> writing a letter, or having a conversation, but somebody needs to explain to them what the decision is and why and listen to their response, because that is where you get improvement in practice and better safety for children.[215]

We have also learnt that failure to share information related to child sexual abuse with children may adversely affect their sense of safety. In recent research on institutional responses to children's safety concerns, the Australian Catholic University's Australian Institute of Child Protection Studies found that children 'recognised that adults often did not share information with them about sensitive issues [such as sexual abuse] in an attempt to protect them, but felt that sometimes this was counter-productive'.[216]

Issues for particular consideration

We are considering how sharing information with children in care may be improved to address issues related to child sexual abuse, and promote their participation in decision making which affects them. Legislation recently passed in New South Wales to enable agencies to share information about the progress and outcomes of reportable allegations investigations under the *Ombudsman Act 1974* (NSW) (with children allegedly the subject of reportable conduct or misconduct, as well as with their parents or carers) provides one example of how this may be done.[217]

Sharing information with carers

While child protection legislation in a number of jurisdictions provides for sharing information with carers prior to and during placement,[218] evidence and information before us suggests that information provided to carers about children in care may sometimes be too little and too late.

We were told in *Case Study 24: Preventing child sexual abuse in OOHC*, in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* and in private sessions about the importance of sharing information with carers regarding the history, sexually harmful behaviour and needs of children placed in their care. We were told carers are not always given timely and adequate information to meet their care responsibilities and to manage risks. We learnt that, especially where a child has displayed sexualised behaviours, inadequate sharing of information with carers may undermine placement stability and the safety of children in care and other children in carer households.[219]

This was highlighted in *Case Study 24: Preventing child sexual abuse in OOHC*:

> Just from a very personal perspective, I can remember at one stage there was a child brought to us late on a Saturday night by a stepfather, and when I went to the door to greet the stepfather and the child, I was carrying a baby in my arms and the stepfather said, 'Oh, you've got a baby? He can't be anywhere near babies. That's why he's being put into care now,' and then went on to explain why. So we did take the child over the weekend; the child could not stay after the Monday, though, because we couldn't put the baby, who was also in care, at risk, or the other young children we had in our home. It's about this sharing appropriate information to keep all children safe, not just the child who is coming into care, so there is a big issue around that sort of work that needs to be done within the sector.[220]

We were told, in *Case Study 24: Preventing child sexual abuse in OOHC*, submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*, and private sessions, about incidents of child-to-child sexual abuse in circumstances where child protection and OOHC agencies had not given carers adequate information about the sexually harmful behaviours of children placed in their care.[221]

On this issue, we note the recent decision of the Queensland District Court, in the matter of *ABC & Ors v State of Queensland & Anor*.[222] In this case, the Court considered the State's liability in negligence and breach of statutory duty for psychological injury sustained by three plaintiff sisters who were sexually abused by a foster child in their family's carer household. The Court addressed the question of whether the Queensland Department of Child Safety had fulfilled its obligation, under section 83A of the *Child Protection Act 1999* (Qld), to provide the carers with adequate information to make an informed decision to accept placement of the foster child:

> Certainly, she [the plaintiff's mother and foster child's carer] knew that the foster child had committed earlier serious sexual offences but there is no evidence that she was provided with such information as was necessary for her and her husband to make the informed decision [to accept placement] for the purposes of section 83A of the CPA. Of necessity, that information had to include matters relevant to ensuring the safety of the three plaintiffs [her children].[223]

The relevant matters which the Court found the Department had failed to disclose were the contents of a psychologist's report (including an assessment of the risk of recidivism and recommendations for sex offender treatment and sex education) and that the foster child had not undertaken recommended treatment and education.[224] The Court found that the carers and their family 'did not have a full appreciation of the risks associated with the foster child residing with them'.[225] The Court found that, by failing to provide the carers with 'all of the information that was reasonably needed' to make a fully informed decision to accept the placement, the Department had breached its duty of care.[226]

We were told in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* that information is not being shared with carers because of concerns about confidentiality and the privacy of children in care.[227] We also recognise that some OOHC contexts, such as kinship and relative care placements in Aboriginal communities, may raise additional familial and cultural complexities[228] for sharing information with carers.

We acknowledge the importance of concerns about confidentiality and children's privacy when sharing information with carers. However we also consider that they must be balanced with the need to ensure, as far as possible, the safety and wellbeing of children in care, as well as other children in carer households. Children's rights to privacy are discussed later in this chapter.

Issues for particular consideration

We are considering how information sharing with carers may be improved to support greater placement stability as well as safety. In particular, we are considering how institutions' information sharing with carers could be improved to assist carers in making properly informed decisions to accept placement of children with sexual abuse histories (including sexually harmful behaviours). We are also considering how information sharing could be improved to better support carers in meeting their responsibilities for children in care and managing risks to other children in their household.

Sharing information with carers about complaints and investigations relevant to children placed in their care may also assist carers in understanding and responding to children's needs. As noted above, legislation recently passed in New South Wales enables agencies to share information with carers about the progress and outcomes of reportable allegations investigations under the *Ombudsman Act 1974* (NSW).[229]

Where complaints and allegations are made against the carers themselves, other considerations are relevant. The Queensland Commission for Children and Young People and Child Guardian told us that 'lack of information about decisions [related to investigations of complaints and allegations against carers] can cause more harm and adversely impact all parties involved in the alleged incident'.[230] Institutions also need to be mindful of the risk of compromising police investigation or criminal proceedings when they share information in these circumstances. We welcome your submissions on information sharing in the context of complaints and allegations against carers. We will consider best practice principles in responding to complaints more generally in our work on complaints handling.

Institutions sharing information in the same jurisdiction

We have been told, in evidence in *Case Study 24: Preventing child sexual abuse in OOHC*, and in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*, about the need for effective co-ordination and exchange of information between service providers, regulator/oversight bodies, and other government and non-government agencies involved in the lives of children in care, to help ensure the safety of children in OOHC.[231]

All Australian jurisdictions have established arrangements for some degree of intra-jurisdictional information sharing, including the sharing of personal information, for the purpose of protecting children in OOHC.

The following discussion does not address all such arrangements.[232] Rather, it focusses on key legislated arrangements[233] that permit or require prescribed classes of agencies, organisations and individuals (all are referred to collectively here as 'prescribed bodies')[234] to exchange information with each other and/or with their jurisdictional child protection agency.[235] These arrangements, established by state and territory child protection laws, explicitly or implicitly override privacy and confidentiality restrictions on disclosure of personal information.[236]

While the information shared under these arrangements is variously described across the jurisdictions, it generally includes information related to the safety and wellbeing of children in OOHC contexts.[237] This includes information that is relevant to identifying, preventing and responding to child sexual abuse.

There are some variations across jurisdictions in the range of prescribed bodies,[238] as well as in the way they are described and defined.[239] Where arrangements include classes of individuals, they are often identified in an institutional capacity (such as school principals, or police officers).[240] However, in some cases, these individuals may operate as professionals within or outside institutional structures (such as registered medical practitioners and registered psychologists).[241]

In addition to these differences, the information sharing capacity and obligations of different prescribed bodies vary across jurisdictions.

Arrangements under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* in New South Wales and Part 5.1A of the *Care and Protection of Children Act* in the Northern Territory require the jurisdictional child protection agency to operate as a prescribed body with the same information sharing capacity and subject to the same information sharing obligations as other prescribed bodies.

All prescribed bodies under the New South Wales and Northern Territory arrangements, including the jurisdictional child protection agency, are able to initiate information sharing by requesting relevant information from any other prescribed body. Similarly, all prescribed bodies, including the child protection agency, are able to provide relevant information to any other prescribed body without a request. Proactive (unsolicited) sharing of information requires a belief, on the part of the provider, that the information would assist the recipient in a range of functions related to the safety and wellbeing of children (including service provision, planning, decision-making, assessments, investigations and risk management).[242]

Where the New South Wales or Northern Territory child protection agency receives a request for relevant information, it must, like other prescribed bodies,[243] provide that information if it reasonably believes that the information *may* (in New South Wales) or *would* (in the Northern Territory) assist the recipient in functions related to the safety and wellbeing of children.[244] The limited exceptions to this obligation which apply to the child protection agency also apply to other prescribed bodies.[245]

Elsewhere, the child protection agency occupies a more privileged position in information sharing arrangements. In other jurisdictions, for example, the child protection agency can require relevant information from prescribed bodies, without being similarly required to provide such information to prescribed bodies.[246]

Some jurisdictional arrangements do not enable prescribed bodies to seek information directly from each other.[247] With the exception of New South Wales and the Northern Territory, jurisdictional arrangements which do enable prescribed bodies to seek information from each other are generally not supported by a requirement for relevant information to be provided.[248]

With the capacity to require information from prescribed bodies, and a discretion to pass the information received on to others, jurisdictional child protection agencies can operate as information centres. However, reliance on jurisdictional child protection agencies to always direct information where it needs to go may be misplaced.[249] Without a general capacity for prescribed bodies to seek and require relevant information from the child protection agency and from other prescribed bodies, information required to prevent and respond to child sexual abuse in OOHC contexts may not be disseminated as widely or as quickly as it needs to be.

The capacity of prescribed bodies, in a number of jurisdictions, to proactively share information with each other[250] may contribute to prevention and risk management. This is particularly so where the prescribed body receiving the information is unaware of the risk, or of the availability of the information. The absence of a general requirement for prescribed bodies to comply with appropriate information requests from other prescribed bodies may limit information sharing for risk

management purposes. Prescribed bodies may be unwilling to provide information unless they are satisfied that a risk to a child's or children's safety is serious.

We understand there may be some uncertainty and reluctance about sharing information relating to concerns, suspicions, and unsustained or untested allegations about carers and others.[251] There may be legitimate concerns about sharing information which may prejudice criminal justice processes. In some cases, the significance of isolated pieces of information about a potential, rather than a known, abuser may not be obvious. Abuse or risk may not become apparent until a range of information from a number of sources over time is combined to create a complete picture. *Case Study 2: YMCA New South Wales' response to the conduct of Jonathan Lord*, showed how information about seemingly isolated or insignificant incidents can, when considered cumulatively, paint a more complete and concerning picture.[252] Arrangements that allow sharing of what may appear, in isolation, to be low level concerns may be of benefit in protecting children in OOHC contexts.

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides for sharing of 'information relating to the safety, welfare or wellbeing' of any child or class of children. This sets a threshold which can capture low level concerns relevant to all children, whether or not they are in care and whether or not a child protection risk has been reported or identified. Similarly, the Northern Territory's arrangements under Part 5.1A of the *Care and Protection of Children Act* enables the sharing of information relating to the 'safety or wellbeing' of any child or group of children specified by the information seeker or provider.

In contrast, Tasmania and Victoria's arrangements provide for sharing information related to the safety and wellbeing of children who have come to the attention of or are involved in the child protection system (because they are the subject of reports of safety and wellbeing concerns, are subject to assessment, or intervention or protection orders).[253]

These arrangements appear to exclude information sharing about the safety of children in carer households who are not in care, and who may not otherwise be involved in the child protection system. As discussed above, information about these children may need to be shared, for example, because they may be at risk of harm by a child in care in the same household. These arrangements may also exclude sharing information about the safety of children who are in voluntary OOHC for respite purposes, and not because of concerns about abuse or neglect.

Other arrangements for information sharing

All jurisdictions have other arrangements, in addition to the key legislated arrangements discussed above, which support direct information exchange between institutions and service providers involved in the lives of children.

In Victoria and the Australian Capital Territory, for example, information relating to safety and wellbeing of children in care may be shared within care teams.[254] In many jurisdictions, safety and wellbeing information may be shared within interagency investigation and response teams (including child protection agencies and police, and sometimes others).[255] While these team arrangements support information sharing to protect children in care, their membership is limited. In the case of care teams, membership requires specific nomination.[256] Arrangements for

information sharing amongst such limited groups are not equivalent to standing arrangements for direct information exchange between a wide range of prescribed bodies.

In South Australia, unlike other jurisdictions discussed above, the main arrangements for intra-jurisdictional exchange of safety and wellbeing information have been established administratively rather than legislatively. These arrangements are set out in the *Information Sharing Guidelines for promoting safety and wellbeing* (2013) (SA ISG) which apply to a wide range of public and state contracted private sector agencies, including those providing services for children in OOHC. The SA ISG support disclosure of personal information without consent to prevent or lessen a serious threat to life, health or safety.[257] This is consistent with the *Privacy Act 1988* (Cth) and the *Information Privacy Principles Instruction 2013* (SA). The SA ISG appear to provide helpful guidance and support for direct information exchange to promote children's safety. However information sharing based on serious threats to life, health or safety may be limited in some respects. These limitations are discussed later in this chapter.

Direct information exchange may also occur in all jurisdictions through other less formal and administrative arrangements. While such arrangements may promote children's safety, they will be limited by privacy and confidentiality restrictions on disclosure unless they are made in accordance with laws which overcome these restrictions. Importantly, they are also likely to be limited in the range of participants, and may be confined to the OOHC sector rather than covering a range of sectors that provide services and supports for children in OOHC.[258]

Other information sharing arrangements may be established based on privacy commissioners' modifications of privacy restrictions in specific circumstances. These are also discussed later in this chapter.

Additional challenges

With the transfer of many OOHC services from the government to the non-government sector, additional challenges for information sharing may be created. Generally, the range of information (relevant to carer suitability and placement safety) which is available to non-government OOHC service providers may not be as complete as that held by or available to child protection agencies (government OOHC providers).[259] Such disparity in access to information may create greater risk for children in care under the supervision of non-government providers.

As carers and placements are transferred from government to non-government providers, carer and placement records are likely to be dispersed across different agencies and fragmented.[260] As contracting out continues, expansion of the non-government OOHC sector may give carers who have problematic histories opportunity to move between a growing number of providers. With such movement and further fragmentation of records, children in care may be exposed to greater risk.

Issues for particular consideration

We have heard, in evidence and submissions, about the importance of direct information exchange between the wide range of service providers and agencies involved in the lives of children in care, for protecting children in OOHC contexts.[261]

Information sharing arrangements should both permit and require the sharing of relevant information for purposes including identifying, preventing, and responding to child sexual abuse in OOHC contexts. These arrangements should support all OOHC service providers equally, government and non-government, to fulfil their obligations to keep children safe in OOHC contexts. These arrangements should also operate to protect all children in OOHC contexts, including those in carer households and those in voluntary OOHC.

Children's safety may also be enhanced by arrangements that enable low level concerns to be gathered (where this will not prejudice criminal justice processes) and combined with other information for a complete picture of risk or abuse.

The potential of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) as a model for intra-jurisdictional information sharing in all jurisdictions is discussed later in this chapter.

Institutions sharing information across jurisdictions

All Australian jurisdictions have established arrangements, through legislative provisions[262] and intergovernmental agreements, for inter-jurisdictional information sharing between specified institutions to protect children in OOHC contexts.

These arrangements include provisions for information sharing through nominated 'interstate officers'[263] and information sharing protocols.[264] Some jurisdictions include interstate bodies in the arrangements for intra-jurisdictional information sharing discussed above.[265]

The *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance* provides for jurisdictional child protection agencies to exchange information with each other related to fulfilling child protection obligations, such as assessing carer suitability and safety of children across Australia and New Zealand. The *Information Sharing Protocol Between the Commonwealth and Child Protection Agencies* provides for information sharing between jurisdictional child protection agencies across Australia and key Commonwealth agencies (Centrelink, Medicare, and the Child Support Agency) to facilitate investigations and assessments of vulnerable and at-risk children to promote their care, safety, welfare, wellbeing and health.[266]

Evidence in *Case Study 24: Preventing child sexual abuse in OOHC*, information in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* and other information before us have addressed the limitations of these arrangements and have highlighted the need for improvement in and clarification of interstate information exchange processes, to better protect children in care from sexual abuse.[267]

The Northern Territory Children's Commissioner, for example, told us in our OOHC roundtable that there is no system for sharing information across jurisdictions on allegations and events that have not led to a conviction, but are actually of great significance.[268]

We understand that, as a result of the intergovernmental agreement for *Exchange of Criminal History Information for People Working with Children* (ECHIPWC), working with children screening agencies across Australia now have consistent access to an expansive range of interstate criminal history information for working with children check purposes.[269] However, ECHIPWC provisions do

not capture all relevant information that identifies risks to children – for example, relevant misconduct findings and child protection notifications,[270] and Victorian non-conviction charges.[271]

Our report into the Working with Children Check (WWCC) regime in Australia[272] has made recommendations aimed at facilitating better information exchange across jurisdictions about people who may pose a risk to children. However, those recommendations are specifically aimed at improving WWCC decision making and do not address all the issues raised here.[273] In addition, states and territories will need to formalise arrangements to improve the sharing of information between all relevant agencies with child protection and OOHC services or roles.

One of the limitations of the *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance* is that it provides for information exchange subject to confidentiality/privacy restrictions in jurisdictions' legislation.[274]

The exclusion of non-government entities as well as other relevant government agencies from information exchange under the *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*[275] and the *Information Sharing Protocol between the Commonwealth and Child Protection Agencies*,[276] also appears to be problematic.[277] In the absence of clearly identified and effective avenues for information exchange outside these arrangements, children, particularly those in placements supervised by non-government providers, are potentially exposed to risk.

Legislation recently passed in New South Wales to enable New South Wales OOHC service providers (including non-government organisations), as well as the New South Wales child protection agency and the NSW Children's Guardian, to share carer assessment information directly with child protection bodies and OOHC service providers in other jurisdictions may go some way to addressing this.[278]

We note previous commitments and initiatives of Australian governments for intra-jurisdictional as well as inter-jurisdictional information sharing under the *National Framework for Protecting Australia's Children 2009–2020* (National Framework).[279] We also note the recently published Third Action Plan for the National Framework includes a commitment to '[a]ddress barriers to information sharing to allow easier information exchange within and across jurisdictions for government and non-government agencies where there are concerns about child wellbeing'. This includes sharing jurisdictional approaches to develop a best practice model of information exchange.[280] We understand that South Australia, Victoria and New South Wales have already initiated research into inter-jurisdictional carer information sharing arrangements, as part of the Second Action Plan 2012–2015 for the National Framework.[281] We are interested in hearing from all jurisdictions, and particularly South Australia, New South Wales and Victoria, on the progress of this and related initiatives under the National Framework.

Issues for particular consideration

We are considering whether, and how, arrangements for inter-jurisdictional information sharing to prevent and respond to child sexual abuse in OOHC contexts should be established to overcome existing limitations in inter-jurisdictional information sharing.

A number of considerations relevant to intra-jurisdictional information sharing are also relevant to inter-jurisdictional information sharing. These include: privacy; the range of participants in arrangements and their capacity for direct exchange; the threshold for sharing information; and the operation of arrangements to protect all children in OOHC contexts.

One option would be to develop an intergovernmental agreement, between all Australian governments, to establish legislative as well as administrative arrangements to address these issues.

The potential of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) as a model for inter-jurisdictional information sharing is discussed later in this chapter.

Privacy as a barrier to timely and appropriate information sharing

The effect of privacy as a barrier to timely and appropriate information sharing in OOHC contexts was raised as a significant issue in *Case Study 24: Preventing child sexual abuse in OOHC*, submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*, private sessions and other reviews.[282]

As suggested in *Case Study 24: Preventing child sexual abuse in OOHC*, and reflected in submissions, some impediments to sharing information related to safety of children in OOHC may be due to concerns and misunderstanding about privacy obligations, rather than the actual restrictions of privacy laws.[283] However, in some cases, the limitations and complexity of privacy laws may inhibit the sharing of risk related information.

Australia recognises privacy as a human right generally,[284] and specifically as a right to which children are entitled.[285] Australian laws regulating the handling of personal information are based on our acceptance of the general principle that, in the absence of an overriding interest, privacy should be protected. We have been told that children's rights to safety and wellbeing (including protection from sexual abuse)[286] should take precedence over the protection of privacy.[287]

Capacity for information sharing under privacy laws

As noted above, Australian privacy laws allow for disclosure of personal information in certain circumstances.[288] This means that, consistently with those laws, there is some existing capacity to share information to protect children in OOHC contexts.

Personal information may be shared where consent has been given. Seeking consent from an individual to share their personal information because it is relevant to child sexual abuse may not be possible, reasonable or appropriate. In some cases seeking consent may unduly delay institutional responses to risk, expose a child to greater risk, or otherwise compromise prevention, identification or prosecution of child sexual abuse. Children's capacity to consent is discussed later in this chapter.

Privacy laws also generally allow sharing of personal information where necessary to lessen or prevent significant threats to life, health, or safety, although jurisdictions vary as to whether such threats must be either serious,[289] serious or imminent,[290] or both serious and imminent.[291]

Requirements to identify threats as serious/imminent before sharing information may be highly problematic in the context of child sexual abuse.[292] Threats of child sexual abuse are not always

imminent, and opportunities to identify risk of child sexual abuse may be missed if information cannot be shared unless it indicates that the threat is serious.[293] Sharing personal information on the basis of serious/imminent threats may be further complicated where the personal information is classified as 'sensitive information' (for example, because it relates to a person's sexual activities). As the Wood Special Commission of Inquiry into Child Protection Services in New South Wales noted, under New South Wales privacy legislation, disclosure of 'sensitive information' on the basis of a serious and imminent threat must be to prevent (rather than to lessen *or* prevent) that threat.[294]

South Australia's *Information Sharing Guidelines for promoting safety and wellbeing* (2013) (discussed above) support disclosure of personal information without consent to prevent or lessen a serious threat to life, health or safety, [295] consistently with the *Privacy Act 1988* (Cth) and the *Information Privacy Principles Instruction 2013* (SA). Given the need to identify a relatively high level of risk based on what may often be limited information, such arrangements based on a serious/imminent threat threshold for disclosure may unduly limit timely and appropriate information exchange.

In contrast, information sharing laws like Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) which provide for information sharing at a lower threshold (related to safety, welfare and wellbeing) may be more likely to assist earlier identification of risk based on a totality of relevant information.

Privacy laws may also support information sharing where privacy commissioners authorise special arrangements, including public interest directions and codes of practice, to modify privacy restrictions in particular circumstances.[296]

A recent development in this area in Victoria enables the Victorian Commissioner for Privacy and Data Protection to issue approved information usage arrangements as well as public interest determinations, and temporary public interest determinations. These mechanisms may be used, where an application is made, to modify the application of privacy obligations to Victorian public sector agencies and certain other organisations.[297] The purpose of these mechanisms is (amongst other things) to 'significantly assist in the…implementation of child protection programs where multiple agencies hold information'.[298]

Arrangements authorised by privacy commissioners, such as public interest directions and codes of practice, may be limited by their application to particular organisations and circumstances, and in their duration. Consideration and authorisation of such arrangements in response to individual applications may also limit their capacity to provide consistency and certainty across the wide range of bodies and sectors involved in OOHC. Clear legislative provisions which provide standing arrangements for wider sharing of relevant information may be of greater value in protecting children in OOHC contexts.

Confusion about obligations

As other inquiries have identified, the complexity of 'inconsistent, fragmented and multi-layered privacy regulation' within and across Australian jurisdictions can be particularly problematic in the context of child protection.[299]

Confusion and uncertainty may arise, for example, because in some cases different conditions for information sharing under Commonwealth and state/territory privacy regimes may apply simultaneously to an institution involved in providing services for children in care.[300] Civil and criminal penalties for improper disclosure of information[301] may add to uncertainty and anxiety about sharing personal information.

Confusion may also impede information sharing even where such conditions and penalties do not, in fact, apply. The findings of a recent Social Policy Research Centre (UNSW) report suggest that, even where information sharing laws (like Chapter 16A of the *Children and Young People (Care and Protection) Act 1998* (NSW)) explicitly prioritise children's safety over privacy laws, confusion about legal constraints and anxiety can still limit information sharing.[302]

Professional and organisational cultures and reluctance to share information

Previous inquiries and reviews have noted concerns about professional and organisational privacy cultures that can conflict with the need for information exchange for protecting children. Such conflicts may result in 'cultural divides' between agencies holding information and child protection agencies seeking information. These 'cultural divides' have the potential to 'derail' collaborative interagency work to protect children.[303]

Professional or organisational cultures which inhibit or prevent timely and appropriate information sharing related to child sexual abuse in OOHC contexts may maintain the secrecy upon which child sexual abusers rely.[304] By so doing, such cultures undermine the safety of children in OOHC.

For information sharing arrangements to operate effectively, they must be supported by organisational and professional cultures with strong practice leadership, which understand and observe the proper limits of privacy.

Issues for particular consideration

Privacy laws do, to some extent, support information sharing to protect children in OOHC contexts. However, the limitations and complexities of privacy laws, and the resulting barriers to information sharing (whether real or perceived), may sometimes hinder the protection of children.

We are considering other arrangements, beyond those allowed for by privacy laws, which may be established to clearly and consistently provide for intra-jurisdictional and inter-jurisdictional sharing of information relevant to child sexual abuse in OOHC contexts.

Children's right to privacy

As we noted earlier in this chapter, we have been told in private sessions and in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* that information is not being shared with carers because of concerns about confidentiality and the privacy of children in care.[305]

We heard in evidence in *Case Study 24: Preventing child sexual abuse in OOHC* that lack of confidentiality is a barrier for children in OOHC disclosing sexual abuse.[306] Lack of confidentiality may also raise particular concerns for certain groups of children in OOHC, for example children from

Aboriginal and Torres Strait Islander communities and children from culturally and linguistically diverse backgrounds[307] and children in kinship care or relative care placements.[308]

Finding the proper balance between due regard for children's privacy and addressing the needs of and risks to children in OOHC contexts may be particularly difficult where the privacy concerns are those of an abused or at risk child. However, the privacy concerns of children in care who have engaged in sexually harmful behaviours must also be given due consideration.[309]

Children's views should be taken into account in making decisions about their lives – including decisions about sharing their personal information. However, it is also important to recognise that children may not be in a position to determine appropriate use of their information for their own and other children's safety. As discussed above more generally, seeking consent to disclosure of personal information may not be possible, reasonable or appropriate. Seeking children's consent may be particularly problematic given perpetrator grooming and children's reluctance to disclose abuse. In addition, children may lack the capacity to consent.[310]

Prioritising children's safety while respecting privacy

We acknowledge the importance of privacy for all children in care. However, we are also mindful that strict maintenance of their privacy and confidentiality may compromise their safety and that of other children in OOHC contexts.[311]

A proper understanding of and capacity to address privacy and confidentiality concerns sensitively and appropriately, restrictions on further use and disclosure,[312] and security of shared information may be helpful in properly balancing privacy and safety. De-identified and/or limited disclosure (sufficient to flag any relevant safety or wellbeing concerns, protect against the risk of abuse and enable therapeutic responses) may also be considered.

It is worth noting here CREATE's view that '[i]nformation provision [to carers] should focus on equipping carers to deal with the child's behavioural needs and how to handle this, rather than necessarily the details of abuse'.[313] However, as the recent case of *ABC & Ors v State of Queensland & Anor*[314] demonstrates, some circumstances may require more comprehensive disclosure of information relating to children with sexually harmful behaviours.

A nationally consistent approach

OOHC service providers have indicated support for nationally consistent approaches to information sharing. Specifically, support has been indicated for a nationally consistent approach to information sharing between nominated agencies;[315] a nationally consistent approach to sharing information about carers and carer applicants who have been de-registered or denied accreditation;[316] a carers register in all jurisdictions to provide clear processes for sharing information between agencies;[317] and the creation of a national information bank about perpetrators of sexual abuse of children in OOHC.[318]

We understand that considerable action, commitment and resource investment by all jurisdictions will be required to reach agreement on and implement nationally consistent approaches to information sharing.

However, the potential benefits of nationally consistent approaches which apply equally to government and non-government agencies are also considerable.

Nationally consistent approaches will benefit children in OOHC by giving institutions greater certainty and confidence to share relevant and potentially critical information. Nationally consistent approaches to information sharing are also more likely to contribute to the achievement of equal protection for children in OOHC across Australia.

National consistency in arrangements for government agencies and non-government organisations to engage equally in interstate information exchange is likely to assist in the understanding of and compliance with applicable provisions, policies and practices. Such national consistency is likely to reduce the compliance burden on organisations providing OOHC services subject to different and complex rules for information sharing, both within and across jurisdictions.

As one OOHC service provider told us, nationally harmonised systems or national consistency would be of assistance to organisations operating in more than one jurisdiction.[319] We seek your views on whether nationally consistent approaches to intra-jurisdictional information sharing would better support consistency in interstate information exchange.

An example model

Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) is an information sharing arrangement which appears to offer significant benefits for the protection of children in OOHC contexts.

Before Chapter 16A was introduced in New South Wales in 2009, the main arrangement for sharing information related to the safety and wellbeing of children in OOHC contexts was through the child protection agency under s248 of that Act. This provision empowered the New South Wales child protection agency to direct prescribed bodies to provide it with safety, welfare and wellbeing information and to provide prescribed bodies with safety, welfare and wellbeing information. Effectively, this meant that the child protection agency had to be relied on as the 'clearing house' for all safety and wellbeing information related to children in OOHC contexts.[320]

Chapter 16A was introduced in response to the recommendation by the Wood Special Commission of Inquiry into Child Protection Services in New South Wales (Wood Inquiry) that the Act be amended to enable direct exchange between agencies, including non-government organisations.[321] In addition, Chapter 16A was introduced to resolve the 'complex relationship between privacy legislation, agency privacy codes of practice and access to information under the *Children and Young Persons (Care and Protection) Act 1998*', which was also identified by the Wood Inquiry as an impediment to information sharing.[322]

As discussed above, Chapter 16A enables information related to children's safety, welfare and wellbeing to be exchanged for a range of purposes, including identifying, preventing and responding to child sexual abuse in OOHC contexts.[323] In summary, the provisions of Chapter 16A:

- require prescribed bodies to provide relevant information on request from other prescribed bodies unless limited exceptions apply

- allow prescribed bodies to provide relevant information to other prescribed bodies without a request for that information
- explicitly prioritise safety, welfare and wellbeing of children over confidentiality and an individual's right to privacy
- emphasise the need for interagency communication and collaborative practice.[324]

The wide range of prescribed bodies that Chapter 16A applies to include New South Wales Police, the NSW Department of Family and Community Services (the New South Wales child protection agency), Children's Guardian, Ombudsman, government and non-government OOHC service providers, government agencies and other organisations involved in the provision of health care, welfare, education, children's services, residential services, and law enforcement to children.[325]

Unlike other jurisdictional information sharing arrangements which refer specifically to government contracted or funded organisations, Chapter 16A clearly and comprehensively captures relevant organisations regardless of contractual arrangements or funding source.[326]

The application of Chapter 16A to the NSW Children's Guardian and the NSW Ombudsman, as well as OOHC service providers, can complement and support regulatory and oversight processes with effective information sharing and collaboration between service providers and regulatory/oversight bodies for prevention and risk management.[327]

As we have noted, the obligation to share under Chapter 16A arises if the prescribed body from whom information is sought reasonably believes the information *may* assist in the exercise of a range of functions related to the safety, welfare and wellbeing.[328] This may be a significant point of difference with the equivalent information sharing provisions in the Northern Territory, where prescribed bodies are only obliged to share if they reasonably believe doing so *would* assist such purposes.[329] The lower threshold for obligatory information sharing in New South Wales may provide greater scope to capture potentially important information.

Exceptions to the obligation to share information under Chapter 16A are, as noted above, limited. Prescribed bodies are not required to disclose information where they reasonably believe that doing so would:

- prejudice the investigation of a contravention (or possible contravention) of a law in any particular case;
- prejudice a coronial inquest or inquiry;
- prejudice any care proceedings;
- contravene any legal professional or client legal privilege;
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained;
- endanger a person's life or physical safety;
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law; or
- not be in the public interest.[330]

As we have previously indicated, inappropriate information sharing may undermine the investigation and prosecution of alleged sexual abuse of children in OOHC contexts. Exceptions to information

sharing obligations such as those listed above which protect the integrity of investigation and prosecutorial processes are, therefore, particularly important.
We also note that the exception relating to identification of confidential sources may support disclosure of child sexual abuse in some cases.[331] We are considering whether the exceptions to information sharing obligations under Chapter 16A are appropriate and adequate. We seek your views on this issue.

In evidence in *Case Study 24: Preventing child sexual abuse in OOHC*, in submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* and in our OOHC roundtable, we heard from key agencies involved in the operation of Chapter 16A about the benefits derived from the model.[332] The Deputy Secretary of the New South Wales child protection agency (NSW Family and Community Services) told us that Chapter 16A has helped to 'set aside the privacy debate'.[333] We heard that Chapter 16A enables information from a variety of sources to be easily gathered to better inform assessments of and responses for children at risk.[334] We also heard that the operation of Chapter 16A has resulted in significantly more information being shared than was the case prior to its introduction.[335]

Recent research by the Social Policy Research Centre (UNSW) confirms that 'information sharing in child welfare has improved considerably across the board as a result of the [introduction of Chapter 16A] and the training and organisational support for these changes'.[336]

Fragmentation of information, as carers and placements are transferred to the non-government sector and as carers move between OOHC service providers, can create risks for children in care. We understand that the NSW Carers Register was recently established to address such risks. We also understand that the NSW Carers Register is supported and complemented by Chapter 16A as a critical mechanism for interagency information exchange about carer suitability and placement safety.[337]

We have been told that information sharing arrangements like Chapter 16A, complemented by regulatory and information exchange mechanisms like the NSW Carers Register, are likely to promote the safety of children in OOHC contexts (the NSW Carers Register is discussed earlier in chapter 4).

We also understand that Chapter 16A has some limitations. For example, it presumes a prescribed body seeking or needing information will know which other prescribed body may hold relevant information. However this is not necessarily the case. We also note there is no comprehensive, systematic data about the use and effectiveness of Chapter 16A.[338] However, inconsistent (within and between organisations and sectors) and inadequate awareness, practice, and confidence in sharing information under Chapter 16A have been reported.[339]

Chapter 16A's explicit prioritisation of information sharing for the safety, welfare and wellbeing of children over the protection of privacy and confidentiality,[340] together with clear protection against criminal and civil liability,[341] should promote timely and appropriate information sharing. However, it appears that anxiety and reluctance to share information remain in some quarters.[342] This suggests that more needs to be done in New South Wales to promote understanding and confidence in sharing information to protect children in OOHC contexts.

It may also be significant that, while prescribed bodies must provide written reasons for any refusals to share information in response to a Chapter 16A information request,[343] there is no other apparent legislative mechanism for ensuring compliance where an obligation to share arises. This may present problems where there is reluctance to share information.

There appears to be some room for improvement in the operation of Chapter 16A in New South Wales. In addition to improvements in understanding and practice, there may be some value in considering whether additions should be made to the current range of prescribed bodies under Chapter 16A – for example, particular professional groups who may provide key services and supports in OOHC contexts as individuals, rather than through agencies or organisations. Improvements in information sharing between these professionals and organisations such as OOHC providers may assist in preventing and responding to child sexual abuse in OOHC contexts. We note that a recent amendment to section 245B(1) enables such individuals to be added as prescribed bodies for the purposes of Chapter 16A.[344]

We are considering whether, as a model, Chapter 16A is likely to enable improvements in intra-jurisdictional information sharing to prevent and respond to child sexual abuse in OOHC contexts in all jurisdictions.

Harmonising inter-jurisdictional information sharing arrangements with intra-jurisdictional arrangements may provide greater clarity, resulting in improved understanding and practice to better protect children in OOHC contexts. We are considering whether adapting Chapter 16A for inter-jurisdictional application is also likely to result in improvements in information sharing across jurisdictions. We seek your views on this.

Jurisdictions' implementation of any such information sharing arrangements should be supported with education and training of those responsible for sharing information. In addition, the development of child safe organisational cultures, which promote understanding of and confidence in appropriate information sharing, may also enhance the safety and wellbeing of children in OOHC contexts.

5.2 Addressing the problem

Effective and appropriate information sharing is important for identifying, preventing and responding to child sexual abuse in OOHC contexts. We seek your views on how current information sharing arrangements across Australia could be improved to better protect children from, and respond to, sexual abuse in OOHC contexts.

Potential improvements in information sharing to better protect children in OOHC

Information sharing in OOHC contexts may be improved as outlined below:

1. Institutions' sharing of information related to child sexual abuse with children in OOHC could be strengthened to:

    - better inform children about child sexual abuse, especially where they have been or may be directly affected by such abuse
    - better promote children's participation in decision making that affects them.

2. Institutions' information sharing of information related to child sexual abuse with carers could be strengthened to better assist carers in:
    - making informed decisions to accept placements
    - supporting placement stability
    - providing appropriate care for children who have been sexually abused and for children with sexually harmful behaviours
    - managing risks to children placed in their care and risks to other children in their household.

3. All jurisdictions could have in place nationally consistent arrangements for intra-jurisdictional and inter-jurisdictional exchange of information related to the safety and wellbeing of children, including information related to child sexual abuse in OOHC contexts.

    These arrangements could be modelled on Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to enable information sharing for purposes related to identifying, preventing and responding to child sexual abuse in OOHC contexts.

    In particular, these arrangements could:

    - enable direct exchange of relevant information between a wide range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies and regulator/oversight bodies, involved in the lives of children in care
    - enable prescribed bodies to provide relevant information to other prescribed bodies without a request, for purposes related to identifying, preventing and responding to child sexual abuse in OOHC contexts
    - compel prescribed bodies to share relevant information on request from other prescribed bodies, for purposes related to identifying, preventing and responding to child sexual abuse in OOHC contexts, unless limited exceptions apply
    - explicitly prioritise safety and wellbeing of children over confidentiality and privacy.

4. All jurisdictions and prescribed bodies subject to information sharing arrangements, as proposed at 3 above, could work together to ensure implementation is supported with adequate education and training of those responsible for sharing information. Education and training should promote understanding of, and confidence in, appropriate information sharing to better identify, prevent and respond to child sexual abuse in OOHC contexts.

   We seek submissions on these issues, and on the changes to legislation, policy and practice that may be required to give effect to such improvements. In relation to 3 above, we also seek submissions on the appropriate range of prescribed bodies that should be subject to such arrangements, the appropriate range of exceptions to information sharing obligations, and the challenges jurisdictions may face in implementing these arrangements.

6. Child safe organisations

This chapter outlines what we know about the current approach to making organisations child safe, and about opportunities to enhance the safety of children in organisations. We have identified nine key elements, which although still in draft form and subject to testing, provide the framework for an overarching approach to making organisations child safe.

All organisations providing services, activities or venues for children must take proactive steps to protect children from harm, including sexual abuse. Research and practice wisdom helped us identify the key elements of a child safe organisation. Many of these key elements are reflected in the *National Framework for Creating Safe Environments for Children*[345] (developed in 2005), which is in addition to the *National Framework for Protecting Australia's Children 2009–2020.*

Given that OOHC can be a high risk institutional environment for sexual abuse, there should be a corresponding highly reliable culture of safety – a culture that 'walks the talk' – where child safe organisational principles are consistently practiced and are behaviourally observable.

6.1 Current approach

Child safe organisations are those that create cultures, adopt strategies, and take action to prevent harm to children broadly and to prevent child sexual abuse specifically. The Australian Children's Commissioners and Guardians describe a child safe organisation as one that consciously and systemically:

- creates conditions that reduce the likelihood of harm occurring to children and young people
- creates conditions that increase the likelihood of any harm being discovered
- responds appropriately to any disclosures, allegations or suspicions of harm.[346]

Although our work is focused on the sexual abuse of children in institutions, most resources on child safe organisations are relevant to all forms of harm to children. We have learnt through our private sessions, public hearings, research and consultation work to date that it is important to consider child safety strategies and frameworks within broader policy approaches that promote children's safety, health and wellbeing.

There is evidence that many survivors of child sexual abuse in residential institutions also experienced physical abuse, psychological maltreatment and neglect while in OOHC as children.[347] We have been told that risk strategies must not only focus on the risk of sexual abuse to children, but must cover the full range of intentional and unintentional harms that could occur in an institutional setting.[348]

National child safe organisation frameworks

There are currently two national child safe frameworks in place:

- the *National Framework for Creating Safe Environments for Children*, endorsed by the Community and Disability Services Ministers' Conference (CDSMC) in 2005 (the National Framework for Creating Safe Environments)
- Principles for Child Safety in Organisations, developed by the Australian Children's Commissioners and Guardians in 2013 (the ACCG Principles).

The 2005 *National Framework for Creating Safe Environments* encourages a comprehensive national approach without making regulatory or legislative recommendations. It acknowledges jurisdictional variations and the diversity of services working with children. It is a non-binding document that sets out the national consensus on strategies for ensuring community service organisations are child safe. The extent to which this framework has been implemented is unknown, as no formal evaluations or reviews have been conducted and no independent monitoring has been publicly reported.

State and territory approaches

Implementation of child safe approaches based on the *National Framework for Creating Safe Environments* within states and territories may be considered on a continuum from binding to non-binding. Binding examples include legislation in South Australia (2010)[349], Queensland (2011),[350] and Victoria (2016)[351] with detailed requirements for child safety within certain organisations, generally focused on screening, risk management and codes of conduct, supported by capacity building. The Australian Capital Territory[352] and New South Wales[353] have focussed child safety activities on capacity building support, as well as implementing binding child safe requirements for limited circumstances or sectors. Other states and territories, such as Western Australia and Tasmania, have a non-binding approach to child safety and have solely focussed activities on awareness raising and capacity building.

The Children's Commissioners and Guardians play a significant role in promoting child safe initiatives in the states and territories. Except for Northern Territory, all have developed resources to build capacity and promote child safe policies and practices.

Sector level frameworks

In relation to OOHC, as mentioned previously, the National Standards for OOHC[354] apply to any Australian OOHC service provider and were implemented in 2011 under the *National Framework for Protecting Australia's Children* (the National Framework). Although not specifically related to child safe organisations, the 13 National Standards are focused on the key factors known to influence better outcomes for children living in OOHC. The standards are prescriptive, and would be readily supplemented by child safe organisation frameworks, standards and guidelines.

6.2 Identifying the elements of a child safe organisation

While we acknowledge the existence of the *National Framework for Creating Safe Environments*, the National Standards for OOHC, and the approaches taken by the states and territories to make organisations child safe, we have learnt that there is a varied approach to and understanding of child safety within organisations, and little research evidence on which to base best practice in this area. Furthermore, the enforcement of child safe standards is partial and fragmented across states and territories and within OOHC.

We therefore decided to review all available evidence, to identify the elements necessary to make organisations child safe so that then we can consider how they could best be applied to better protect children from institutional child sexual abuse.

Our work to date has involved reviewing and analysing the available information and evidence, including:

- almost 60 submissions received in response to *Issues Paper 3: Child Safe Institutions*
- findings from our many public hearings to date
- information from thousands of private sessions
- relevant research and literature in Australia and internationally, including research commissioned by us
- child safe frameworks, guidelines and standards in Australia and internationally
- findings and recommendations from previous inquiries.

This analysis led us to identify the following as the nine key elements to focus on in making organisations safe for children:

- organisational leadership, governance and culture
- human resources management
- child safe policies and procedures
- education and training
- children's participation and empowerment
- family and community involvement
- the organisation's physical and online environment
- review and continuous improvement of policies and processes
- child focussed complaint processes.

Effective implementation of these elements must take into account the diverse experiences and needs of all children. Children who may be at greater risk of sexual abuse, such as children with disability or children in residential care, may require additional or special measures. Barriers to disclosure such as language or cultural issues must also be addressed. Different types of institutions may pose different risks to children and also warrant extra measures to adequately protect children from child sexual abuse.

As part of our consultation process, we are undertaking a research project to obtain systematic feedback from a panel of independent experts who will test the nine elements (including their

adequacy, reliability, usability and relevance) by answering a series of structured questions. This testing process will bring additional rigour to the key elements and solidify them as the key requirements for organisations to be child safe.

Until we conclude the research project, the nine elements we have identified are preliminary in nature. However, we have described them here to seek your feedback into their potential application in the OOHC setting. With some exceptions, they generally align with the *National Framework for Creating a Child Safe Environment* and other child safe standards in place across Australia.

Overview of the key elements of a child safe organisation

Although the nine elements we have identified are generally consistent with the *National Framework for Creating a Child Safe Environment* and National Standards for OOHC, they are currently applied to varying extents across the Australian OOHC system.

1. Organisational leadership, governance and culture

This element encompasses the need for the organisation's approach and commitment to child safety to be set from the top, and embedded into all aspects of the organisation's practice and business. It involves:

- a commitment to good governance – governance that is accountable and transparent; follows the rule of law; is responsive, open, equitable, inclusive, fair and just; and is effective, efficient and participatory
- leaders establishing a culture where all staff members are responsible for preventing child abuse
- a clear risk management strategy with a focus on prevention, which considers risk in specific activities and to particularly vulnerable children, without discouraging positive relationships between children and adults, and healthy child development
- codes of conduct and clear roles and responsibilities that apply to all staff and volunteers, and which clearly describe acceptable and unacceptable behaviours as well as clearly documented processes for dealing with breaches.

Consistent with this element, submissions in response to *Issues Paper 3: Child Safe Institutions* identified some core strategies for preventing child sexual abuse in OOHC, namely:

- leadership and management styles that promote openness
- a focus on being child friendly not just child safe
- adequate risk assessment processes.

CREATE Foundation (the national peak body representing children in OOHC) stated in its submission to *Issues Paper 3: Child Safe Institutions* that 'fostering an organisational culture which recognises the barriers children and young people may face in being aware of their own rights and enabling them to speak up is an important step to addressing organisational factors which may have provide opportunities for harm to be undetected.'[355]

2. Human resources management

The safety of children in organisations relies on strong human resource management practices being in place, to ensure only the most appropriate people are chosen to work with children. This includes robust processes for identifying and excluding known offenders or those who pose a risk to children, and prioritising child safety in advertising, recruiting, screening, selecting and managing all staff members and volunteers.

This is particularly relevant for screening, assessing and authorising carers and residential care workers. Submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* noted the following strategies relevant to OOHC:

- A child or young person should only be placed with a carer after that person and other adults residing in the home have undergone relevant criminal record checks and WWCC; received a home visit; and been assessed by the organisation accrediting that person as a carer.
- There should be appropriate sharing of information across states and territories, as well as across agencies, to facilitate the safety and wellbeing of those in OOHC.
- Assessment interviews with carer applicants should include an exploration of the applicant's personal background, including their childhood experience and any personal experiences of abuse.
- Assessment of licensed service providers should include site visits and the development of a monitoring plan by regional teams that are responsible for funding and contract management.

Carer screening and assessment as well as ongoing monitoring, training and support is fundamental to protecting children from abuse and making OOHC systems child safe. However, information gathered in preparation for *Case Study 24: Preventing child sexual abuse in OOHC* suggests that processes for carer screening, assessment, follow-up assessments and monitoring – as well as training and support – differ markedly across care types, jurisdictions and providers.

3. Child safe policies and procedures

Child safe policies and procedures help to reduce the likelihood of abuse occurring; increase the likelihood of any abuse being discovered; and respond appropriately when abuse is reported or identified. Transparency and clear public statements may deter some potential perpetrators from targeting a specific OOHC setting.

Importantly, policies and procedures should be publicly available and accessible; should be reviewed and embedded in training and education; and should specify clear processes, obligations and responsibilities for all involved in the organisation.

Our *Case Study 2: YMCA New South Wales' response to the conduct of Jonathan Lord* which examined child sexual abuse within YMCA New South Wales'[356] outside school hours care, showed that rules and clear policies about adult-to-child and child-to-child relationships should be unambiguous, widely disseminated, and supported by staff supervision and training. Furthermore, where adults interact with children, even excellent policies will not mean an organisation is child safe unless there is a clear understanding of how the policies actually affect staff behaviour and

experience.[357] Supervision and performance management is required to enforce the strict compliance of all staff with organisational expectations and child safe behaviours.

4. Child focussed complaints processes

Robust and effective complaint handling procedures are required of all institutions, so they can respond adequately to allegations of child sexual abuse.[358] These procedures have added importance in OOHC, where it appears that the risk of child sexual abuse is relatively high compared to other institution types.[359]

This element focuses on the need to have clear and detailed policy and procedures about how to respond to complaints, including concerns, suspicions, disclosures, allegations and breaches. It is important that staff members and volunteers are aware of their reporting obligations and responsibilities, and the importance of prompt action. Complaints processes must also ensure procedural fairness for all involved; include review mechanisms; and provide for disciplinary action that can withstand external scrutiny in accordance with relevant employment law and other employer responsibilities.

During *Case Study 24: Preventing child sexual abuse in OOHC,* recent care leavers gave evidence of the many barriers to making a disclosure or complaint about sexual abuse.[360] These include:

- the power imbalance between the child and the institution or the individual to whom the complaint might be made. This barrier is perhaps the most challenging in the OOHC context, where the child is often dependent on the person, employee or organisation the child is seeking to make a complaint about
- lack of trust in the process
- low self-esteem, fear and embarrassment
- the victim's lack of knowledge about child sexual abuse, the complaints process or their rights.

We have also heard from children and young people about the importance of having access to an independent person who they can trust in disclosing sexual abuse, and a process that they know and trust.

The results captured in the CREATE Foundation's CREATE Report Card 2013 indicates that many children in care do not know their rights, are unaware that they have a right to complain, and in any event do not know how to make a compliant if they have one. The Report Card collated the responses of more than 1,000 children in OOHC across Australia to a survey that was designed to gather their views on key issues. The Report Card noted that 50 per cent of young people in OOHC did not know how to make a complaint.[361]

It is critical for organisations to address these issues by implementing adequate complaints processes for children in OOHC.

5. Education and training

A child safe organisation has an underlying ethos and vision of itself as a 'learning organisation' where staff at all levels are continually building their capacity. It also promotes and provides regular ongoing staff development via education and training.

This element is based on the idea that all staff and volunteers should receive comprehensive and regular training in child safe practices and child protection.

In *Case Study 2: YMCA New South Wales' response to the conduct of Jonathan Lord*, we found that child-related organisations should train all staff in child protection. This training, ideally with expert external trainers, should:

- provide staff with a clear understanding of child sexual abuse and its dynamics, including the characteristics of perpetrators and the behavioural indicators of child victims – and how, when and where sexual abuse is more likely to occur
- empower staff with the knowledge and competencies they need to prevent sexual abuse, identify risks, report concerns, and respond to discovery, disclosure and allegations of abuse.[362]

Evidence in the public hearing on *Case Study 24: Preventing child sexual abuse in OOHC* indicated that the approach to training carers is varied.[363] We have read several submissions that also suggested that training in the prevention of child sexual abuse and appropriate responses to indicators of sexual abuse should be mandatory for all staff members and volunteers who care for children or work in support roles.

6. Children's participation and empowerment

Child safe organisations observe Article 12 of UNCROC regarding the right of children to express their views and participate in decisions that affect their lives. They also recognise that children have rights to be heard, listened to, and taken seriously. They also give due consideration to the child's age, maturity, understanding and abilities. A child safe organisation should strive to make children and young people aware of the standards of care they are entitled to, in an age-appropriate and child-friendly manner.

Children's participation and empowerment is about more than just providing information to children about decisions that affect them; rather, it means engaging them in all aspects of an organisation and its processes, and empowering them to participate and raise concerns.

We understand the challenges that organisations may encounter when it comes to engaging children in the decision and policy making processes that affect their lives. However, in the course of our work we have regularly been told that children's voices are often not heard or considered in the process of devising policies to prevent and respond to sexual abuse in OOHC.

7. Family and community involvement

Child safe organisations observe Article 18 of UNCROC, which states that parents, carers or significant others with caring responsibilities have primary responsibility for the upbringing and

development of the child in their care. This includes being informed about the organisation's operations and the child's progress, and being involved in decisions affecting the child.

In the OOHC context, it is well recognised that family and community involvement, including connection with family, is critical if children in OOHC are to achieve positive outcomes. This is particularly so for children from Aboriginal and Torres Strait Islander backgrounds and communities. As identified by the Senate Community Affairs References Committee's Inquiry into OOHC, one of the key challenges for families with children in care is the need to establish positive and constructive relationships with child protection authorities.[364]

8. Physical and online environment

Child safe organisations have due regard to the need for a well-designed physical environment that minimises opportunity for abuse to occur without compromising healthy child development. There must be a balance between visibility and natural surveillance, and the need to preserve children's privacy and capacity to engage in creative play and other activities. Child safe organisations also consider and address risks to children in online environments.

In response to *Issues Paper 3: Child Safe Institutions*, non-government organisations identified the risk of sexual harm currently faced by children in residential care – primarily around the pressure of high demand and the inappropriate matching of children with placements – including:

- a heightened risk of sexual exploitation when perpetrators become aware of the location of residential units
- the risk of child-to-child abuse.

Several non-government organisations have told us that these risks are influenced by a number of factors including staffing issues; the composition of residential units; policies relating to filling residential beds; and the funding agreements that stipulate targets set by the funding bodies.

The OOHC sector has such a diverse range of facilities and environments – with varying levels of monitoring and oversight – which makes addressing this element a complex task. The increasing online sexual exploitation of young people presents challenges, with those in OOHC at a particular risk.

9. Review and continuous improvement

Best practice requires child safe organisations to have mechanisms for regularly reviewing, evaluating, updating and refining policies and practices in relation to child safety. Review processes are critical to strengthening the safety of children in OOHC.

Reviews are required at every level, and there is a need for learning cultures that open up a safe environment for critical reflection – rather than a 'blaming environment' that can close down disclosures and inhibit transparency. Children should be genuinely engaged in these processes of policy review and continuous improvement. Exit interviews for young people leaving care should also inquire as to how the system could be improved.

6.3 Opportunities to improve the safety of children in OOHC

The National Standards for OOHC, established under the National Framework[365] provide useful guidelines to help states and territories deliver a more consistent response to children in OOHC.[366] However, we have learnt that more needs to be done to ensure jurisdictions and service providers meet the standards and principles in the OOHC context. We have heard that aside from these standards being developed, little has been done to review them or check that they are being adhered to.[367]

We are also aware that at least three states and territories have mandated child safe standards in legislation, which seem to apply to varying degrees to the OOHC setting, although not in a comprehensive or clear way.

We are mindful of not attempting to reinvent the wheel or recommend additional processes, requirements or frameworks on top of those already in existence. We are interested in building on the mechanisms already in place to improve the safety of children in OOHC.

One of the challenges in identifying the key elements of a child safe organisation, is the need to ensure they are applicable across the diverse range of organisations and sectors involving children. Although all the key elements of a child safe organisation are critical to the OOHC sector, it is important to determine where the accountability to fulfil each of these key elements lies. In residential care, the institution's responsibilities are clearer. In less structured OOHC contexts such as foster care, kinship/relative care, it will be important to determine the responsibilities of the government agencies in supporting non-government organisations and carers.

6.4 Addressing the problem

Material before us indicates that the *National Framework for Creating Safe Environments*, the National Standards, and state and territory based approaches are not adequately protecting children from sexual abuse in OOHC. The following section outlines our current considerations to strengthen the safety of children in OOHC.

Applying the child safe elements to the OOHC sector

We seek your views on the opportunities to improve the approach to child safety in OOHC, including opportunities to ensure that the nine key elements outlined in this chapter are embedded in OOHC organisations. To assist in our consideration of these issues, we welcome submissions in relation to:

1. the roles, accountabilities and interdependencies of different parts of the OOHC system (such as government agencies, non-government organisations and carers) in delivering and overseeing the key elements of a child safe organisation

2. the application of these elements in the OOHC system, including whether they should be binding or non-binding

3. whether all forms of OOHC should be required to comply with all of the child safe standards and principles

4. the regulatory, oversight, monitoring and implementation support mechanisms that might be required to support the implementation of child safe standards in OOHC

5. whether there are specific challenges/considerations for the OOHC sector and/or particularly vulnerable groups within the OOHC setting when it comes to implementing child safe standards

6. resources and support mechanisms that might be required for OOHC organisations to comply with child safe standards

7. the best ways to drive continued practice improvement in child safety among relevant organisations within the OOHC sector

8. any other relevant matters.

We seek submissions from the Commonwealth, all states and territories, OOHC service providers and other interested stakeholders regarding the application of the nine child safe organisational elements as articulated above.

7. Prevention of child sexual abuse in OOHC

This chapter outlines what we have learnt to date about preventing child sexual abuse in OOHC, and the importance of supporting children in OOHC in their disclosure of sexual abuse. We seek submissions on whether a nationally consistent approach for the prevention of child sexual abuse in OOHC should be implemented, which would include targeted and effective sexual abuse prevention education programs for children.

7.1 Current approach

We commissioned researchers to conduct a scoping review, mapping evaluations of OOHC practice elements that aim to prevent child sexual abuse in OOHC. The review found limited rigorous research evidence about the effectiveness of practices or programs aimed at preventing sexual abuse in OOHC.[368] While it appears that there is substantive practice wisdom guiding current prevention practices in OOHC, the research identified no studies that specifically tested the effectiveness of practice elements or programs aimed at preventing child sexual abuse by carers or staff within OOHC institutions. The studies that do exist were assessed as having low methodological quality, and did not report on child sexual abuse rates before and after program implementation.

The review identified several 'practice elements' (defined as distinct practices or strategies) directly relevant to enhancing prevention of child sexual abuse for children in OOHC.[369] One of these was the delivery of education programs and support services.

A comprehensive review of the evidence base focused on school-based programs for preventing child sexual abuse.[370] The review found that programs were effective in increasing children's knowledge of child sexual abuse concepts and their self-protective skills. Programs may also promote the disclosure of sexual abuse although disclosure data is often collected in non-uniform ways so this information is equivocal.

Jurisdictions currently lack clear policy and practice guidelines to help carers and practitioners educate young people in OOHC about sexual abuse prevention. Although young people may appear 'worldly' and quite knowledgeable about sexual matters, in reality they may lack basic knowledge of human development, sexual functioning and what constitutes sexual abuse. They may also lack knowledge about safe sex practices, including the risk of pregnancy and sexually transmitted infections. Like many children, children in OOHC frequently have ready access to the internet and social media, via which they may be exposed to pornography, resulting in distorted and violent views about sexual relationships. In the absence of protective adults taking the initiative to discuss these matters with children in OOHC – to empower them with information and protective strategies – these children are more vulnerable to being exploited.

We have learnt that the OOHC environment is often characterised by:

- inadequate attention to proactive or preventative measures such as sexuality education and personal safety programs for children and young people
- inadequate knowledge of what constitutes sexual abuse and appropriate responses for children and their carers
- a failure to identify the indicators of sexual abuse by carers, managers and child protection representatives, who many minimise sexual exploitation as 'adolescent sexual experimentation'
- a failure to ensure adequate training and support to facilitate disclosures of child sexual abuse
- the absence of 'trusted adult relationships' for children and young people in OOHC.

Education programs aimed at preventing child sexual abuse

In private sessions and public hearings, we heard from survivors that for children entering OOHC, education on what sexual abuse is, what they can do about it and who they can tell about it is critically important in helping to improve their safety. We have heard many reports from survivors that as children, they did not know that what they were experiencing constituted sexual abuse. They were not informed of what sexual abuse was, nor what to do if it occurred.

CREATE Foundation reiterated the theme of education as a core strategy in its submission to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*, which stated that education empowers children about body ownership and disclosure:

> Comprehensive, age appropriate sexual health education and information may also assist in empowering children and young people to develop concepts of body ownership and empower them to feel comfortable to identify and raise any concerns about behaviours which cause them to feel uncomfortable. Providing sexual health information and support should be considered a key component of meeting the health needs of children in the out-of-home care system.[371]

Preventing child sexual abuse

In this work we are looking at prevention programs more broadly; however, in response to our concern about the general absence of child sexual abuse prevention programs in Australian OOHC, we have examined school based prevention programs. This has helped us to understand the aspects of these programs that are likely to apply to children in OOHC.

School curricula

Prevention concepts for child sexual abuse prevention are embedded in education systems worldwide. Schools are a logical place to deliver prevention initiatives as they provide a platform for reaching virtually all children, at a relatively low cost, without stigmatising those who may be at greater risk.[372] International guidelines developed by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in 2009 view child sexual abuse prevention education as a component of broader sexuality education beginning in the preschool years. UNESCO's (2009) *International Guidelines on Sexuality Education* states that all young people need sexuality education.[373]

In Australia, school authorities at the Commonwealth and state and territory level have developed and implemented curricula describing what and how children should learn as they progress through school. Child sexual abuse prevention education is typically addressed as part of the core Health and Physical Education curriculum area, where children are taught about healthy relationships, personal safety, and how to seek help. Although child sexual abuse prevention education is not a *sole* focus in any of these curricula, teaching prevention concepts is clearly within their scope.

These school based programs usually inform children how to identify sexual abuse, what to do in those situations, and how to make disclosures and seek help.

Sexuality education	• taught in various ways within Australian schools • can include content on understanding the body, sex education, prevention of sexually transmitted diseases • typically delivered within a framework that promotes inclusivity and diversity • may include anti-discrimination components relating to gender and identity • has a key focus on how to seek help
Healthy and respectful relationships education	• can include content on preventing gender-based violence, sexual assault and cyber-sexual crime within a whole-of-school framework • may include content on preventing of gender-based bullying, child sexual abuse, exploitation and trafficking
Social emotional learning	• can include content on developing interpersonal skills, to support positive views of oneself and others • focusses on developing skills to create respectful relationships; building capacity to identify and manage emotions; and developing resilience and responsible decision-making
Child protection education	• can include content on preventing child sexual abuse (for example touching, grooming, keeping secrets and seeking help) within the context of recognising, reporting and responding to a range of risky situations where children may need protection, such as situations of physical and emotional abuse, and family violence • it may also include content on peer bullying.

Evaluations of school-based child sexual abuse prevention programs and systematic reviews of these evaluation studies have begun to identify the characteristics of effective school-based programs.[374] This provides useful information about practice elements that should be incorporated in prevention initiatives directed towards children in OOHC.

The table below details common characteristics of programs from the research literature over a 30 year period.

Evidence-based characteristics of school-based child sexual abuse prevention programs[375]

Program characteristics	Details
Program topics or curriculum content	• How to recognise abusive situations • Children's bodies belong to them • Distinguishing appropriate and inappropriate touch • Distinguishing types of secrets and / or surprises • Correct anatomical terms for identifying private parts • The 'no, go, tell' sequence • How to identify and tell a trusted adult • Children are not to blame • Both boys and girls can be abused • Adults can sometimes act inappropriately • Offenders may be people they know / trust • Perpetrator strategies (grooming, for example) • It's okay to say 'no' to touching • Identifying the body's warning signs • Safety with technology
Program methods or teaching strategies	• Demonstrating prevention strategies • Practising of prevention skills • Repeating key messages • Providing feedback to children • Active participation • Group discussions • Building messages across year and age levels
Program resources or materials	• Theatre presentation, performance, play and demonstration • Multimedia and computer-based instruction • Videos and DVDs • Workbooks and worksheets • Puppets and characters • Stories, picture books and comics • Games, picture cards and posters • Photos and drawings • Anatomically correct dolls • Homework

Tailoring child sexual abuse prevention programs for children in OOHC

It is important to note that prevention approaches such as those discussed above may not reach all children in OOHC, given that these children often experience disrupted educational pathways as a result of their transition to care and subsequent placement changes. Generally, each placement

change results in a change of school, loss of relationships with teachers and peers, interrupted curriculum content and missed learning opportunities.[376] Children in OOHC may miss these learning or relationship bonding opportunities, or not have an opportunity to fully engage in them. This creates additional risks, as the loss of school based learning may increase the likelihood of children seeking information from any available source, thus increasing their vulnerability to exploitation.

We have learnt that initiatives need to consider giving special attention to specific groups of children in OOHC who may be at heightened risk of abuse, such as children with disability.

Current education programs that focus on preventing child sexual exploitation, relationship violence and bullying may be inadequate for children with disability.[377] They may not be delivered in accessible ways and/or may not use models or examples that can be discerned as appropriate for children who require assisted communication technologies, speak different languages or do not see themselves represented. Lack of appropriate prevention education leaves these children without a language with which to disclose and describe their abuse.[378]

There may also be a need for flexible programs that can be tailored to the individual child based on a careful assessment of the child's history and circumstances. Programs aimed at preventing the sexual abuse of children must take into account the specific needs of the child or young person.

Supporting children in OOHC to disclose by educating adults about perpetrators and abuse dynamics

A key component of preventing further child sexual abuse in OOHC is empowering children to disclose sexual abuse – or report when they are uncomfortable about adults' or other children's behaviour – at the earliest possible opportunity. This requires a culture within the placement where adults are aware of and confident about having these difficult conversations. This requires ongoing education, supervision and support for carers and practitioners. We understand that disclosure is often significantly delayed, however many survivors have told us that they would have spoken out earlier or that they tried to, but that adults were not sensitive or responsive to their cues.

In *Case Study 24: Preventing child sexual abuse in OOHC* we heard evidence that young people often first disclose sexual abuse to other young people or their 'peers'. We heard evidence that there is a gap in practice regarding the level of support provided to those young people whose friends have disclosure sexual abuse to them from their friends.[379] Practice-based evidence suggests that about 20 per cent[380] of young people who experience abuse disclosed it to a peer.

When children disclose sexual abuse, they are sensitive to the adult response and to any expression of blame, verbal or non-verbal. It is important that carers and practitioners be trained in how to respond. As told by individuals who have shared their experiences with us in private sessions, and as described by a recent OOHC care leaver below, the shame of child sexual abuse and fear silences many children:

> You need to be safe and secure to reveal … and feel as though you're going to be believed.[381]

In our OOHC work to date, we have heard that:

- care teams must plan and implement strategies that will engage children in developmentally appropriate ways, beginning in early childhood, so they understand healthy relationships and sexual safety
- carers, residential care staff, and practitioners should begin discussions about sexual development, healthy relationships, and child sexual abuse prevention with a child and not wait until the child's adolescence when they may (or may not) access sexuality education programs at school.
- carers, residential care staff, and practitioners should not assume that child sexual abuse prevention education has been someone else's role in the child's life
- role clarity and expectations need to be documented so that this important area of development is not neglected by the statutory OOHC system.

A common dynamic that prevents children from disclosing sexual abuse is that the perpetrator has manipulated the child into thinking that the behaviour was the child's fault or choice, or that it was 'normal'. The adult perpetrator usually grooms the child victim, by making them believe they participated in the abuse and that there will be consequences if the child tells. This can lead to the child carrying shame and guilt and feeling responsible for the abuse.

Given that most sexual abuse of children in OOHC is perpetrated by known and often trusted adults, the child is likely to be enmeshed in a complex relationship, and the dynamics of that relationship are powerful in restricting the child's freedom to speak out.

Children generally do not have the language or cognitive capacity to name or understand what is happening to them. They can become traumatised and dissociative, shutting down emotionally or be completely overwhelmed with fear about who would believe them, or what others would think about them. Without information from safe adults who can speak authoritatively about the approaches and tricks that offenders use to groom children, the child is isolated by the perpetrator's deception.

Narratives of survivors of child sexual abuse have revealed that the process of disclosure can begin with the provision of new information that acts as a type of catalyst. This information may be in the form of school-based sex/sexuality education; personal safety or body safety education; respectful relationships education; or conversations with carers, parents and peers. New information can challenge the belief in some children, created by perpetrators, that the child is the only person in the world to whom this has happened or is happening – or, conversely, that sexual abuse is normal and happens to all children, and resistance is useless.

Training for carers and staff

We have identified a need for training and supervision for carers and practitioners, so they are equipped to initiate conversations with children, and to be proactive about sexuality education and child sexual abuse prevention education.

In submissions received in response to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC*, government and statutory bodies said that carers and caseworkers require training on child sexual abuse issues, delivered by an accredited training organisation. Ongoing support through supervision, training and other professional development is also required.

Evidence given during *Case Study 24: Preventing child sexual abuse in OOHC* was that only two jurisdictions have legislation mandating training for individuals before they become carers, although training in other jurisdictions is commonly required as a matter of practice.382 Pre-service training – which includes training about sexual abuse – is compulsory for foster carers in all jurisdictions except one, where it is compulsory for metropolitan foster carers but not regional carers. Such training is only compulsory for kinship/relative carers in three jurisdictions (New South Wales, South Australia and Northern Territory) and for metropolitan carers in a fourth (Western Australia).383

Community and academic groups submitted in response to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* that training in how to prevent child sexual abuse and respond appropriately to indications of sexual abuse, should be mandatory for all staff and volunteers caring for children or working in support roles within care arrangements. We have heard from a number of individuals that training and support for carers and staff is very important and often under-resourced. We have learnt that training should include topics such as:

- basic understanding of the normal development of young people, attachment theory and practice
- sexually harmful behaviours in children compared to healthy sexual development in children
- early warning signs and indicators of sexual abuse, including for young people who are at high risk of further abuse in care
- how to recognise and respond to grooming behaviours
- the obligations of all staff, carers and volunteers to report all suspicions or concerns, including laws on mandatory reporting requirements and pathways for reporting
- key features of the institution's complaints handling policy, including pathways for reporting and how the institution will respond to the complaint
- cultural issues and the high prevalence of child sexual abuse in some OOHC population groups (for example, children with disability).

We also received information from a number of organisations indicating that additional training should be available for foster carers, kinship/residential carers, residential care workers and all staff working with children in care who exhibit sexually harmful behaviours.

The New South Wales Government stated that undertaking more evidence-based research in Australia would be beneficial, in order to better understand the needs and risks associated with children who display sexually harmful behaviour towards other children, and what support the carers of these children need. It said that training should be mandatory, current and easily accessible. Training should also be flexible – it does not always have to be delivered in a formal training room or be prescriptive. It could, for example, include online modules and tailored topics.[384]

Submissions in response to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* consistently stated that there was not adequate and effective training available for the range of carers who are caring for children who have been sexually abused or who have sexually harmed other children.[385] Victoria is the only state to have a state wide system of services for children with sexually harmful behaviours in OOHC. As part of this therapeutic model, therapeutic service providers work systemically with the carers and the children's family of origin.

7.2 Addressing the problem

We have heard that the current ad hoc approach to the following issues requires attention, and that to better protect children from sexual abuse in OOHC, there needs to be more of a focus on:

- education prevention programs tailored and targeted for children in OOHC
- ongoing training and support to carers
- strategies to facilitate and support disclosures of child sexual abuse.

A national strategy to prevent child sexual abuse in OOHC

We seek your views on whether a national strategy on child sexual abuse prevention education for children in OOHC is required and should be embedded in the existing National Framework. Such a strategy would aim to create nationally consistent policy and practice expectations, to prevent child sexual abuse in OOHC in Australia and to encourage disclosures at the earliest possible time. This strategy requires the development and evaluation of resources and program implementation.

A consistent, national education strategy may include:

1. raising awareness about children in OOHC being vulnerable to sexual victimisation and revictimisation, among carers, children in OOHC, practitioners and OOHC service providers

2. an education prevention program targeted to children, carers and practitioners in OOHC, which:
   - identifies the necessary elements, drawing on those covered in school based programs identified in this chapter
   - covers how children can make a disclosure
   - covers how to support young people when a friend discloses sexual abuse to them
   - covers all forms of child sexual abuse by different perpetrator groups
   - is flexible and tailored to meet the individual needs of a child and their history
   - is delivered in a variety of formats, such as supportive group formats or on an individual basis

3. development and distribution of resources that are culturally sensitive and suitable for young people with a range of special needs including learning problems and/or disability

4. development and distribution of resources that include material for same sex attracted and gender questioning young people

5. development of an education and training framework for all foster, kinship/relative and residential carers and practitioners based on:
   - role clarity, processes and recording practices as set out in OOHC policies and procedures
   - understanding the importance of enabling a culture of openness, and creating an environment where a child feels safe to disclose abuse
   - developing skills and knowledge about how to talk to children about healthy relationships and sexuality education
   - understanding social media policies, with specific reference to pornography and the transmission of sexualised images (sexting)
   - awareness about the added risk of bullying, exploitation, depression and risk taking for same sex attracted and gender questioning young people

- ongoing coaching and supervision of staff and carers, building on their initial education and training as outlined above, to develop their knowledge of and skills in using the resources

6. mechanisms for implementing, reviewing, evaluating and improving prevention strategies and their components.

We seek submissions from young people, carers, peak bodies, advocacy groups, practitioners, the Commonwealth, all states and territories, OOHC service providers and staff, and other interested stakeholders on the issues raised above.

8. A supportive and quality care environment

We have learnt it is essential that all children and young people who experience sexual abuse in OOHC receive a supportive and quality care environment where they:

- receive adequate, timely and effective therapeutic treatment and support that is appropriate to their individual needs and circumstances
- are in appropriately matched and stable placements with carers who are adequately assessed, trained and supported
- are well supported and prepared to leave care with ongoing access to support, services, complaint mechanisms and records.

This chapter addresses each of these aspects of the OOHC environment and the importance of each aspect in protecting children from, and responding to, instances of sexual abuse in OOHC settings.

8.1 Therapeutic responses to child sexual abuse in OOHC

We have heard that therapeutic models of care can help improve outcomes for children and young people who have been sexually abused. However, we have also learnt that access to quality support and therapeutic models within OOHC is limited across Australia.

Understanding the impact of sexual abuse and trauma on a child's development is important for carers, residential care staff and professionals. Carers need to understand what may be motivating a child's behaviour, which may include sexually harmful behaviours and/or sexually 'acting out'. Carers and residential care staff need access to formal training and information about the impacts of child sexual abuse and trauma on a child's development, and must be supported when a child discloses sexual abuse.

Childhood sexual abuse can be associated with mental illness in adolescence and adulthood; victims are five to 16 times more likely to require psychiatric hospitalisation and three times more likely to suffer an eating disorder.[386] The risk of self-harm, suicide and substance abuse is also significantly increased. Victims of child sexual abuse are also at an increased risk of offending, including property, personal injury and sexual offences. Later abuse (that is, being sexually abused at 12 years of age or older) – more so than early abuse – presents as a significant risk factor for subsequent sexual offending by boys.[387]

Research in the UK indicates a correlation between children's exposure to and experience with family violence and physical violence and engagement in sexually harmful behaviours.[388] In *Case Study 24 OOHC: Preventing child sexual abuse in OOHC* we heard the following evidence:

> Exposure to domestic violence is the most prominent prior experience or the highest appearance in relation to boys who sexually harm.[389]

Children in OOHC, and particularly those in residential care, have often experienced cumulative harm,[390] (including sexual abuse) preceding their placement. The loss of stable attachment figures or relationships heightens their risk of further harm.

There is increasing recognition that at the core of problem behaviour is 'chronic and complex trauma',[391] which requires committed and calm carers and therapeutic attention. Similarly, there is greater recognition that addressing child sexual abuse in OOHC is not simply about preventing maltreatment. Rather, preventing child sexual abuse in OOHC is also about helping children overcome the neurobiological impacts of this trauma and promoting health and wellbeing. This approach aims to strengthen protective factors by acknowledging and addressing children's and young people's histories of pain and loss; supporting their education and hopes for the future; and helping them build quality relationships and connections to their community. It also highlights the importance of providing adequate therapeutic support and quality care for children in care, and providing sustained and adequate information and support for their carers.

We have been told that the needs of grandparents and other kinship/relative carers, as they nurture children placed with them who have experienced sexual abuse, are not being consistently met or adequately supported, and that this issue requires the attention of all states and territories. There is also a need to address the impact that children's trauma in OOHC can have on their carers.

Definitions of therapeutic care

As we discussed earlier, the therapeutic care responses within the OOHC system require further exploration and expansion. We are aware of some therapeutic care programs (as considered below), but access is currently limited for children in OOHC.

In Australia, therapeutic residential care is an emerging model that may 'represent optimal therapeutic care for children in the Australian out-of-home care environment'.[392] As noted in the Senate Community Affairs References Committee's Inquiry into OOHC, we are aware that therapeutic care is used in some residential care models and in some foster care settings[393] across Australia, and that many jurisdictions are committed to extending therapeutic care options in OOHC. Therapeutic residential care aims to improve outcomes and life trajectories for children with complex needs who have experienced abuse or neglect related trauma.

The National Therapeutic Residential Care Workshop held in Melbourne in September 2010 defined therapeutic residential care as:

> … intensive and time-limited care for a child or young person in statutory care that responds to the complex impacts of abuse, neglect and separation from family. This is achieved through the creation of positive, safe, healing relationships and experiences informed by a sound understanding of trauma, damaged attachment, and developmental needs.[394]

Therapeutic residential care is underpinned by trauma-informed practice. Bath[395] describes the 'three pillars' of trauma-informed care as:

- the development of safety
- the promotion of healing relationships
- the teaching of self-management and coping skills.

Others teach that trauma-informed care also includes a focus on the experience of loss and the development of future goals.[396] In the 'sanctuary' approach, 'acting out' by children who have been abused or neglected is viewed as pain-based behaviour in response to complex trauma. Therapeutic residential care shifts the focus from containment to providing a 'sanctuary' for children so they can do the work of healing without the risk of being re-traumatised by their experiences in care.[397]

Therapeutic residential care is also relationship-based, and therapeutic interventions are not limited to clinical settings. Rather than intensive input from a multidisciplinary team, every interaction between children and young people and residential care staff is recognised as a valued opportunity to counter and heal the effects of past trauma and disrupted attachment.[398]

We understand that in practice there is no clear national model of therapeutic care. Furthermore, there is little information about the number -or effectiveness – of different therapeutic care models currently operating in the OOHC sector. One rigorous independent evaluation of therapeutic residential care pilot programs is notable: in Victoria, one program provided increased staffing and training to units, which led to significant improvements in outcomes for young people, including a reduction in risky sexual behaviours.[399] The key findings are summarised below.

Victorian Therapeutic Residential Care pilots

An independent evaluation of 12 sites – which had a matched control group of other young people in mainstream residential care – reported a number of positive outcomes for young people in therapeutic residential care over two years, including:

- significant improvements in placement stability
- significant improvements to the quality of relationships and contact with family
- sustained and significant improvements in the quality of contact with the child's residential carers over time
- increased community connection
- significant improvements in positive behaviour and a significant decrease in offending and admissions to secure welfare
- increased healthy lifestyles and reduced risk taking behaviour, including sexual risk taking
- enhanced mental and emotional health (wellbeing)
- improved physical health
- improvement in relationships with schools across multiple measures.[400]

Important elements of the program included:

- careful matching of young people in the units
- attention to the clinical training of staff so they could understand and respond effectively to trauma
- clear practice leadership
- ongoing supervision
- regular reflective practice sessions for carers facilitated by a clinician.

The evaluation also found that while therapeutic specialists were essential to the outcomes, these specialists worked primarily through the residential care staff rather than delivering interventions directly to children. According to the relationship-based practice of therapeutic residential care, this arrangement worked to strengthen relationships between staff, children, families and other agencies.

We have asked governments about the benefits of a nationally consistent approach across OOHC for children who have been sexually abused. While governments cited the variable size, nature and characteristics of each system as reasons why a nationally consistent approach would not be ideal, there was broad support for a national approach based on uniform principles that still allow for locally tailored programs.[401]

We are currently undertaking a separate project on advocacy, support and therapeutic treatment services which will examine trauma-informed approaches. The results of this work will inform our thinking on how trauma, as it relates to child sexual abuse, should be considered in any recommendations we may make regarding advocacy, support and therapeutic treatment for children in OOHC. However, we welcome submissions on these issues in relation to OOHC.

The Victorian Commission for Children and Young People's inquiry report in 2015 found that in practice, some therapeutic residential care facilities are not meeting the standards or program requirements for the delivery of therapeutic residential care.[402] This report noted that there is a need to improve the quality of care provided in several residential facilities; to increase access to therapeutic care training for residential direct-care staff; and to improve the physical environment of residential facilities.[403] The report notes how the pressure of high demand makes it difficult for providers to adhere to the fidelity of the therapeutic model and standards, increasing the need for external accountability.[404]

Therapeutic care in foster care settings

Therapeutic care approaches are also applied in foster care settings. For example:

Evolve Therapeutic Services and Evolve Behaviour Support Services, Queensland	This program, targeted at children in OOHC with the most severe emotional and behavioural problems, reported: • reductions in clinical symptoms across range of behavioural and emotional indicators of functioning and overall wellbeing • increases in the child or young person's involvement in other activities • improvement in the child or young person's family relationships • improvements in the carers' knowledge and understanding of the child or young person's difficulties and relationships with carers • improvements in problems with scholastic and language skills • increased placement stability • more functional engagement in peer relationships and the wider environment

	• improvement in attendance at – and participation in – educational or vocational activities.[405]
Circle Program, Victoria	This program provides skilled therapeutic parenting and trauma-specific services to support the child's healing from abuse-related trauma. The target group was children entering care the first time.[406] Evaluation of the program reported positive outcomes for children and their carers, including: • greater stability of care • improved short and long-term outcomes • improved family relationships • reunification with the child's birth family • retention of foster carers.[407]

8.2 Enhancing placement stability and supporting carers

We have consistently heard that improving the stability of placements for children in OOHC is essential to better protecting them from risks of child sexual abuse. Placement stability relies on a range of factors, discussed below, including:

- assessing placement types to determine the best match
- supporting carers
- staffing in residential care
- monitoring and supervising placements
- proper remuneration of carers
- professional care models.

We have also considered issues specific to kinship/relative care placements, which are outlined in this section.

The link between placement instability and risk of sexual abuse

We have heard from many participants in private sessions about their experience of regularly moving between different foster care and residential placements during their childhood. During *Case Study 24: Preventing child sexual abuse in OOHC*, young care leavers spoke of the instability of OOHC placements and linked it to vulnerability of further sexual harm.

Young care leavers also spoke about the key role of nurturing relationships in their recovery from child sexual abuse. Recurring themes in the information we received – and also in the evidence provided by witnesses – included the importance of connection and belonging to a community; attending the local school and making friends; the ability to visit their siblings and family; and the availability of good placements in the young person's community:

> … We've worked with somebody who has moved like 22 times across the state. He said he was moving every six months at one stage and he was never able to form a support system with a carer and with an agency worker, or with a school, even. He always knew he was going to be moved on and that's a common story. You do that and that isolates you as a person. Then if you don't have the support system either, you've got no-one to fall back on. When you're feeling isolated you reach out to anyone who is offering you friendship, which is why, I suppose, you have sexual abuse happening in out-of-home care, especially through the internet, because they are looking for something that they don't have.[408]

We are aware that stability can be improved when professionals and carers have a well-developed understanding of the child's history of sexual abuse and other trauma. We are aware that therapeutic care responses can help prevent OOHC placements from breaking down.

Research confirms that repeatedly failed family reunifications and multiple OOHC placements significantly increase the likelihood of future placements breaking down.[409] This in turn affects the child's development and their vulnerability to further sexual abuse. Research also shows that many behaviour problems witnessed in children in OOHC are not simply the ongoing effects of abuse and neglect or the adverse events that caused them come into care. Rather, these problems are directly related to instability the child experiences while in care. Such children can find it difficult to make and sustain positive connections with family members, friends, their community and their culture, putting them at risk of instability.[410]

> We have young people who are ripped out of schooling because there isn't anywhere for them to go in our area so they have to move to another state, which definitely makes it easier for them to be preyed upon by sexual predators, because you have a young person who is feeling very lost and isolated and who…will take any form of love, affection or attention they can get, whether it's negative or positive.[411]

For children in OOHC, it appears to us that there is a connection between poor school attendance and vulnerability to sexual abuse or other forms of abuse. Recent research by AIHW into educational outcomes for children in care found that children in OOHC are an 'academically disadvantaged group'.[412]

The report highlighted the importance of monitoring the academic progress of children in care at the national level, under the National Standards for OOHC. We have been told that tracking and monitoring school attendance and completion indicators for children in OOHC – particularly children in residential care – may help prevent child sexual abuse and sexual exploitation for some children in care.

> … it's a fundamental right for a child to have education. I think we have seen significant improvement, without doubt, but the fact that still not all children in out-of-home care access education as a matter of routine on a full-time basis indicates that we have some work to do.[413]

The ‘endless parade of strangers’

Through our work we have regularly heard that positive, trusting and stable relationships for children in OOHC are critical to their wellbeing and healing. The evidence given in *Case Study 24: Preventing child sexual abuse in OOHC* and information from our private sessions, have highlighted the need to reduce the number of ‘strangers’ in the lives of children in care so that they are less vulnerable to sexual abuse:

> Children [in care] are exposed to a significant amount of people whom they don’t know.[414]

> ...we don’t ask how many workers a child [has] had during their care…what we see as [a] result of that system is that our children in out-of-home care are not raised with the stranger-danger type sense.[415]

A lack of stability in a placement and seeing many professionals and carers come and go in their life – including the residential care workforce – exacerbates problems for children in OOHC who are likely to have trouble trusting and forming healthy connections with adults. There is a need for ongoing and familiar carers, professionals and staff members who can build rapport with children, and to whom children feel safe in disclosing abuse. This in turn requires a more professionalised workforce and career path, with adequate remuneration.

> … young people in out-of-home care reported that children and young people who had been involved in the care and protection system were more likely to have been hurt by adults and to have been let down by adults and systems than other children. They believed that this led them to a point where they had little faith in adults, and assessed people and organisations more critically than their peers.[416]

Matching placements

We have heard from many people that while the safety and wellbeing of children in OOHC is paramount, service providers often face difficulties in matching children appropriately within placements, given the growing demand for and scarcity of placement options.

We know that children who have been sexually abused require supported and safe environments where they can heal and grow. In the course of our work we have heard that inadequate assessments and matching of children to OOHC placements may increase the risk of child sexual abuse, for example due to:

- gender imbalances in a placement
- age differences of children and young people in a placement
- a heightened risk of sexual exploitation when the location of residential units become known to perpetrators
- the risk of child-to-child abuse
- inadequate capacity in the mental health system to meet the complex needs of children in OOHC
- insufficient connection and therapeutic work with the family of origin of children in OOHC, who are usually still having significant contact with the family.

Support for carers, family and staff

We are aware that for children who have experienced sexual abuse in OOHC, it is important to support the non-offending carer and the child's family where appropriate, during the child's therapeutic process.

We have learnt that foster carers in Australia are often dissatisfied, as they do not feel adequately supported. Areas of concern for carers included the need for:

- provision of adequate support from caseworkers
- better training and supervision, more experienced workers
- support and information concerning legal entitlements and eligibility for benefits and services
- adequate information, preparation, support and consultation by the system, to improve the stability of the placement.

Aspects of agency support are very important in carer satisfaction and the desire to continue fostering, particularly in instances where the carer experiences placement breakdown and allegations of abuse from children in their care.

Families, carers and residential care staff may require support to:

- work through their own reaction and feelings about the abuse history
- understand how best to assist the child who suffered the abuse and is now in their care
- deal with any difficult behaviours the child may be displaying as a result of the abuse.

Children, their families and carers are likely to require a range of support options, from family therapies through to practical advice, ongoing assistance and formal training.

Staffing in residential care

There is often a lack of compatibility between the characteristics of the residential care workforce and the complex therapeutic needs of residents. As Bath[417] summarises:

> … [it is] not unusual for essentially untrained staff members to be caring for children with significant abuse histories, long juvenile justice records, serious substance abuse issues, histories of sexually exploiting other children, and/or frank psychiatric symptomatology, all together in one small and isolated residential unit.

The literature identifies that best-practice requires staff who are:

- skilled in trauma-informed practice
- employed in ongoing roles
- able to access quality supervision and ongoing professional development
- paid at a level that provides an incentive to stay in the system.

The sector currently relies on casual and agency staff to fill gaps in the rosters and to address the shortage of skilled, permanent staff. We have heard that the low pay and complex conditions attached to these contracts contribute to recruitment and retention problems. We have also heard from many OOHC service providers that this instability poses a safety risk for children in OOHC, as

well as for the staff. A transient workforce means that staff rostered on residential care units may not have the opportunity to develop working knowledge of the children in their care. This limits their capacity to identify risks – and children's behavioural cues, and to recognise when problems are escalating and how to diffuse and manage challenging behaviours.

Insufficient investment in training and a lack of program guidelines means that sometimes staff do not know what to do if they do recognise a risk. We have received information that the incidence of sexual abuse is higher where there is a higher proportion of contract (casual) staff – children are more likely to abscond from placement, be sexually exploited, and act out with other children.

Monitoring and supervision

We have received information from various OOHC service providers that insufficient funding currently limits the supervision of children in some residential units, and that they cannot guarantee minimal safety. This is particularly a problem as some units will have multiple children with challenging behaviours or children who are being sexually exploited. Information provided to us for *Case Study 24: Preventing child sexual abuse in OOHC* suggested that at some agencies, there are not enough staff members on duty so that a staff member can leave the facility to pick up or search for a child who is at risk of sexual abuse. This is particularly so where there is only one staff member rostered on overnight.

Factors we are considering to prevent child sexual abuse in residential care facilities include:

- enough staff members to provide adequate supervision
- children having their own bedrooms unless they wish to share bedrooms with their siblings
- older children not being housed with younger children
- bedrooms being located where they can be regularly monitored.

Remuneration for carers and tax implications

Given the complexity of meeting the needs of children with sexually harmful behaviours and the difficulty in finding appropriate placements for children who have been sexually abused, it is clear that there needs to be a wider availability of placement options. We have heard many ideas and views about how the current OOHC system might be reformed to ensure that an adequate number of appropriate carers can be engaged.

Consistent with the findings of the 2005 Senate Standing Committee Report, *Protecting vulnerable children: A national challenge*, we have heard that although many foster and kinship/relative carers remain committed to assisting children who cannot live at home, the financial costs of caring for a child can make it unviable to be a carer in the longer term.

Providing higher remuneration for foster, kinship/relative carers – or streamlining and simplifying processes for seeking reimbursements for expenses – could reduce some of the financial pressures many carer face, and could help attract new carers in the future.

We note the recommendation of one study, suggesting that governments should:

> reimburse… carers for specialist counselling to assist recovery from family violence, other expenses and children's medications; funding for regular respite care for all carers; [and have] policies and procedures for the issue of private health or Medicare cards and additional subsidy loadings for carers in remote and regional areas.[418]

That recommendation was also noted in the 2005 Senate Standing Committee Report, which recommended that:

> … the National Plan for Foster Care, Young People and their Carers be extended to … examine ways of improving carer support including national standards for reimbursement of costs to cover the real costs of caring and payment of allowances.[419]

Care allowances paid to foster and kinship/relative carers vary across jurisdictions. For example, the minimum foster carer allowance for a child aged under five years old in the Northern Territory is approximately $230 per fortnight,[420] whereas in Queensland it is roughly double this amount.[421] The allowance paid to carers is non-taxable, as this payment is intended to support the needs of the child or children placed with the carer, and is- therefore- not considered to be 'taxable income'.[422]

In the event that a carer received higher remuneration, the characterisation of that remuneration and the nature of the care (particularly, whether it was considered 'employment' by way of having provided a service for the purposes of sections 5 and 6 of the *Income Tax Assessment Act 1997*) would be significant. If a higher amount was deemed to be compensation or allowance for, or in relation to, employment or services rendered, it would become 'taxable income', which would potentially offset any net benefit gained from the increased payment.

Professional care models

Several service providers have suggested to us that Australia could explore the possibility of adopting a 'professional' model of foster care akin to that which has been implemented in several other countries.

Many carers demonstrate great skills and dedication when caring for children with varied and often complex needs; however, there is often a lack of specialised training, support and financial remuneration to reflect this.

As Berry Street noted in its 2013 Report, *Reforming the Foster Care System in Australia – A New Model of Support, Education and Payment for Foster Parents*:

> [n]umerous reports … highlight the ongoing tension between what foster parents are expected (and want) to do to achieve good outcomes for their fostered children, and the level of government support (financial and non-financial) provided to do so.[423]

Increasingly, foster, kinship and relative carers are seeing their roles as professional – or semi-professional, and there is arguably good reason for governments to likewise adjust their perception – and the support and remuneration they provide to those carers – to reflect that. Under a 'professionalised' care system, prospective foster carers would receive greater training; would be required to demonstrate that they have the relevant skills required to carry out their duties as professional carers; and would be commensurately remunerated.

Providing higher remuneration that reflects skill and commitment would likely help attract more carers to the OOHC system, and produce higher retention rates. Furthermore, a more formalised education and training program for prospective carers – ideally including training on the potential challenges of caring for vulnerable children or children with more and complex needs – would also be likely to promote better outcomes for children in terms of more specialised care and support, and fewer movements between placements.[424]

To date, a 'professionalised' OOHC carer model is yet to be adopted in any Australian jurisdiction; legal, taxation and human resource issues are frequently cited as the main obstacles. However, a number of agencies have informed us of the extra resources they provide so that carers can continue caring or supporting sibling groups or children with special needs. Victoria has also developed tailored packages to help young people in residential care move into home-based care by overcoming the resource barriers that may exist; for example, the need for a bigger car or for an extra bedroom to be added onto a carer's house.

Recommendation 25 of the 2012 *Report of the Protecting Victoria's Vulnerable Children Inquiry* (the 'Cummins Report'), promoted the adoption, over time, of a professional carer model, 'to provide improved and sustained support for children and young people',[425] while Recommendation 27 provided, more explicitly, that:

> The Victorian Government should, as a matter of priority, give further detailed consideration to the professional carer model and associated arrangements and request that the Commonwealth Government address and resolve, as a matter of priority, significant national barriers associated with establishing this new category of worker including industrial relations and taxation arrangements.[426]

We have heard that the Victorian Government has not yet adopted that recommendation, although it has not ruled it out.[427] The New South Wales Government has stated that further consideration of how effectively the system currently provides 'wrap around' services for children is needed, before there is any definitive movement towards professionalised care;[428] while Tasmania and the Northern Territory governments have both expressed concerns that taxation of remuneration for professional carers may be an obstacle to implementing such a system.[429]

As discussed above, a professional OOHC system under which carers were remunerated commensurate to their skills and experience could create significant resource challenges for governments. It is also possible that payments to 'professional' carers would be more likely to constitute an income (being a payment for a service), and therefore be taxable. Reform to current tax laws might therefore be needed to ensure a professionalised system was attractive. Noting that:

> The monetary costs would be substantial but the benefits in positive outcomes for children and society could be significant and well worth the financial costs. The tentative conclusion to be drawn… it is time for governments to give serious consideration to rethinking policies and practices in the out-of-home care sector to better reflect and acknowledge the changing role of … carers and the diverse needs of children coming into care.[430]

Professionalisation of carers and permanency

Several countries have adopted, or are moving towards, a professionalised model of OOHC, as discussed above. These countries include, to differing degrees, the United States, United Kingdom, New Zealand, Germany and the Netherlands.

In the United Kingdom, Canada and the United States, this approach has included 'higher pay, employment contracts, re-training and extra worker support'.[431] Small scale studies in England have indicated that the professionalised system has resulted in positive outcomes, including 'easier carer recruitment, better retention rates, high quality services and less offending by young people', with similar findings recorded in the United States and Scotland.[432]

Many European countries have concurrently adopted 'preventative' strategies to help reduce the number of children entering OOHC. Germany and the Netherlands both have child welfare systems that are 'family-service oriented', emphasising the participation and opinions of children and their parents, and relying on therapeutic early intervention.[433]

Both countries above have tried to professionalise foster and residential care, and now have almost no unqualified carers. Nevertheless, both countries view OOHC as a 'last resort', to be used only where other strategies such as intensive community based services or day treatment have proven unsuitable.[434]

The Netherlands has also invested significant effort in streamlining and strengthening its referral criteria to ensure that children's backgrounds and specific needs are fully understood before they are placed.[435] Germany's residential care system includes several forms of 'residential group care', including therapeutic intensive residential groups; supervised individual residences for young adults and 'parent model residential groups', where a small group of children are raised by a couple, at least one of whom is a professional carer.[436]

Many western countries share the concern that children in OOHC should have as much stability as possible in order to meet the child's individual needs and promote their wellbeing. In the United States, the United Kingdom and Canada, adoption of children, including without parental consent, remains a potential pathway out of OOHC.

Adoption is an option rarely pursued in Australia[437] however, we are aware that some jurisdictions, for example New South Wales, are working towards increasing the number of adoptions for children who are in OOHC.

Guardianship and permanent care orders are other pathways to a more stable, longer term placement of children in OOHC. In New South Wales, guardianship allows kinship or relative carers (and sometimes authorised foster carers) who are considering seeking long-term full parental responsibility for a child or young person to do so through an order of the New South Wales Children's Court.

Under a guardianship order in New South Wales, a guardian takes on full parental responsibility of the child or young person, making all decisions about their care until they reach 18 years of age.[438] Similarly, the Victorian Government has recently implemented legislative changes to help remove some of the barriers to achieving permanent placements for children, by changing some of the

features of permanent care orders, so a carer becomes the child's legal parent and the child remains in their care until they are an adult.[439]

In-home care and therapeutic supported family group home models

For some children – particularly children who have many or complex needs, disability, or a large sibling group – the possibility of an 'in-home care' model or a therapeutic supported family group home could be alternatives to OOHC. We have heard that, for some children in OOHC, different types of models and support options may help reduce the risk of child sexual abuse in care.

Under existing in-home care arrangements, a professional carer can be engaged to care for a child in their own home for periods of time, which can reduce demands on parents, and allows high needs children to remain at home with their families rather than being placed in a high needs OOHC residential facility.

We understand that the in-home care model is not widely utilised within Australia. Furthermore, this model depends on the child and their family meeting a number of strict criteria.

Broadly speaking, the in-home care model can only be used where a child cannot be cared for by another service, and:[440]

- the child has an illness or disability, or lives with another child who has an illness or disability
- the child's guardian or the guardian's partner has an illness or disability that affects their ability to care for the child
- the child lives in a rural or remote area
- the work hours of the child's guardian or guardian's partner are hours when no other approved child care service is available
- the child's guardian or the guardian's partner is caring for three or more children who have not yet started school.

Some service providers, including Anglicare, have argued that the in-home care system should be expanded to allow children who are currently in residential care to return to a home environment.[441] However, like the system more broadly, the effectiveness of such a system would rely on the ability of governments and service providers to recruit, fund and retain suitable in-home carers.

Kinship/relative care

Approximately 49 per cent of children and young people in OOHC today are in kinship/relative care placements.[442] From the available data, we understand that statutory (that is, court ordered) kinship/relative care is the fastest growing category of OOHC in Australia and is the preferred category for most children.[443] [444] In particular, the majority of children from Aboriginal and Torres Strait Islander backgrounds in OOHC are in kinship/relative placements.[445]

As previously noted, prevalence data on child sexual abuse in OOHC is extremely limited. In *Case Study 24: Preventing child sexual abuse in OOHC*, government organisations and OOHC service providers told us that of the total child sexual abuse reports they had received, approximately 20 per

cent concerned children and young people in kinship/relative care.[446] This was a considerably lower proportion than reports from foster care and residential care.

We have heard consistently that appropriately assessed and supported kinship/relative care is the optimum form of care for children who cannot live with their birth parents.[447] However, while there are clear benefits, there are also specific challenges in protecting children in this setting. Furthermore, there is limited evidence of the longer term outcomes for children in kinship/relative care or of the support needs of the children and their carers.[448]

Differences between kinship/relative care and non-relative care

There are important differences between kinship/relative carers, and non-relative carers. Kinship/relative care arrangements often occur during times of family crisis and are not amenable to forward planning or pre-assessment. The carers do not have a lead-time between first identifying the desire to care and the care commencing. Carers agree to provide care for a specific child, rather than indicating a desire to care for vulnerable children in general, and may have particular expectations of the child and their family. These distinct characteristics require a particular response when considering the safety of the placement.

Key benefits and protective factors distinct to kinship/relative care include:

- preservation of the family and continuity of relationships
- preservation of cultural identity, and connection to Country and community, which are of central importance to children from Aboriginal and Torres Strait Islander backgrounds and their families
- preservation of culture for children and their families with culturally and linguistically diverse backgrounds
- permanency and stability of care
- a greater likelihood that kinship/relative carers can meet the child's emotional needs.[449]

Current challenges

We are aware of particular challenges in implementing of kinship/relative care; these have been raised in other inquiries[450] and continue to be highlighted in submissions to us.[451]

Key concerns include:

- reportedly less rigorous screening and assessment of kinship/relative carers
- less stringent or mandatory training requirements for kinship/relative carers than for foster or residential carers, and generally less training offered to kinship/relative carers
- inadequate support services for kinship/relative carers in general and specific lack of culturally responsive support for Aboriginal and Torres Strait Islander carers
- lack of monitoring and oversight mechanisms within kinship/relative care
- children potentially being less likely to disclose sexual abuse by a relative to their kinship/relative carers
- kinship/relative carers tend to have fewer social and economic resources than other carers[452]

- kinship/relative carers as a cohort being generally older, poorer, in poorer health and more likely than foster carers to be single[453]
- children in kinship/relative placements remaining in their community, potentially exposed to perpetrators who may still be accessing them
- a lack of suitable kinship/relative carers to meet demand, putting pressure on the system
- inadequate attention and support for the implementation of Aboriginal cultural care plans within kinship/relative care, under the Aboriginal and Torres Strait islander Child Placement Principle.[454]

Connection to immediate family

The complexities of ongoing engagement with a child's immediate family can present particular challenges for kinship/relative carers. Where unsupervised access between the child and family members is prohibited, research indicates these carers may have more difficulty than non-relative foster carers when it comes to establishing and maintaining the required boundaries around access outside formal contact visits.[455]

In the literature – and consultations conducted with Australian kinship/relative carers – parental access and contact visits are highlighted as the most problematic aspects of managing care arrangements.[456] Some carers felt they did not have the capacity to protect children in their care from harm from their biological family. Others felt torn between love for the child and love for the biological parent (often their own child), so they allowed or facilitated unsupervised access. Some did not believe in the seriousness of the parental abuse and therefore did not understand the risks in allowing unsupervised access.

In contrast to foster care arrangements, where children are likely to be physically removed from their family and community network, children in kinship/relative placements may remain in the community where abuse has already taken place. This can add further challenges in protecting children from a known perpetrator, or managing extended family expectations of access.

Support for carers to better protect children in kinship/relative care

As discussed in chapter 4, we have heard concerns that 'weaknesses'[457] in screening and assessment – or 'less rigorous monitoring'[458] of kinship/relative care – may result in children being placed in unsafe environments. We have also been told that subjecting kinship/relative carers to more stringent assessment processes and 'overregulation' may diminish the already insufficient supply of carers, and create tension between case managers and carers, thus potentially undermining placements.[459]

The literature highlights that a specific model of assessment, appropriately tailored for kinship/relative care does not necessarily result in more carers being rejected. Rather, a model of assessment that meets initial safety checks and then shifts the emphasis from 'approving' to 'enabling' the placement underpins stronger kinship/relative care.[460] This type of assessment is designed to better identify the support and training needs of kinship/relative carers, and to ensure that an appropriately resourced support plan is put in place, where case managers work with the family to provide an environment conducive to ongoing safety and quality care.[461] This position is

reflected in both the UK and the US literature which emphasises a 'flexible' approach to assessment.[462]

We have heard support from some stakeholders for 'kin-specific'[463] processes and models of screening, together with assessment of potential kinship/relative carers, where the potential carer receives additional support. We are aware that various jurisdictions have or are moving towards models of kinship/relative care assessment following this approach,[464] and note that Family Group Conferencing has been highlighted as an important element in many cases. The Winangay Aboriginal Kinship Care Assessment tool has been recommended as one such assessment model that is culturally safe and appropriate.[465] We are aware this model is currently being formally evaluated and await the findings of the evaluation.[466]

We understand that, for children from Aboriginal and Torres Strait Islander backgrounds, a holistic approach to supporting placements is required. Many birth families, kinship/relative carers and communities are managing the ongoing effects of historical trauma, compounded by current poverty and discrimination as a legacy of colonisation. This means Aboriginal kinship/relative carers experience unique stresses. Recognition of the impact of this collective trauma is critical for understanding and responding to the needs of Aboriginal and Torres Strait Islander kinship/relative carers.

In accordance with legislative provisions in each state and territory, the Aboriginal and Torres Strait Islander Child Placement Principle underpins Aboriginal kinship/relative care as the priority placement for children from Aboriginal and Torres Strait Islander backgrounds. The Principle aims not only to ensure that children from Aboriginal and Torres Strait Islander backgrounds are placed with kin, but also to ensure that connection to culture and Country is sustained throughout the placement. In the context of institutional child sexual abuse, connection to culture and positive family relationships are protective factors.[467]

As mentioned previously in this paper, we have heard in some instances there is inadequate attention given to the Aboriginal and Torres Strait Islander Child Placement Principle in OOHC. This can lead to insufficient implementation of cultural care plans and not enough community involvement or control over placement decisions.[468] We understand that improved implementation of the Principle in its broad intent – beyond simply finding a kinship/relative carer – will support stronger, safer kinship/relative placements. We have also been told that having culturally competent and respected community controlled organisations participate in kinship/relative carer assessment, training and ongoing support is important. We have heard that increasing support for community controlled organisations so they can provide these services for kinship/relative care may help to address many issues regarding safety and quality of care.[469]

8.3 Support when young people leave care and post-care

Based on our work so far, we have identified a number of issues that affect children and young people who have been sexually abused in care when they leave OOHC. Across Australia, it is estimated that 3,000 young people aged 15 to 17 leave OOHC each year,[470] and many are required

to leave their care placement.[471] Due to the lack of available OOHC sexual abuse data, we do not know how many of those children and young people leaving care have been sexually abused in care.

Evidence and information we have gathered to date suggests that there will be a group of young people who in the future will disclose to someone that they experienced sexual abuse while in OOHC. We know that many children will not disclose sexual abuse for many years. As stated earlier, based on information obtained in private sessions, on average it takes survivors 22 years to disclose the abuse perpetrated against them, and men take longer than women to disclose.[472]

We seek your views on whether OOHC organisations and governments should remain responsible for helping those children who have been in care to access necessary counselling and support as they transition out of care and into adulthood.

Inadequate preparation to leave care

There is little readily available data about the number of young people who have a plan for leaving care and little information about the effectiveness of these plans. As at 30 June 2012, an estimated 77 per cent of young people aged 15 and over in OOHC had a current and approved leaving care plan (based on data from Victoria, Queensland and Western Australia only).[473] We have heard from our private sessions that not everyone had a plan.

CREATE's Report Card 2009 reported that of the 335 young people surveyed across Australia, only 36 per cent had some form of leaving care plan.[474]

Some care leavers who were sexually abused during their time in care have told us they were unaware of their rights and entitlements to access victims of crime support services, compensation and other assistance. Furthermore, some care leavers told us they were not informed of their rights to make complaints; did not know who to complain to or who they could talk to about sexual abuse; and if what they said would remain confidential or not.

In the years after leaving care, there is little evidence to show that OOHC agencies undertake planned reviews to monitor the health and wellbeing of care leavers. Follow up support for care leavers may include the review of a person's leaving care plan, ongoing advice, and advocacy assistance where appropriate. In *Case Study 24: Preventing child sexual abuse in OOHC*, we heard evidence that in some jurisdictions people would be followed up – for example five years after they left care – 'more by chance than intent'.[475]

We have heard that there should be stronger, ongoing support and review functions in policies related to young people leaving care, to help young people who have left care to disclose abuse and seek support.

We have received information from several individuals to indicate that some jurisdictions offer exit interviews when young people leave care, so they can obtain feedback on the quality of the service the young person experienced. Information we obtained from submissions to *Issues Paper 4: Preventing Sexual Abuse of Children in OOHC* and evidence obtained in *Case Study 24: Preventing child sexual abuse in OOHC* suggest that formal and structured exit interviews for care leavers may not be the most suitable, appropriate, sensitive or reliable method for eliciting a disclosure of sexual abuse.[476]

> I personally think they [young care leavers] are just not comfortable [to disclose], because you're still just coming out of that system where nobody has listened to you, or, you know, it might not be for other people, but for me it was nobody listened, nobody cared.[477]

We understand that alternative feedback methods as well as exit interviews are required, to encourage disclosures of child sexual abuse.

There needs to be a clear process for care leavers to make a disclosure when they feel ready to tell someone about their experiences of sexual abuse. We have heard that the leaving care process could be part of the disclosure process for a young person who has been abused in care. This may be appropriate for some young people if they are given a sensitive and tailored opportunity to disclose, and it is not limited to a one off 'exit interview', and we seek your views on this issue.

We have heard consistently that all young people leaving OOHC should be equipped with knowledge about the support services available to them in the event that they disclose abuse later in life and this could be explicitly addressed through existing care planning processes. We heard from people in private sessions that they were abused in foster care and disclosed the abuse to their provider years later – but there was no avenue to make a complaint, and they were worried the carer was still working as a foster carer.

Social media as a means of feedback and reporting

It is apparent to us that there is a need for innovation in methods of providing information, and encouraging feedback to agencies from children and young people about their time in care. Information about processes for reporting abuse may be updated in line with new communication and social media technologies – such as mobile messaging application – as they evolve.

We are aware that in some jurisdictions there are web and mobile phone applications for reporting sexual abuse (for adults) – for example, Sexual Assault Report Anonymously (SARA)[478] in Victoria, and the Sexual Assault Reporting Option (SARO) in New South Wales.[479] SARO is a questionnaire that enables an adult victim to give police information on a sexual assault without proceeding to a 'formal' investigation.

We also note the innovative development of Sortli,[480] a free mobile application for young people leaving care, to help them with their transition to independence. Sortli was developed in partnership between young people who have transitioned from care; the CREATE Foundation; and the Queensland Government's Department of Communities, Child Safety and Disability Services. It focuses on the seven key areas of identity; relationships; finding a place to live; health; finances; gaining education and looking for a job; and general living skills.

We request submissions as to how these social media applications may help care leavers be more informed about how to seek help in making complaints, and seek information about their rights to compensation and support.

Access to care leaver records and information

A key issue for both young and older care leavers is access to information about their time in care. It is clear from our public hearings and private sessions that records are very important for young people and adults who have left OOHC. Records can assist help those care leavers who have been abused in care with their healing process. They can be a critical source of evidence about abuse a child might have suffered while in care, and may become pivotal in civil or criminal proceedings.

Concerns about access to care leaver records and poor recordkeeping practices are not new. Records have been addressed in several previous inquiries[481] within Australia, and the issue forms part of two National Standards for OOHC.[482]

Many survivors and advocacy groups have raised with us their concerns about poor recordkeeping practices, both historical and contemporary. We have learnt that care leavers face significant barriers when accessing information about their time in care, as summarised below:

Poor access to care leaver information and records	• Many care leavers have told us they would like more support from an advocate or support person in accessing their records. • When care leavers receive information, the records are heavily redacted to conceal particular content or information often without any explanation, and without any apparent consistency. • Names of people the care leaver knows or may be directly related to are often redacted (for example parent or known sibling names). • Care leavers experience excessive time delays in receiving files. • In some jurisdictions, care leavers need to explain why they are seeking their records. • There are some costs associated with receiving care leaver files in some jurisdictions. • Some jurisdictions have thousands of un-indexed or uncategorised historical care leaver files. • There is often confusion around the location of care leaver records and files across government and non-government providers. • There is a lack of coordination across government and non-government agencies, so care leavers who have lived in multiple institutions may need to request information from multiple agencies.
Poor record keeping practices by both government and non-government organisations	• Files frequently contain insensitive and judgemental language. • Many older care leavers' files have been destroyed or cannot be located. • There is a lack of any positive experiences, or major life events, or photos of care leavers when they were young. • Files often contain inaccurate information or are missing information.

	• Information about care leavers is often contained throughout multiple files. • Information is not always culturally appropriate.
Little understanding from institutions, staff and some carers about the importance and value of records for care leavers	• There is a lack of understanding in general about the importance of records for care leavers. • Records are a valuable part of a care leaver's life story. They help care leavers understand the circumstances that led to their placement into OOHC; provide further details on family histories, culture, heritage and ethnicity; identify otherwise unknown family members; and generally help care leavers construct, validate or rebuild memories of their childhood and their identity.
Lack of support for care leavers when they read information from files and other records	• Many care leavers say they would like to be supported by a counsellor or support person when they read their files and try to understand and interpret the information (or lack of information) provided to them. • This process can be traumatic and distressing for the care leaver and can often trigger past experiences of trauma, neglect, and physical and sexual abuse that occurred while they were in care or before they entered care.

We are currently undertaking a separate piece of work on records and recordkeeping in the context of institutional responses to child sexual abuse generally, including OOHC. Our records work is in its early stages and will continue to develop over the coming year. However, we welcome submissions on records and recordkeeping in relation to OOHC, including the need for:

- a care-leaver focused, timely, streamlined and coordinated process for care leavers to access records from OOHC institutions about their time in care, including access to historical records and contemporary OOHC care leaver records
- more support and assistance from an agency, advocate or support person to help care leavers find and access information and records from their time in care
- face-to-face access to a free counsellor, advocate or support person when a care leaver reviews the information they receive from the OOHC service provider
- training for all carers, practitioners, staff working in records teams, and other key staff about the importance of good recordkeeping and timely access to records for care leavers.

8.4 Addressing the problem

We have been told that a range of aspects within the OOHC environment require attention, including workforce planning and capacity building; practice leadership and clinical expertise to flexibly support carers and children within placements; and building adequate capacity within the system so it can safely match children with sexually harmful behaviours in appropriate placements with therapeutic support.

Young people in OOHC need stable, positive and supported relationships with trusted adults to ensure their ongoing wellbeing. These relationships continue to be important for young people who have been sexually abused in OOHC after they leave care.

Improving support for children and young people

We are considering improvements that may be required to better support children who have been sexually abused in OOHC and their carers and families. We welcome submissions with respect to our considerations as outlined below:

Establish a nationally consistent therapeutic framework for OOHC service delivery

1. Develop a sector-wide and nationally agreed therapeutic care framework that defines therapeutic care, and outlines the essential elements required.

2. Embed consistent evaluation of child outcomes and longitudinal research, to inform the development of therapeutic residential care.

Expand trauma-informed therapeutic treatment and advocacy and support services

3. Ensure that children can access trauma-informed advocacy and support services.

4. Address the cultural needs of children from Aboriginal and Torres Strait Islander backgrounds and young people who have been sexually abused in care, through appropriate therapeutic treatment, advocacy and support services that, where possible, be provided by Aboriginal and Torres Strait Islander practitioners.

5. Ensure adequate access to therapeutic treatment and advocacy and support that is tailored to a child's individual needs, culture, age and abilities, with particular consideration for children with disability and children from culturally and linguistically diverse backgrounds.

6. Ensure adequate access to therapeutic treatment and advocacy and support for children who live in rural and remote areas within Australia.

7. Provide systematic training for carers and practitioners, especially in the areas of therapeutic care, responding to trauma and the impact of sexual abuse. Regular supervision and support is integral to good outcomes, and training should not be a one-off event; rather, it must be part of an overall strategy and therapeutic approach to OOHC.

Enhance placement stability and reduce the number of 'strangers' in a child's life by increasing the availability of placement options – including professional carer models

8. Develop professional foster care models, in-home care models, and therapeutic family group home models of care.

9. Expand residential therapeutic treatment options for children.

10. Create nationally consistent system for home-based care reimbursements, to address allowances differing greatly across jurisdictions.

Provide better workforce planning and development for residential care staff

11. Have jurisdictions agree on a strategy to professionalise and build the capacity of the residential carer workforce.

12. Have jurisdictions establish agreed targets for reducing the use of casual staff in residential care facilities.

13. Establish nationally consistent standards for training and supervising externally accredited residential carers.

Improve protections against child sexual abuse for children in kinship/relative care

14. Develop a 'kin-specific' approach to a culturally safe and appropriate kinship/relative carer assessment and recruitment that is differentiated from foster care approaches.

15. Increase the casework support and oversight for children in kinship/relative care.

16. Promote the engagement of Aboriginal and Torres Strait Islander children with their culture and strengthen the capacity of Aboriginal and Torres Strait Islander community controlled organisations to place and support children in care.

17. Increase the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, promoting culturally appropriate assessment; implementation of cultural care plans; monitoring and accountability for implementation; and holistic and community-based solutions to the support needs of Aboriginal and Torres Strait Islander kinship/relative carers.

18. Conduct more research to investigate the long-term outcomes for children of kinship/relative care.

Increase support when leaving care, and in the care leaver's post-care life

19. Government and non-government OOHC service providers develop leaving care plans for all care leavers, and address any current risks to children when they leave care. Arrange access to therapeutic supports and ensure that young people:
    - are educated and supported in undertaking any victims compensation claims for sexual abuse and/or other abuse suffered while they were in care
    - know the processes involved in making complaints, including referring matters to the police for criminal investigation
    - have access to supportive environments where they can disclose abuse, both at the time of leaving care and after they have left care.

20. Consider innovative ways to communicate with young care leavers, such as the internet and mobile applications, so that the leaving care process can be part of the disclosure process for a young person who has been abused in care.

21. Improve recordkeeping and access to care leaver records.

We seek submissions from all interested stakeholders about these issues that address how the OOHC sector can better support children who have been sexually abused while in care, and also support their carers.

9. Appendix

Letters Patent

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,
Mr Robert Atkinson,
The Honourable Justice Jennifer Ann Coate,
Mr Robert William Fitzgerald AM,
Dr Helen Mary Milroy, and
Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and

incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those affected by child sexual abuse can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;

b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

e. the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;

f. the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;

g. the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;

h. changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

i. the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;

j. the need to establish investigation units to support your inquiry;

k. the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;

l. the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;

m. the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

child means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

government means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

institution means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

i. includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and

ii. does not include the family.

institutional context: child sexual abuse happens in an ***institutional context*** if, for example:

iii. it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or

iv. it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or

v. it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

law means a law of the Commonwealth or of a State or Territory.

official, of an institution, includes:

vi. any representative (however described) of the institution or a related entity; and

vii. any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and

viii. any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and

ix. any other person who you consider is, or should be treated as if the person were, an official of the institution.

related matters means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

n. require you to begin your inquiry as soon as practicable, and

o. require you to make your inquiry as expeditiously as possible; and

p. require you to submit to Our Governor-General:

i. first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and

ii. then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and

iii. authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the Commonwealth of Australia.

Dated 11th January 2013

Governor-General

By Her Excellency's Command

Prime Minister

Appendix A – Letters Patent

Endnotes

[1] See *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12. Furthermore, this statement is reflected in jurisdictional Charters of Rights for children and young people in care.

[2] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.19.

[3] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.18.

[4] See, for example: Bravehearts, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 4; NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 1.

[5] Productivity Commission, *Report on Government Services 2015*, 'Chapter 15: Child Protection Services', Table 15A.19.

[6] Australian Institute of Health and Welfare, *Child protection Australia: 2013–14*, Child Welfare, Series no 61, cat no CWS 52, Canberra, 2015, pp 46, 58.

[7] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.19.

[8] Royal Commission internal data on private sessions. As at February 2016 over 4,700 private sessions have taken place across Australia.

[9] Senate Community Affairs References Committee, *Out of home care*, Parliament House, Canberra, 2015; The Senate Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Parliament House, Canberra, 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report (viewed 27 November 2015).

[10] The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008; http://www.dpc.nsw.gov.au/publications/news/stories/?a=33794 (viewed 27 November 2015).

[11] Commission for Children and Young People, *"… as a good parent would …": Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Melbourne, 2015, http://www.ccyp.vic.gov.au/downloads/inquiry/final-report-as-a-good-parent-would.pdf (viewed 27 November 2015); Family and Community Development Committee, *Betrayal of trust: Inquiry into the handling of child abuse by religious and other non-government organisations*, Parliament of Victoria, 2013, http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Preliminaries.pdf (viewed 27 November 2015); The Hon. P Cummins, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, Victoria, 2012, http://www.childprotectioninquiry.vic.gov.au/images/stories/inquiry/volume1/cpi%207649%20web-pdf%20volume%201%20protecting%20victoria_s%20vulnerable%20children_%20inquiry_bm.2.pdf (viewed 27 November 2015).

[12] Queensland Child Protection of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection,* (Carmody Report), Queensland Child Protection Commission of Inquiry, 2013, http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0017/202625/QCPCI-FINAL-REPORT-web-version.pdf (viewed 27 November 2015).

[13] Public Sector Commission, *Review of the Commissioner for Children and Young People Act 2006*, State of Western Australia, West Perth, 2013, https://publicsector.wa.gov.au/sites/default/files/documents/review_of_the_ccyp_act_-_final_report.pdf (viewed 7 March 2015).

[14] Select Committee on Statutory Child Protection and Care in South Australia, *Interim report of the select committee on statutory child protection and care in South Australia*, Parliament of South Australia, South Australia, 2015, http://cfc-sa.org.au/wp-content/uploads/bsk-pdf-manager/64_InterimReport_SelectCommittee_2015.pdf (viewed 27 November 2015); The Hon. EP Mullighan QC, *Children in state care commission of inquiry: Allegations of sexual abuse and death from criminal conduct,* South Australia, 2008, http://www.sa.gov.au/__data/assets/pdf_file/0007/27187/CISC-Complete.pdf (viewed 27 November 2015).

[15] ACT Public Advocate, *Who is looking out for the Territory's Children? Review of the emergency response strategy for children in crisis in the ACT*, Canberra, 2012, http://cdn.justice.act.gov.au/resources/uploads/PAACT/publications/ReviewReportFinal_v2.pdf (viewed 27 November 2015).

[16] Select Committee on Child Protection, *Final Report*, Parliament of Tasmania, Tasmania, 2011, http://www.parliament.tas.gov.au/ctee/House/Reports/Final%20Report%20CP.pdf (viewed 27 November 2015).

[17] M Bamblett, H Bath and R Roseby, *Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory, Northern Territory Government, Darwin, 2010, http://www.childprotectioninquiry.nt.gov.au/__data/assets/pdf_file/0009/49779/CPSR_Summary.pdf (viewed 27 November 2015).

[18] See, for example: *Convention on the Rights of the Child*, open for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, G.A. res. 2200A (XXI) (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1996, 993 UNTS 3 (entered into force 3 January 1976). Australia was also one of the eight nations which assisted with developing the draft of the *Universal Declaration of Human Rights,* which was adopted and proclaimed by General Assembly Resolution 271 A (III) of 10 December 1948. For more information see: https://www.humanrights.gov.au/publications/australia-and-universal-declaration-human-rights (viewed 1 February 2016).

[19] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 2.

[20] Transcript of K Finn, T14666:27-37 (Day 142).

[21] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3.

[22] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 8.

[23] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 entered into force 2 September 1990) art 9.

[24] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.

[25] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 19.

[26] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 20.

[27] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 34.

[28] See, for example: L Bromfield & D Higgins, 'Chronic and isolated maltreatment in a child protection sample', *Family Matters,* No 70*,* 2005, pp 38–45; D Finkelhor & J Dzuiba-Leatherman, 'Victimization of Children', *American Psychologist*, vol 49, no 3, 1994, pp 173–183; Finkelhor, *Child Sexual Abuse: New Theory and Research*, The Free Press, New York, 1984, pp 56–57.

[29] See, for example: Transcript of B Orr, T14753:11-27 (Day 143); Transcript of C Salamone, T13545:30-43 (Day 129); Transcript of P McDonald, T13544:18-42 (Day 129).

[30] K McKeown, *A guide to what works in family support services for vulnerable families*, Unpublished report, Department of Health and Children, Dublin, 2000, section 3.2, p 13; http://www.dcya.gov.ie/documents/publications/A_Guide_to_what_Works_in_Family_Support_Serviecs_for_Vunerable_Families.pdf (viewed 30 November 2015); Department of Health, *Caring for children away from home: Messages from research,* John Wiley & Sons Ltd., London, 1998, p 27.

[31] Transcript of M Walk, T13466:24-26 (Day 128).

[32] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.18.

[33] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.18.

[34] Transcript of S Hunter, T14716:32-40 (Day 143).

[35] The Aboriginal and Torres Strait Islander Child Placement Principle aims to strengthen Aboriginal and Torres Strait Islander children's connection to their natural family, community and enhance and preserve cultural identity. For more information see: http://www.snaicc.org.au/_uploads/rsfil/03167.pdf (viewed 1 February 2016).

[36] Transcript of D Clarke, T14788:39-T14789:1 (Day 143).

[37] Transcript of D Clarke, T14783:41-T14784:15 (Day 143).

[38] Transcript of A Jackomos, T15008:3-36 (Day 145).

[39] S.F. Grossman & M Lundy, 'Double jeopardy: a comparison of persons with and without disabilities who were victims of sexual abuse and/or sexual assault,' *Journal of Social Work in Disability and Rehabilitation,* 2008, vol 7(1), pp 19–46.

[40] L Jones et al, 'Prevalence and risk of violence against children with disabilities: a systemic review and meta-analysis of observational studies', *The Lancet,* 2012, vol 380, no 9845, p 905; P Sullivan & J Knutson, 'Maltreatment and disabilities: a population-based epidemiological study', *Child Abuse & Neglect,* 2000, vol 24, no 10, pp 1265–1266.

[41] Australian Bureau of Statistics Census, *Cultural Diversity in Australia - Reflecting a Nation: Stories* from *the 2011 Census*, cat no 2071.0, ABS, Canberra, 2011, http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013# (viewed 23 November 2015).

[42] Senate Community Affairs References Committee, *Out of home care*, Parliament House, Canberra, 2015, p 271.

[43] Settlement Services International, Submission Number 55 to the Senate Community Affairs, *Out of Home Care*, 1 December 2014, p 3, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Submissions (viewed 23 November 2015).

[44] J Kaur, *Cultural Diversity and Child Protection: Australian research review on the needs of culturally and linguistically diverse (CALD) and refugee children and families*, Queensland, 2012, p 18.

[45] Senate Community Affairs References Committee, *Out of home care*, Parliament House, Canberra, 2015, p 274.

[46] Senate Community Affairs References Committee, *Out of home care*, Parliament House, Canberra, 2015, p 272.

[47] Senate Community Affairs References Committee, *Out of home care*, Parliament House, Canberra, 2015, pp 22–23.

[48] *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020*, Council of Australian Governments, Canberra, 2009. The six broad outcomes are: children live in safe and supportive communities; children and families access adequate support to promote safety and intervene early; risk factors for child abuse and neglect are addressed; children who have been abused or neglected receive the support and care they need for their safety and wellbeing; Indigenous children are supported in their families and communities; and child sexual abuse and exploitation is prevented and survivors receive adequate support.

[49] *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020*, Council of Australian Governments, Canberra, 2009. The standards are: stability and security, participate in decisions, Aboriginal and Torres Strait Islander communities, individualised plan, health needs, education and early childhood, education, training and/or employment, social and/or recreational, connection with family identity development, significant others, carers, transition from care planning.

[50] Senate Community Affairs References Committee, *Out of home care*, Parliament of Australia, Canberra, 2015, p 56.

[51] The *National Framework for Protecting* Australia's *children 2009–2020* can be found at https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business?HTML (viewed 11 February 2016).

[52] S Swain, *History of institutions providing out-of-home residential care for children*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 28.

[53] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.19.

[54] See, for example: N Mudaly and C Goddard, *The truth is longer than a lie: Children's experiences of abuse and professional interventions,* Jessica Kingsley Publishers, 2006; *The Victoria Climbié Inquiry: report of an inquiry by Lord Laming*, London: The Stationery Office, 2003; M Rayner, 'Home Truths', *Eureka Street*, vol 5, no 8, 1995, pp 16–17; C Goddard and R Carew, *Responding to children: Child welfare practice,* Longman Cheshire, Melbourne, 1993, pp 241–248.

[55] A Turnell and S Edwards, *Signs of safety: A solution and safety orientated approach to child protection casework*, W.W. Norton & Company, New York, 1999, p vii.

[56] L Pelton, 'Child abuse and neglect: The myth of classlessness', *Bureau of Research, New Jersey Division of Youth and Family Services,* vol 48, no 4, 1978, p 609; D Thorpe, *Evaluating Child Protection,* Open University Press, Buckingham, 1994; C Goddard and R Carew, *Responding to children: Child welfare practice,* Longman Cheshire, Melbourne, 1993, pp 63–92.

[57] N Parton, *Child protection and family support: current debates and future prospects*, *Child Protection and Family Support; Tensions, contradictions and possibilities,* Routledge, London, 1997, pp 1–24; S Gibbs, G Mann and N Mathers, 'Child-to-child: A practical guide – empowering children as active citizens', *Child-to-Child*, London, 2002.

[58] The key child protection legislation for each jurisdiction is as follows: *Family Law Act 1975* (Cth); *Children and Young People Act 2008* (ACT); *Children and Young Persons (Care and Protection) Act 1998* (NSW); *Care and Protection of Children Act* (NT); *Child Protection Act 1999* (Qld); *Family and Community Services Act 1972* (SA) and *Children's Protection Act 1993* (SA); *Children, Young Persons and their Families Act 1997* (Tas); *Child Wellbeing and Safety Act 2005* (Vic) and *Children, Youth and Families Act 2015* (Vic); *Family Court Act 1997* (WA), *Children and Community Services Act 2004* (WA) and Child Care Services (Child Care) Regulations 2006 (WA).

[59] For more information, see: Australian Institute of Family Studies, *Australian child protection legislation*, 'Child Family Community Australia Fact Sheet', August 2014, https://www3.aifs.gov.au/cfca/publications/australian-child-protection-legislation (viewed 8 October 2015).

[60] In NSW, voluntary OOHC (VOOHC) is overseen by the NSW Office of the Children's Guardian. See NSW Government, 'VOOHC Fact Sheet 1: Information for families', *Office of the Children's Guardian,* 2014, http://www.kidsguardian.nsw.gov.au/out-of-home-care/voluntary-out-of-home-care/fact-sheets (viewed 9 October 2015).

[61] The Association of Children's Welfare Agencies (ACWA), Submission Number 94 to the Senate Community Affairs References Committee, *Out of Home Care*, 1 December 2014, p 1, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Submissions (viewed 8 October 2015).

[62] K McKeown, *A guide to what works in family support services for vulnerable families*, Unpublished report, Department of Health and Children, Dublin, 2000, section 3.2, p 13; Department of Health, *Caring for children away from home: Messages from research*, John Wiley & Sons Ltd., London, 1998, pp 27–32.

[63] Australian Bureau of Statistics, *Australian Demographic Statistics*, cat no 3101.0, ABS, Canberra, 2014. Growth in the overall child population in Australia figure is derived by calculating the change the estimate resident population of persons aged 0–17 between June 2004 and June 2014.

[64] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.18.

[65] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.18, p 1.

[66] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.18.

[67] Productivity Commission, *Report on Government Services 2015*, Chapter 15: Child Protection Services, Table 15A.21.

[68] Australian Institute of Health and Welfare, *Child protection Australia: 2013–14*, Child Welfare Series no 61, cat no CWS 52, Canberra, 2015, p 3.

[69] A substantiation indicates there is sufficient reason (after an investigation) to believe the child has been, is being or is likely to be, abused, neglected or otherwise harmed. The relevant department will then attempt to ensure the safety of the child or children through an appropriate level of continued involvement, including the provision of support services to the child and family. Australian Institute of Health and Welfare, *Child protection Australia: 2013–14*, Child Welfare Series no 61, cat no CWS 52, Canberra, 2015, p 3.

[70] Australian Institute of Health and Welfare, *Child protection Australia: 2013–14*, Child Welfare Series no 61, cat no CWS 52, Canberra, 2015, pp 20–22.

[71] Australian Centre for Child Protection, Submission Number 82 to the Select Committee on Statutory Child Protection and Care in South Australia, *Interim Report of the Select Committee on Statutory Child Protection and Care in South Australia*, Parliament of South Australia, South Australia, 2015, p 41.

[72] Senate Community Affairs References Committee, *Out of home care*, Parliament House, Canberra, 2015, p 290.

[73] E Beauregard, B Leclerc, & P Lussier, 'Decision making in the crime commission process: comparing rapists, child molesters and victim-crossover sex offenders', *Criminal Justice and Behaviour*, vol 39, no 10, October 2012, p 1276; E Beauregard & B Leclere, 'An application of the rational choice approach to the offending process of sex offenders: a closer look at the decision-making', *Sexual Abuse: A Journal of Research and Treatment,* vol 19, 2007, p 117; B Leclerc, R Wortley & S Smallbone, 'Getting into the script of adult child sex offenders and mapping out situational prevention measures', *Journal of Research in Crime and Delinquency*, vol 48, no 2, 2011, pp 213, 216.

[74] See, for example, the public hearing (*Case Study 1*) concerning Steven Larkins, the former CEO of Hunter Aboriginal Children's Services: *Case Study 1: Response of institutions to the conduct of Steven Larkins.*

[75] Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report: Volume 1,* 2014, p 6.

[76] Transcript of J Eyles, T14670:25-37 (Day 142); Transcript of K Finn, T14671:7-8 (Day 142); Transcript of T Dale, T14671:20-27 (Day 142).

[77] See, for example: Transcript of I Spicer, T14635:35-47 (Day 142); Transcript of T Dale, T14638:17-38 (Day 142); Transcript of K Finn, T14671:6-15 (Day 142); Transcript of K Finn, T14672:8-20 (Day 142); Transcript of T Dale, T14672:38-40 (Day 142); Transcript of K Finn, T14672:42-47 (Day 142); Transcript of J Eyles, T14664:28-37 (Day 142); Transcript of T Dale, T14664:39-37-T14665:1-14, (Day 142).

[78] Note, for the purpose of this consultation paper, data refers to information systematically recorded in fixed response fields in electronic information systems and is more sophisticated than information on individual case files.

[79] Data produced under summons by the Royal Commission from government agencies within all states and territories and from 12 non-government organisations including: Anglicare, Barnardos Australia, MacKillop, United Protestant Association, Berry Street, CatholicCare, Uniting Care, Wesley Mission, Life Without Barriers, BaptCare, Marymead and VACCA.

[80] This table is derived from data produced under summons by the Royal Commission from government agencies within all states and territories and from 12 non-government organisations including: Anglicare, Barnardos Australia, MacKillop, United Protestant Association, Berry Street, CatholicCare, Uniting Care, Wesley Mission, Life Without Barriers, BaptCare, Marymead and VACCA. This table shows, as a percentage, the distribution of child

sexual abuse reports in OOHC from the above agencies by care type from 1 July 2012 to 30 June 2014.

[81] The definition of child sexual exploitation in use in Victoria for the past four years has been taken directly from the UK government Department for Children, Schools and Families and reads as follows: '*Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing and/or another or others performing on them, sexual activities. Child sexual exploitation can occur through the use of technology without the child's immediate recognition; for example being persuaded to post sexual images on the Internet/mobile phones without immediate payment or gain. In all cases, those exploiting the child/young person have power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person's limited availability of choice resulting from their social/economic and/or emotional vulnerability.'* Department for Children Schools and Families, *Safeguarding children and young people from sexual exploitation: Supplementary guidance to Working Together to Safe Guard Children,* United Kingdom, 2009, p 9, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278849/Safeguarding_Children_and_Young_People_from_Sexual_Exploitation.pdf (viewed 3 December 2015).

[82] See, for example: A Jackson, *Literature review: Young people at high risk of sexual exploitation, absconding, and other significant harms*, Berry Street Childhood Institute, Melbourne, 2014; H Beckett, *Not a world away: the sexual exploitation of children and young people in Northern Ireland,* Barnardo's Northern Ireland, Belfast, 2011; Barnardo's, *Puppet on a String: The urgent need to cut children free from sexual exploitation,* Barnardo's UK, Essex, UK, 2011.

[83] Transcript of C Robbs, T13034:26-28 (Day 124).

[84] Transcript of M Cronin, T13033:43-44 (Day 124).

[85] Transcript of S de Wolf, T13547:15-22 (Day 129).

[86] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 34.

[87] H Beckett, *Not a world away: the sexual exploitation of children and young people in Northern Ireland*, Barnardo's Northern Ireland, Belfast, 2011, http://www.barnardos.org.uk/13932_not_a_world_away_full_report.pdf (viewed 30 September 2015); Barnardo's, *Puppet on a String: The urgent need to cut children free from sexual exploitation*, Barnardo's UK, Essex, UK, 2011, http://www.barnardos.org.uk/ctf_puppetonastring_report_final.pdf (viewed 30 September 2015).

[88] See, for example: Commission for Children and Young People, *"… as a good parent would …" Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Melbourne, 2015, p 24; Centre for Excellence in Child and Family Welfare, *Responses to the sexual abuse and sexual exploitation of children in residential care in Victoria*, 2014, pp 36–49, http://www.ccyp.vic.gov.au/downloads/inquiry/literature-review-centre-for-excellence-child-and-family-welfare.pdf (viewed 3 December 2015).

[89] Mr Geary retired from his role as Victorian Commissioner for Children and Young People on 7 December 2015.

[90] Transcript of B Geary, T14889:28-37 (Day 145).

[91] Transcript of K Haire, T13369:1-17 (Day 128).

[92] H Beckett, *Not a world away: The sexual exploitation of children and young people in Northern Ireland*, Barnados Northern Ireland, Belfast, 2011, p 86; Centre for Excellence in Child and Family Welfare, *Responses to the sexual abuse and sexual exploitation of children in residential care in Victoria*, 2014, p 59.

[93] See, for example: Centre for Excellence in Child and Family Welfare, *Responses to the sexual abuse and sexual exploitation of children in residential care in Victoria*, 2014, pp 39, 69, 73; A Jackson, *Literature review: Young people at high risk of sexual exploitation, absconding, and other significant harms*, Berry Street Childhood Institute, Melbourne, 2014, pp 9, 35.

[94] S Jago et al., *What's going on to safeguard children and young people from Sexual Exploitation? How local partnerships respond to child sexual exploitation*, University of Bedfordshire, 2011, pp 5, 42, 50, http://www.beds.ac.uk/__data/assets/pdf_file/0004/121873/wgoreport2011-121011.pdf (viewed 30 November 2015); H Beckett et al., *Tackling child sexual exploitation: a study of current practice in London*, University of Bedfordshire, 2014, pp 12, 14, 20, 21, 27, 28, http://www.bing.com/search?q=Tackling+child+sexual+exploitation%3A+a+study+of+current+practice+in+London&src=IE-TopResult&FORM=IE10TR (viewed 30 November 2015).

[95] Transcript of C Salamone, T13033:22-24 (Day 124).

[96] See, for example: Commission for Children and Young People, *"… as a good parent would …" Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Melbourne, 2015.

[97] Transcript of M Cronin, T13034:5-24 (Day 124).

[98] Some of these developments in the UK include the *National Action Plan for Tackling Child Sexual Exploitation,* 2011, https://www.gov.uk/government/publications/tackling-child-sexual-exploitation-action-plan (viewed 16 December 2015); *Missing Children and Adults – A cross-government strategy,* 2011, https://www.gov.uk/government/publications/missing-children-and-adults-strategy (viewed 16 December 2015); *A House of Commons Home Affairs Committee Inquiry into Child Sexual Exploitation and the Response to Local Grooming*, 2013, http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2010/childgrooming/ (viewed 16 December 2015); *The All-Parliamentary Group Inquiry into Children Missing from Care*, 2012, http://childrenssociety.org.uk/sites/default/files/tcs/u32/joint_appg_inquiry_-_report...pdf (viewed 16 December 2015); *The Association of Chief Police Officers Strategy for Policing Prostitution and Sexual Exploitation,* 2011, http://www.npcc.police.uk/documents/crime/2011/20111102%20CBA%20Policing%20Prostitution%20and%20%20Sexual%20Exploitation%20Strategy_Website_October%202011.pdf (viewed 16 December 2015).

[99] 'Looked after children' is the terminology used in UK research when referring to children who are known to child protection and are in some form of care such as OOHC.

[100] A Jay, *Independent Inquiry into Child Sexual Exploitation in Rotherham: 1997–2013*, Rotherham Metropolitan Borough Council, United Kingdom, 2014, http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham (viewed 30 November 2015).

[101] Barnardo's, *Puppet on a string: The urgent need to cut children free from sexual exploitation*, Barnardo's UK, Essex, UK, 2011, pp 26–27.

[102] Transcript of C Robbs, T13340:13-27 (Day 127).

[103] W O'Brien, *Australia's Response to Sexualised or Sexually Abusive Behaviours in Children and Young People*, Australian Crime Commission, Canberra, 2010, p 13, https://www.crimecommission.gov.au/sites/default/files/NIITF-PSB-REPORT-2010.pdf (viewed 30 November 2015).

[104] Transcript of B Geary, T14989:35-36 (Day 145).

[105] Transcript of J Tucci, T14768:4-33 (Day 143).

[106] Transcript of D Tolliday, T14899:6-13 (Day 144).

[107] The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, recommendation 10.4(c), p xvii–xviii.

[108] *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020*, Council of Australian Governments, Canberra, 2009. Strategy 6.1:- Continue to introduce strategies to prevent sexual exploitation, such as: through a new statutory pathway, intervene earlier with young people who exhibit sexually abusive behaviours to help prevent ongoing and more serious sexual offences (Vic). Strategy 6.2:- Investigate best practice therapeutic programs for children displaying sexually abusive behaviours, such as: collaboration between government agencies and therapeutic treatment service providers to build a state-wide therapeutic treatment service system to implement the relevant provisions of the *Children, Youth and Families Act 2005* (Vic); New Street program for adolescents aged 10–17 years who display sexually abusive behaviours (NSW). Also see the *National Plan to reduce violence against women and their children,* https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf (viewed 11 February 2016).

[109] An evaluation of NSW's New Street Adolescent Service found that only 3% of young people who completed the program went on to re-offend sexually – see KPMG, *Evaluation of NSW Adolescent Services: NSW Kids and Families: Final Report*, March 2014, pp 7, 58, 63; L Laing et al., 'Evaluation of the New Street Adolescent Service', quoted in W O'Brien, *Australia's Response to Sexualised or Sexually Abusive Behaviours in Children and Young People*, Australian Crime Commission, Canberra, 2010, p 3. Note, this is one of a number of studies that indicate recidivism increases where young people commence therapeutic work but fail to complete the program. In addition a small cohort of children were examined and results were contingent on completion of the program; C Borduin, C Schaeffer & N Heiblum, 'A randomized clinical trial of multisystemic therapy with juvenile sexual offenders: Effects on youth social ecology and criminal activity', *Journal of Consulting and Clinical Psychology,* vol 77, no 1, 2009, American Psychological Association, pp 26–37. This is an American study that found young people treated with multisystemic therapy (MST) reported decreases in person and property crimes at post-test and were less likely to be re-arrested for sexual and nonsexual crimes within the average 8.9-year follow-up period than were youths who received usual community service (UCS). It is noted that these studies have low numbers of participants. MST is aimed at a number of behaviours not specific to sexual behaviours.

[110] C Borduin, C Schaeffer & N Heiblum, 'A randomized clinical trial of multisystematic therapy with juvenile sexual offenders: Effects on youth social ecology and criminal activity', *Journal of Consulting and Clinical Psychology,* vol 77, no 1, 2009, American Psychological Association, pp 26–27.

[111] W O'Brien, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, Australian Crime Commission, Canberra, 2010.

[112] W O'Brien, *Australia's response to sexualised or sexually abusive behaviours in children and young*

people, Australian Crime Commission, Canberra, 2010, p 3.

[113] Victorian Government, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, VIC.0007.001.0001, 2015, p 50.

[114] Transcript of D Tolliday, T14843:31–T14852:3 (Day 144), and see http://www.keepthemsafe.nsw.gov.au/initiatives/acute_services/new_street_adolescent_service_program (viewed 16 December 2015).

[115] G Winkworth and M McArthur, 'Being "child centred" in child protection: What does it mean?', *Children Australia*, vol 31, no 4, 2006, p 14.

[116] Reports on Government Services provides information on the equity, effectiveness and efficiency of government services in Australia. See http://www.pc.gov.au/research/ongoing/report-on-government-services/2015 (viewed 7 December 2015).

[117] Collecting data on a unit record basis, which began in 2013, facilitates better tracking of the whole experience of individual children and their journey through both the child protection and OOHC system; including multiple notifications (reports of concern to child protection), subsequent investigations and whether they were substantiated, as well as movement in and out of care during the same financial year.

[118] S Nicolson, S Newell & L Ball, 'Children's Rights Report 2013,' *Australian Human Rights Commission*, 2013, p 25, https://www.humanrights.gov.au/sites/default/files/document/publication/ChildrenRightsReport2013.pdf (viewed 5 February 2016).

[119] Transcript of K Boland, T14944:9-37 (Day 145).

[120] Transcript of M Mitchell, T14946:5-19 (Day 145).

[121] See, for example: ACT Auditor-General's Office, *Performance Audit Report of the Care and Protection System,* ACT Government, 2013; The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008; M Bamblett, H Bath and R Roseby*, Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory, Northern Territory Government, Darwin, 2010; Queensland Child Protection Commission of Inquiry, *Taking responsibility: A roadmap for Queensland Child Protection*, Queensland Child Protection Commission of Inquiry, 2013; The Hon. EP Mullighan QC, *Children in State Care Commission of Inquiry: Allegations of sexual abuse and death from criminal conduct,* South Australia, 2008; The *Child Protection Systems Royal Commission*, South Australia, 2015, http://www.childprotectionroyalcommission.sa.gov.au/ (viewed 29 February 2016); The Hon. P Cummins, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of Premier and Cabinet, Victoria, 2012; P Ford, *Review of the Department for Community Development*, Western Australia, Department of Premier and Cabinet, 2007.

[122] The lead government departments or agencies responsible for OOHC for each jurisdiction are as follows: Community Services Directorate (ACT); Department of Family and Community Services (NSW); Department of Children and Families (NT); Department of Communities, Child Safety and Disability Services (Qld); Department for Education and Child Development (SA); Department of Health and Human Services (Tas); Department of Health and Human Services (Vic); Department for Child Protection and Family Support (WA).

[123] CREATE Foundation, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 9.

[124] *Children and Young People Act 2008* (ACT) ss 61, 63, 352B, s517, 520; *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 138(1), 139 and 181; Children and Young Persons (Care and Protection) Regulations 2012 (NSW) reg 48(1), 49(1); *Child Protection Act 1999* (Qld) ss 82, 122, 123, 126, Part 2, Licensing of care services, Division 2; *Family and Community Services Act 1972* (SA) ss 48, 51; *Children, Youth and Families Act 2005* (Vic) ss 46, 47.

[125] *Children and Young Persons (Care and Protection Act) 1998* (NSW) ss 138, 139.

[126] Berry Street, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 5.

[127] Children and Young Persons (Care and Protection) Regulations 2012 (NSW) r 61; *Family and Community Services Act 1972* (SA) s 51; *Children, Youth and Families Act 2005* (Vic) s 49.

[128] For example, the ACT and Victoria.

[129] See, for example: PeakCare, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 3 ('[the statutory child protection agency] should not be the same agency that assesses compliance or accredits against the agreed standards'); and Child Wise, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 18 ('any auditing or accreditation system must be independent from the department responsible for overseeing out-of-home care').

[130] Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 30.

[131] We note that, in *Case Study 24: Preventing child sexual abuse in OOHC*, Mr Tony Kemp, Deputy Secretary of the Tasmanian Department of Health and Human Services, advised that Tasmania is planning to implement an accreditation scheme to be administered by a body independent of the Department, to provide '[a] level of fidelity and some external accountability', Transcript of T Kemp, T13086:6-11 (Day 125).

[132] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181.

[133] Available at: http://www.kidsguardian.nsw.gov.au/ArticleDocuments/449/ChildSafeStandards_PermanentCare.pdf.aspx?Embed=Y (viewed 5 February 2016).

[134] NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 13, 16.

[135] *Children and Young Persons (Care and Protection Act) 1998* (NSW) ss 138, 139.

[136] Full accreditation can be granted for one, three of five years. Provisional accreditation can be granted for up to three years (see: Children and Young Persons (Savings and Transitional) Regulation 2000 rr 22A, 22AA, 22B; and NSW Office of the Children's Guardian, 'Designated agencies'.

[137] Transcript of M Walk, T13072:1-47 (Day 125); NSW Department of Family and Community Services, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, NSW.0057.001.0001, 2015, p 38; http://www.kidsguardian.nsw.gov.au/out-of-home-care/statutory-out-of-home-care/designated-agencies/designated-agencies (viewed 5 February 2016).

[138] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181.

[139] Children and Young Persons (Care and Protection) Regulation 2012 (NSW) r 66.

[140] NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 5.

[141] See, for example: Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 8 ('We believe that the New South Wales Accreditation system, which requires policies to be in place and participation of children and young people, is the most robust way to protect children'). See also: Life Without Barriers Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 11), and MacKillop Family Services, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 10.

[142] See, for example: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 136, 137; *Child Protection Act 1999* (Qld) ss 82, 131, 132; *Family and Community Services Act 1972* (SA) s 41; *Children, Youth and Families Act 2005* (Vic) ss 73, 75, 77, 119, 120.

[143] NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 11. See also Children and Young Persons (Care and Protection) Regulation 2012 (NSW) rr 30, 31A and Schedule 2.

[144] See Children and Young Persons (Care and Protection) Regulation 2012 (NSW) rr 31, 31B.

[145] See, for example: Queensland Government, 'How to become a foster or kinship carer', at: https://www.qld.gov.au/community/caring-child/foster-kinship-care-how-to-become-a-carer/ (viewed 29 January 2016).

[146] In Victoria, for example, kinship carers who are 'closely related' to the children they are caring for are exempt from the requirement to have a working with children check (see: *Working with Children Act 2005* (Vic) s 28. See also: Secretariat of National Aboriginal and Islander Child Care (SNAICC) et al., Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 6; Life Without Barriers, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 6; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 6.

[147] State Government of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 28, 33.

[148] J Hunt, et al., *Keeping them in the family: outcomes for abused and neglected children placed with family or friends carers through care proceedings*, Department for children, schools and families, University of Oxford, UK, 2008.

[149] State Government of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 33.

[150] On the shortage of suitable kinship carers see L Bromfield et al., 'Why is there a shortage of Aboriginal and Torres Strait Islander Carers? Perspectives of professionals from Aboriginal and Torres Strait Islander agencies, non-government agencies and government departments', *Promising Practices in Out-of-Home Care for Aboriginal and Torres Strait Islander Carers and Young People: Strengths and Barriers*, *Australian Institute of Family Studies*, Melbourne, 2007, https://aifs.gov.au/cfca/sites/default/files/publication-documents/paper1_0.pdf (viewed 15 January 2016).

[151] State Government of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 33.

[152] See, for example: Victorian Commission for Children and Young People, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 4: 'in kinship care [there is] the potential for a higher risk of abuse if issues such as family violence, physical abuse, emotional abuse, neglect or intergenerational sexual abuse have been present within the extended family.'; M McHugh, *A framework of practice for implementing a kinship care program: Final report*, UNSW Social Policy Research Centre, Sydney, 2009, pp 9, 11, 132, 63–65; A Shlonsky & J Berrick, 'Assessing and promoting quality in kin and nonkin foster care', *Social Service Review*, vol 75, no 1, 2001, pp 60–83; T Terling-Watt, 'Permanency in kinship care: An exploration of disruption rates and factors associated with placement disruption', *Children and Youth Services Review,* vol 23, no 2, 2011, pp 111–126.

[153] On this point, however, we note the observation of the Victorian Commission for Children and Young People that: '[it is] not aware of any comparative research that would provide an evidence base for customizing [sic] the assessment process and preliminary training to meet the differing needs of kinship carers and foster carers respectively', Victorian Commission for Children and Young People, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 14.

[154] See comments on the (then) pending NSW Carers Register in Transcript of M Walk, T12897:9-13 (Day 123); Transcript of M Walk, T13075:15-41 (Day 125); Transcript of K Boland, T14905:18-39 (Day 145); Transcript of K Boland, T14906:7-14 (Day 145); Transcript of K Boland, T14907:24-35 (Day 145); Transcript of K Boland, T14910:8-13 (Day 145); Transcript of L Voigt, T13193:2-5 (Day 126); The NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, pp 3, 13, 16; NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, pp 5–6; Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 1–2.

[155] See, for example: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 81; *Children, Youth and Families Act 2005* (Vic) s 80.

[156] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181(1)(d); Children and Young Person (care and Protection) Regulation 2012 (NSW) r 86B. See also http://www.kidsguardian.nsw.gov.au/out-of-home-care/nsw-carers-register (viewed 25 November 2015).

[157] Children and Young Person (care and Protection) Regulation 2012 (NSW) r 86M.

[158] Children and Young Person (care and Protection) Regulation 2012 (NSW) r 86M. See also NSW Office of the Children's Guardian, *Carers Register Fact Sheet 2 – Information for carers and household members: What data is recorded?* http://www.kidsguardian.nsw.gov.au/ArticleDocuments/541/CR_FS2_InfoForCarersandHM_June2015.pdf.aspx?Embed=Y (viewed 25 November 2015).

[159] Children and Young Person (Care and Protection) Regulation 2012 (NSW) rr 30, 86D(2), 86E(3), 86F. See also: http://www.kidsguardian.nsw.gov.au/out-of-home-care/nsw-carers-register (viewed 25 November 2015).

[160] Children and Young Person (Care and Protection) Regulation 2012 (NSW) Schedule 2(2).

[161] See: NSW Office of the Children's Guardian, *Carers Register Fact Sheet 4: Information exchange between designated agencies*, at: http://www.kidsguardian.nsw.gov.au/ArticleDocuments/541/CR_FS4_RequiredInformationExchange.pdf.aspx?Embed=Y (viewed 20 December 2015).

[162] South Australia is working with NSW and Victoria to develop a research proposal on inter-jurisdictional carer information sharing arrangements, at the request of the National Children and Families Secretaries Group; see Government of South Australia, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, SA.0029.001.0002, 2015, p 31; Victorian Government, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, VIC.0007.001.0001, 2015, p 45.

[163] See, for example: NSW Ombudsman, *Good Conduct and Administrative Practice – Guidelines for state and local government (2nd edition),* 2006, pp A38–A39, https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0016/3634/Good-Conduct-2nd-edition-amended.pdf (viewed 19 February 2016); Government of Western Australia, *Oversight bodies across government*, 2012, https://publicsector.wa.gov.au/public-administration/sector-performance-and-oversight/oversight-bodies-across-government (viewed 19 February 2016). See also the American Non-Governmental Organizations Coalition for the International Criminal Court (AMICC), *Questions & answers on an independent oversight mechanism for the International Criminal Court – 'What is oversight and what does it do?'*, 2008, p 1, http://www.amicc.org/docs/OversightQA.pdf (viewed 19 February 2016).

[164] See, for example: Solicitor-General of Tasmania, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 1–2, 4, 11–12; Victorian Commissioner for Children and Young People, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 16; State of Western Australia State Solicitor's Office, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 10, 11.

[165] See, for example: NSW Ombudsman, *Good Conduct and Administrative Practice–Guidelines for state and local government (2nd edition),* 2006, pp A38–A39, https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0016/3634/Good-Conduct-2nd-edition-amended.pdf (viewed 19 February 2016); Government of Western Australia, *Oversight bodies across government*, 2012, https://publicsector.wa.gov.au/public-administration/sector-performance-and-oversight/oversight-bodies-across-government (viewed 19 February 2016). See also the American Non-Governmental Organizations Coalition for the International Criminal Court (AMICC), *Questions & answers on an independent oversight mechanism for the International Criminal Court – 'What is oversight and what does it do?'*, 2008, p 1, http://www.amicc.org/docs/OversightQA.pdf (viewed 19 February 2016).

[166] Victorian Commission for Children and Young People, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 24.

[167] The Ombudsman of the ACT cannot investigate actions taken by an agency for the purpose of, or in the course of providing, a service for children and young people, or refusal to provide a service for children and young people (see *Ombudsman Act 1989* (ACT) ss 4C, 5(2)(n)). The functions of the Ombudsman of the Northern Territory do not extent to a matter that the Children's Commissioner of the Northern Territory is authorised to investigate under the *Children's Commissioner Act 2013* (NT) (see *Ombudsman Act 2009* (NT) s 10(2)).

[168] *Ombudsman Act 1989* (ACT) ss 4C, 5; *Ombudsman Act 1974* (NSW) ss 5, 12; *Ombudsman Act 2009* (NT) ss 3, 6, 10; *Ombudsman Act 2001* (Qld) ss 5, 6, 7, 12; *Ombudsman Act 1978* (Tas), s 12; *Ombudsman Act 1972* (SA) ss 13, 14A; *Ombudsman Act 1973* (Vic) s 13; *Parliamentary Commissioner Act 1971* (WA) ss 4A, 13, 14.

[169] *Human Rights Commission Act 2005* (ACT) s 19B (re the functions of the Commissioner); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181 (re the functions of the Guardian); *Children's Commissioner Act 2013* (NT) s 10 (re the functions of the Commissioner); *Family and Child Commission Act 2014* (Qld) s 9 (re the functions of the Commission); Office of the Guardian for Children and Young People South Australia, http://www.gcyp.sa.gov.au/about-2/ re the functions of the Guardian); *Children and Young Persons and their Families Act 1997* (Tas) s 79 (re the functions of the Commissioner); *Commission for Children and Young People Act 2012 (*Vic) s 8 (re the functions of the Commission); *Commissioner for Children and Young People Act 2006* (WA) s 19 (re the functions of the Commissioner).

[170] *Human Rights Commission Act 2005* (ACT) ss 19B, 40A; *Public Advocate Act 2005* (ACT) s 10(g); *Advocate for Children and Young People Act 2014* (NSW) s 15(1)(c); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 181; *Children's Commissioner Act 2013* (NT) s 10; *Family and Child Commission Act 2014* (Qld) s 9; Office of the Guardian for Children and Young People South Australia, http://www.gcyp.sa.gov.au/about-2/; *Children, Young Persons and their Families Act 1997* (Tas) s 79; *Commissioner for Children and Young People Act 2012* (Vic) s 8.

[171] *Public Advocate Act 2005* (ACT) ss 10(d), 10(e); *Advocate for Children and Young People Act 2014* (NSW) ss 15(1)(a), 15(1)(b), 15(1)(d).

[172] We note that some jurisdictions have Visitors programs for children in detention or juvenile justice facilities; children and others with disability in facilities established to cater for their needs; and some individuals with mental health concerns (eg: ACT, Vic and WA). Our discussion here is limited to Visitors who visit children in OOHC placements only.

[173] *Public Guardian Act 2014* (Qld) s 56(1).

[174] *Children and Community Services Act 2004* (WA) s 125A.

[175] *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) s 8(1); New South Wales Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 10.

[176] See, for example: Queensland Commissioner for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 17, 18; Transcript of T Kemp, T13087:42-6 (Day 125).

[177] We note that children in OOHC can contact the Queensland Office of the Public Guardian (OPG) Community Visitors by phone, email or via the OPG website at any time between visits.

[178] Barnardos Australia, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 8; Transcript of T Kemp, T13087:42-6 (Day 125); Transcript of E White, T13102:6-46 (Day 125).

[179] Queensland Commissioner for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 17, 27; Solicitor-General of Tasmania, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 2; PeakCare Queensland Inc., Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 3.

[180] Transcript of T Kemp, T13087:46-T13088:3 (Day 125).

[181] *Ombudsman Act 1974* (NSW) s 25A(1).

[182] *Ombudsman Act 1974* (NSW) s 25A(1).

[183] *Children and Young Persons (Care and Protection Act 1998* (NSW) s 137.

[184] *Ombudsman Act 1974* (NSW) s 25A(1).

[185] *Ombudsman Act 1974* (NSW) s 25AAA(1)–(2).

[186] *Ombudsman Act 1974* (NSW) s 25C.

[187] Currently Professor John McMillan.

[188] *Ombudsman Act 1974* (NSW) s 25DA. See also the *Child Protection (Working with Children) Act 2012,* Sch 1 cl 2A.

[189] *Ombudsman Act 1974* (NSW) s 25E.

[190] *Ombudsman Act 1974* (NSW) s 25F.

[191] *Ombudsman Act 1974* (NSW) s 25G.

[192] Transcript of L Voight, T13190:41-T13191:43 (Day 126).

[193] Victoria Department of Human Services, *Creating child safe organisations*, http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/creating-child-safe-organisations (viewed 29 February 2016); Family and Community Development Committee 2013, *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations,* Parliament of Victoria, 2013.

[194] Transcript of P Clarke, T15029:41-T15030:11 (Day 146); Transcript of C Field, T15116:11-29 (Day 146); Transcript of D Glass, T15041:11-T15042:7 (Day 146); Transcript of H Watchirs, T15120:29-30 (Day 146).

[195] The term 'information sharing', as it is used in this chapter, refers to the sharing (or exchange) of information between institutions, both within and across jurisdictions. In some cases it refers to information exchange between institutions and individuals who provide key services in OOHC contexts. The term also refers to information sharing by institutions with carers and children in care. The 'information' which we refer to is information about or related to child sexual abuse in OOHC contexts.

[196] See, for example: The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008; Australian Law Reform Commission, *Family Violence – A National Legal Response*, Report 114, 2010; M Bamblett, H Bath and R Roseby*, Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory, Northern Territory Government, Darwin, 2010; Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse: Ampe Akelyernemane Meke Mekarle 'Little Children Are Sacred'*, Northern Territory Government, 2007, pp 98–102; NSW Ombudsman, *Responding to child sexual assault in Aboriginal communities: A report under Part 6A of the Community Services (Complaints, Reviews and Monitoring) Act 1993*, NSW Ombudsman, 2012.

[197] Australian Law Reform Commission*, Family Violence – A National Legal Response*, Report 114, 2010, p 1364.

[198] This includes evidence from public hearings and information from private sessions and stakeholder consultations. We have also commissioned research by Carolyn Adams (Macquarie University) and Krista Lee-Jones into the legislative (and related key policy and operational) frameworks for sharing information related to child sexual abuse in institutional contexts.

[199] See, for example: Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 1: The response of institutions to the conduct of Steven Larkins*, Sydney, 2014, pp 26–29, 33; Knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 3; Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 10.

[200] See, for example: Transcript of S Kinmond, T15068:9-25 (Day 146); Transcript of K Boland, T14940:42-T14941:37 (Day 145). See also Australian Human Rights Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper 1: Working with Children Check*, 17 June 2013, p 12; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 2. See also NSW Ombudsman, *Responding to child sexual assault in Aboriginal communities: A report under Part 6A of the Community Services (Complaints, Reviews and Monitoring) Act 1993*, NSW Ombudsman, 2012, pp 171–174.

[201] See, for example: Transcript of B Orr, T14758:40-T14759:22 (Day 143); Dr Frank Ainsworth, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 4.

[202] See endnote 200 above. See also Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 10; Transcript of K Boland, T14941:36-45 (Day 145); Transcript of S Kinmond, T15067:3-18 (Day 146) and T15068:9-25 (Day 146); Transcript of D Glass, T15043:21-32 (Day 146); Transcript of M Walk, T13146:19-27 (Day 125).

[203] We are using the term 'personal information' to refer to information or an opinion about an identified or reasonably identifiable person (see *Privacy Act 1988* (Cth) s 6(1) for a more comprehensive definition of personal information).

[204] By 'privacy' we mean a person's ability to control access to, and use of, their personal information.

[205] Our discussion of 'confidentiality' and 'confidential information' in this chapter refers to information held subject to obligations or rules preventing or restricting disclosure.

[206] The *Privacy Act 1988* (Cth) imposes obligations and restrictions (with respect to collection, use and disclosure of personal information) on commonwealth public sector agencies and private sector organisations (those with an annual turnover of $3 000 000 or more, and health service providers). State/territory privacy legislation imposes obligations and restrictions on state/territory public sector agencies (*Information Privacy Act 2014* (ACT); *Information Privacy Act 2002* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic)). In South Australia, the handling of personal information by state/territory public sector agencies is regulated by a Cabinet Administrative Instruction (*Information Privacy Principles Instruction 2013* (SA)). In some jurisdictions, obligations and restrictions (with respect to personal information related to health) are also imposed under specific health privacy legislation, which applies to both public sector agencies and private sector organisations (*Health Records (Privacy and Access) Act 1997* (ACT); *Health Records and Information Privacy Act 2002* (NSW); *Health Records Act 2001* (Vic)). See also endnote 301, below.

[207] For examples of confidentiality obligations in child protection legislation, see: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29, 254; *Care and Protection of Children Act* (NT) ss 150, 195, 221; *Child Protection Act 1999* (Qld) ss 186–188; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Community Services Act 2004* (WA) s 241; *Children's Protection Act 1993* (SA) ss 13, 52E, 52L, 58; *Children, Youth and Families Act 2005* (Vic) ss 127(5) and 180.

[208] For example, service agreements for government funded OOHC services, common law and equitable obligations of confidence, and professional and ethical codes. See: The Royal Australian & New Zealand College of Psychiatrists Code of Ethics, *RANZCP,* Melbourne: The RANZCP, 2010, https://www.ranzcp.org/Files/Resources/College_Statements/Practice_Guidelines/code_ethics_2010-pdf.aspx (viewed 22 December 2015); Australian Association of Social Workers Code of Ethics, *Australian Association of Social Workers*, Canberra, 2010, http://www.aasw.asn.au/practitioner-resources/code-of-ethics (viewed 22 December 2015).

[209] Information may be subject to higher privacy standards because it is information about a person's sexual activities or practices. See, for example: *Privacy Act 1988* (Cth) s 6, Schedule 1 APP 6.2(a); *Information Act* (NT) s 4, Schedule 2 IPP 2.1(a); *Personal Information Protection Act 2004* (Tas) s 3, Schedule 1 PIPP 2 (1)(a); *Privacy and Data Protection Act 2014* (Vic) Schedule 1 IPP 10. See also *Privacy and Personal Information Protection Act 1998* (NSW) 19(1) and endnote 295 below. The handling of criminal records is also subject to particular obligations and restrictions under the *Crimes Act 1914* (Cth) and state/territory criminal records legislation, as well as under privacy legislation.

[210] See, for example: *Privacy Act 1988* (Cth) Schedule 1 APP 6.1; *Privacy and Personal Information Protection Act 1998* (NSW) ss 18(1)(a) and 18(2); *Information Privacy Principles Instruction 2013* (SA) cl 4(10). (See endnote 209, above, with respect to sensitive information).

[211] See, for example: *Privacy Act 1988* (Cth) Schedule 1 APP 6.1; *Information Privacy Act 2014* (ACT) TTP 6.1(a); *Privacy and Personal Information Protection Act 1998* (NSW) s26(2); *Information Act* (NT) Schedule 2 IPP 2.1(c); *Information Privacy Act 2009* (Qld) Schedule 3 IPP 11(1)(b) and Schedule 4 NPP 2(1)(b); *Personal Information Protection Act 2004* (Tas) Schedule 1 PIPP 2 2(1)(b); *Privacy and Data Protection Act 2014* (Vic) Schedule 1 IPP 2.1(b).

[212] See, for example: *Privacy Act 1988* (Cth) ss 16A, 16B(3), APP 6.2; *Privacy and Personal Information Protection Act 1998* (NSW) ss 23, 24 and 25. Exceptions to confidentiality under child protection legislation include: *Children and Young People Act 2008* (ACT) s 847(2); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 254(1); *Care and Protection of Children Act* (NT) s 308(2); *Child Protection Act 1999* (Qld) ss 187(3) and 188(3); *Children's Protection Act 1993* (SA) s 58(3); *Children, Young Persons and Their Families Act 1997* (Tas) s 103(3); *Children, Youth and Families Act 2005* (Vic) s 132; *Children and Community Services Act 2004* (WA) s 241(2).

[213] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 12.

[214] See, for example: Standard 6 of the NSW Office of the Children's Guardian *NSW Child Safe Standards for Permanent Care,* November 2015; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 9, art 12; *Charter of Rights for Children and Young People in Out of Home Care in NSW*, http://www.community.nsw.gov.au/parents,-carers-and-families/for-young-people/are-you-in-care/charter-of-rights (viewed 29 February 2016). See also *Children and Community Services Act 2004* (WA) s 10.

[215] Transcript of B Orr, T14777:9-18 (Day 143).

[216] T Moore et al., *Taking us seriously: Children and young people talk about safety and institutional responses to their safety concerns*, Institute of Child Protection Studies, Australian Catholic University, Melbourne, 2015, p 54.

[217] See *Ombudsman Act 1974* (NSW) s 25GA.

[218] See, for example: *Children and Young People (Care and Protection) Act 1998* (NSW) ss 143, 144; *Ombudsman Act 1974* (NSW) s 25GA; *Care and Protection of Children Act* (NT) s 80; *Child Protection Act 1999* (Qld) s 83A; *Children Youth and Families Act 2005* (Vic) s 179. Arrangements for the sharing of information by prescribed bodies related to the safety and wellbeing of children in OOHC in the ACT and the NT also include carers (*Children and Young People Act 2008* (ACT) s 859(1)(c); *Care and Protection of Children Act* (NT) s 293C(1)(c).

[219] See, for example: Transcript of B Orr, T14775:36–T147776:28 (Day 143); Queensland Commission for Children and Young People, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, pp 9–10; Act for Kids, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 4, 8; Dr Frank Ainsworth, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 4. See also CREATE Foundation, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, pp 9, 10; Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 36. On the Victorian child protection agency's awareness of this issue and attempts to address it, see Transcript of B Allen, T14889:4–T1890:15.

[220] Transcript of B Orr, T14759:7-22 (Day 143).

[221] Transcript of B Orr, T14775:36-T147776:28 (Day 143); Act for Kids, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 4; Queensland

Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 10; Knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 7; Royal Commission internal information received in private sessions.

[222] ABC & Ors v State of Queensland & Anor [2015] QDC 321 (11 December 2015).

[223] ABC & Ors v State of Queensland & Anor [2015] QDC 321 (11 December 2015) [291].

[224] ABC & Ors v State of Queensland & Anor [2015] QDC 321 (11 December 2015) [292].

[225] ABC & Ors v State of Queensland & Anor [2015] QDC 321 (11 December 2015) [244].

[226] ABC & Ors v State of Queensland & Anor [2015] QDC 321 (11 December 2015) [262].

[227] Act for Kids, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, pp 4, 8; Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 10; Royal Commission internal information received in private sessions.

[228] See, AbSEC Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 14.

[229] See *Ombudsman Act 1974* (NSW) s 25GA.

[230] Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 22.

[231] See, for example: Anglicare Sydney, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013; Knowmore, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, pp 3–4; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 14; NSW Office of the Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 16. See, for example: Truth Justice and Healing Council, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 36 on the lack of information provided by OOHC agencies to Catholic schools about students in OOHC. Also see: Transcript of S Kinmond, T15067:3-18, T15067:39-T15068:7 (Day 146).

[232] Arrangements not considered here include specific arrangements for information sharing: between police and others, including child protection agencies, for investigation purposes; with regulator/oversight bodies for purposes related to the exercise of the regulator/oversight body's functions; and within care teams.

[233] Information sharing arrangements under state/territory child protection legislation considered here include: *Children and Young People Act 2008* (ACT) Div 25.3.2; *Children and Young Persons (Care and Protection) Act 1998* (NSW) Ch 16A; *Care and Protection of Children Act* (NT)

Part 5.1A; *Child Protection Act 1999* (Qld) Ch 5A (in particular, Part 4); *Children, Young Persons and Their Families Act 1997* (Tas) Part 5A; *Children and Community Services Act 2004* (WA) s 23 and Part 3 Div 6; *Children, Youth and Families Act 2005* (Vic) Part 4.5, and ss 35, 36. See endnote 236 below regarding South Australia's arrangements under the *Information Sharing Guidelines for Promoting Safety and Wellbeing* (2013).

[234] The term 'prescribed body' is used in New South Wales. Other jurisdictions use other terms, for example 'prescribed entity' (Queensland), 'prescribed authority' and 'authorised entity' (Western Australia) and 'information sharing authority' (Northern Territory).

[235] Arrangements may identify jurisdictional child protection agency heads, employees and authorised officers for the purposes of information sharing with prescribed bodies (see, for example: *Child Protection Act 1999* (Qld) ss 159M, 159N; *Care and Protection of Children Act* (NT) s 293C(1)(a)). Here we use the term child protection agency to include such references.

[236] South Australia does not provide for equivalent information sharing arrangements in legislation. Arrangements for sharing safety and wellbeing information are provided for administratively, consistently with the *Privacy Act 1988* (Cth) and the *Information Privacy Principles Instruction 2013* (SA): Ombudsman SA, *Information Sharing Guidelines for promoting safety and wellbeing* (2013). These arrangements are considered later in this chapter.

[237] See *Children and Young People Act 2008* (ACT) s 858 for some examples of information relevant to safety and wellbeing.

[238] For example, while arrangements in New South Wales focus on organisations which have direct responsibility for or supervision of services wholly or partly to children (as well as government agencies more generally), other jurisdictions include adult mental health and drug/alcohol treatment services. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6) and Children and Young Persons (Care and Protection) Regulation 2012 (NSW) r 8 compared to *Care and Protection of Children Act* (NT) s 293C(1); *Children, Young Persons and Their Families Act 1997* (Tas) s 3; *Children, Youth and Families Act 2005* (Vic) s 3.

[239] See: *Children and Young People Act 2008* (ACT) s 859(1) (definition of 'information sharing entity'); *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6), and Children and Young Persons (Care and Protection) Regulation 2012 (NSW) r 8 (definitions of 'prescribed body'); *Care and Protection of Children Act* (NT) s293C; *Children, Young Persons and Their Families Act 1997* (Tas) s 3 (definition of 'information sharing entity') and s 14(1) (definition of 'prescribed person').

In some jurisdictions, the application of information sharing provisions varies, depending on the category or type of prescribed body. See *Child Protection Act 1999* (Qld), s 159D (definitions of 'prescribed entity' and 'service provider') and ss 159 H(4) and 159M(1); *Children, Youth and Families Act 2005* (Vic) s 3 (definitions of 'information holder', 'community-based child and family service', 'community service', 'registered community service' and 'service agency' for different information sharing arrangements under, ss 35, 36, 192, 195, 196 of that Act); *Children and Community Services Act 2004* (WA) s28A and Children and Community Services Regulation 2006 (WA) r 20A (definitions of 'authorised entity' and 'prescribed authority' for the purpose of information sharing under Part 3 Div 6). See also definitions of the bodies subject to information sharing arrangements under s 23, some of which are also prescribed bodies subject to information sharing arrangements under Part 3 Div 6 of the *Children and Community Services Act 2004* (WA). See endnotes 246 and 247, below, for further discussion.

See also, by way of comparison, Ombudsman SA, *Information Sharing Guidelines for promoting safety and wellbeing* (2013), p 5, which applies to South Australian government agencies, and non-government organisations acting under a State contract.

[240] See *Child Protection Act 1999* (Qld) ss 159D and 159M(1)(e); *Children, Young Persons and Their Families Act 1997* (Tas) ss 3, 14(1)(e) and 14I1)(h). By way of further comparison, in New South Wales and Western Australia, the jurisdictional Police Force is referred to, while Queensland's arrangements refer to the police commissioner, and Tasmania's arrangements refer to police officers. Despite such variations, these arrangements allow for information held by the relevant institutional entity to be captured (see *Children and Young Persons (Care and Protection Act) 1998* (NSW), ss 245B(1)(a) and 248(6)(a); *Child Protection Act 1999* (Qld) ss 159D and 159M(1)(e); *Children, Young Persons and Their Families Act 1997* (Tas) ss 3 and 14(1)(e); *Children and Community Services Act 2004* (WA) s 28A and Children and Community Services Regulation 2006 (WA) r 20A(la).

[241] See, for example: *Care and Protection of Children Act* (NT) s 293C(1)(l)) and *Children, Young Persons and Their Families Act 1997* (Tas) ss 3(1), 14(1)(a) and 14(1)(d).

[242] *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 245C; *Care and Protection of Children* Act (NT) s 293D. In New South Wales, the relevant information is described as 'information relating to the safety, welfare or wellbeing of a particular child or young person or class of children or young persons' (*Children and Young Persons (Care and Protection Act) 1998* (NSW) s 245C(1), see also s 245D(1)). In the Northern Territory, it is described as 'any information that relates to the safety or wellbeing of the child' (*Care and Protection of Children* Act (NT) s 293B(1)). Information sharing for risk management purposes (with respect to risks that might arise in the information recipient's capacity as an employer or OOHC provider) is referred to explicitly in New South Wales' provisions, but not in the Northern Territory's provisions: *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 245C(1)(b), see also s 245D(2)(b).

[243] Some Federal courts and Commonwealth Departments are included as prescribed bodies for the purposes of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (see ss 245B(1) and 248(6)(f) and Children and Young Persons (Care and Protection) Regulation 2012 (NSW) r 8. However, these bodies cannot be compelled to provide information under Chapter 16A: *Children and Young Persons (Care and Protection) Act 1998* (NSW), 245I.

[244] *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 245D(1),(2),(3); *Care and Protection of Children Act* (NT) s 293E (1),(2),(3). See also endnote 242, above.

[245] See *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 245D(4); *Care and Protection of Children Act* (NT), s 293E(5).

[246] See *Children and Young People Act 2008* (ACT) ss 860(1), 860(2), and 862 and *Children and Their Families Act 1997* (Tas) ss 53A and 53B(1). See also *Children, Youth and Families Act 2005* (Vic) ss 195–197; see also s 36. Similarly, in Queensland the child protection agency can require prescribed bodies to provide it with relevant information, without being required to provide information itself: *Child Protection Act 1999* (Qld) ss 159M(4) and 159N. However, there are some limited circumstances where the child protection agency is required to provide information to a prescribed body under the *Child Protection Act 1999* (Qld). Where the child protection agency has asked a prescribed body (which belongs to a particular group of prescribed bodies specified in s 159H(1)) to provide a service to a child in need of protection, the child protection agency must give that prescribed body the information it needs to provide the service (*Child Protection Act 1999* (Qld) ss 159H(2) and s 159H(4) and 159N). Under s 23(2) of the *Children and Community Services Act 2004* (WA), the West Australian child protection agency may (but is not obliged) to provide relevant information to prescribed bodies if they fall within the range of bodies specified in s 23(2). In Victoria, the child protection agency can require information from prescribed bodies under Part 4.5 *Children, Youth and Families Act*

2005 (Vic) (see ss 195–197). See endnote 247, below, with respect to the capacity of those prescribed bodies which fall within the category of 'community based child and family services' in Victoria to seek, but not require, information from the child protection agency (*Children, Youth and Families Act 2005* (Vic) s 36).

[247] See *Children and Young People Act 2008* (ACT) ss 859–862. Provisions for direct information exchange under the *Children, Youth and Families Act 2005* (Vic) appear to be limited. Under s 36 of the Act, prescribed bodies that are 'community based child and family services' and have received a referral of a wellbeing concern may 'consult with' the child protection agency and a wider range of prescribed bodies in order to assess risk assess and identify appropriate service providers. The community based child and family service can, for the purpose of this consultation only, disclose information to and 'receive' information from those it consults with. Section 36 does not enable the wider range of prescribed bodies to initiate direct information exchange outside this consultation arrangement. Part 4.5 of the *Children, Youth and Families Act 2005* (Vic), which provides for disclosure of information by prescribed bodies to the child protection agency, does not enable direct information exchange between prescribed bodies.

[248] See *Child Protection Act 1999* (Qld) s 159M; *Children, Young Persons and Their Families Act 1997* (Tas) s 53B(3)(b); *Children and Community Services Act 2004* (WA) s 28B. Disclosure under the *Children, Youth and Families Act 2005* (Vic) s 36 is also voluntary (see endnote 247 above). South Australia's *Information Sharing Guidelines for promoting safety and wellbeing* (2013) (discussed later in this chapter) also support information sharing, but cannot require it.

[249] See evidence of M Walk, Deputy Secretary, NSW FACS on the application of s 248, *Children and Young Persons (Care and Protection) Act 1998* (NSW), prior to the introduction of Chapter 16A: Transcript of M Walk, T13145:42-47, T13146:1-17 (Day 124). See the Wood Inquiry's assessment of the effect of s 248: The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, pp 983–984, 998–999, 1056–1058. See also M Bamblett, H Bath and R Roseby*, Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory, Northern Territory Government, Darwin, 2010, pp 413–461.

[250] Provisions for proactive sharing include *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245C; *Care and Protection of Children Act* (NT) s 293D; *Child Protection Act 1999* (Qld) ss 159C(1), 159 D, 159M; *Children and Their Families Act 1997* (Tas) s 53B(3); *Children and Community Services Act 2004* (WA) s 28A.

[251] See Transcript of A Kemp, T13151:11-26 (Day 125). See also Transcript of H Bath, *Roundtable discussion into preventing sexual abuse of children in out-of-home care*, T33:11 - 16 (16 April 2015) on the difficulty of sharing such information across jurisdictions.

[252] See *Case Study 2: YMCA NSW's response to the conduct of Jonathan Lord*, p 70; E Munro & S Fish, 'Hear no evil, see no evil: Understanding failure to identify and report child sexual abuse in institutional contexts', Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney 2015, p 23; In their analysis of *Case Study 2,* Professor Eileen Munro and Sheila Fish note that failures to suspect grooming or abusive behaviour may occur 'when an accurate assessment depends on bringing together small items of information known by several different people or over a long period – items that in isolation do not look very worrying but when combined suggest a serious problem' See also *Case Study 20: The response of The Hutchins School and the Anglican Diocese of Tasmania to allegations of child sexual abuse at the school* on the incremental assessment of reports of sexual abuse and the importance of every piece of information gathered (p 73).

[253] See *Children and Their Families Act 1997* (Tas) ss 53A, 53B; *Children, Youth and Families Act 2005* (Vic) ss 35, 36, 192, 194–196. See also Transcript of T Kemp, T13149:27-29 (Day 125).

[254] See, for example: *Children and Young People Act 2008 (*ACT) s 863. In relation to care teams in Victoria, see Child Protection Manual: Care Teams – Advice, Victoria State Government, Available: http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/out-home-care/care-teams (viewed 19 February 2016).

[255] These interagency joint response teams include: the Joint Investigation Response Team (JIRT) in NSW; the Suspected Child Abuse and Neglect (SCAN) in Queensland; the ChildFirst Assessment and Interview Team (CAIT) in Western Australia; the Child Abuse Taskforce (CAT) in the Northern Territory; Multidisciplinary Centres (MDCs) in Victoria.

[256] See, for example, *Children and Young People Act 2008* (ACT) s 863.

[257] Ombudsman SA, *Information Sharing Guidelines for promoting safety and wellbeing* (2013), p 6.

[258] Uniting Church in Australia told us that in Victoria , information sharing is streamlined and enhanced through Child First (Child and Family Information, Referral and Support Teams) and Integrated Family Services Programs. Child First was established in Victoria to provide a community based referral point into Family Services (Victoria Department of Human Services, Child First Fact Sheet November 2008 http://www.dhs.vic.gov.au/__data/assets/pdf_file/0016/590110/child_FIRST_fact_sheet_PRINT.pdf). Anglicare Victoria told us that its OOHC staff exchange information with the Victorian child protection agency and other children, youth and family services funded by the child protection agency, via a common assessment framework called the Best Interests Framework, which in turn incorporates the Looking After Children framework. Anglicare Victoria commented that 'these frameworks are typically not in use within other service sectors with which our staff liaise concerning children's needs (such as mental health and other healthcare services, educational institutions, and so on)': Anglicare Victoria, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, ANG.0069.001.0001, 2015, p 16.

[259] See discussion above about limitations on prescribed bodies' capacity for information exchange, and below about the exclusion of non-government agencies from inter-jurisdictional information sharing protocols. See also Act for Kids, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, pp 5–6.

[260] See NSW Government, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 9; NSW Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care,* 11 September 2013, p 16. For information about the transfer of OOHC service provision to non-government organisations, see Transcript of M Walk, T12825:34-T12826:9 (Day 123); Transcript of S Kinmond, T15065:18-56 (Day 146). See also, Uniting Church, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, for discussion about limited information sharing with the transfer of placements.

[261] See, for example: Anglicare Victoria, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, ANG.0069.001.0001, 2015, p 8; Berry Street, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, BER.0001.001.0001, 2015, p 20; Transcript of S Kinmond, T15076:46-T15077:5 (Day 146).

[262] See, for example: *Children and Young People Act 2008 (*ACT) s 852; *Children and Young Persons*

(Care and Protection) Act 1998 (NSW) ss 231V(1), 248; *Children and Community Services Act 2004* (WA) s 23.

[263] See, for example: *Care and Protection of Children Act* (NT) ss 153, 154(3) and 181; *Children Protection Act 1993* (SA) s 54U; *Children, Young Persons and their Families Act 1997* (Tas) s 77Z; *Children and Community Services Act 2004* (WA) s 184(1).

[264] *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance* April 2009 (amended 19.08.2011); *Information Sharing Protocol Between the Commonwealth and Child Protection Agencies* (January 2009). Interstate exchange of criminal history information for screening of carers and others employed in the OOHC sector is governed by the intergovernmental agreement for the *Exchange of Criminal History Information for People Working with Children*. The latter is considered in our Working With Children Checks Report. Other interstate information sharing arrangements which are in place for criminal justice/law enforcement purposes are not included in our discussion here.

[265] See, for example: *Children and Young People Act 2008* (ACT) ss 859(1)(g), 859(i)(v); *Children and Community Services Act 2004* (WA) s 23. See also endnote 243.

[266] Allen Consulting Group 2011, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Final report*, Report to the Department of Families, Housing, Community Services and Indigenous Affairs, Sydney, 2011, p vi.

[267] Transcript of K Boland, T14941:1-5 and 36-37 (Day 145); Transcript of S Kinmond, T15068:27-T15069:17 (Day 146); Transcript of B Glass, T15069:40-45 (Day 146); Transcript of M Walk, T13146: 19-29 (Day 125). See also Australian Human Rights Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper 1: Working with Children Check*, p12, *Working with Children Check*, 17 June 2013, p 12, on the need to establish protocols and laws for information exchange across and within jurisdictions and between government and non-government agencies when risks to children are identified; NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working With Children Check*, 17 June 2013, p 10.

[268] Transcript of H Bath, *Roundtable discussion into preventing sexual abuse of children in out-of-home care*, T33:11-16 (16 April 2015).

[269] Council of Australian Governments, *National Exchange of Criminal History Information for People Working with Children*, www.coag.gov.au/node/518 (viewed 29 February 2016).

[270] NSW Ombudsman, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working With Children Check*, 17 June 2013, pp 5, 10.

[271] State of Victoria, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working With Children Check*, 17 June 2013, pp 21–22; NSW Children's Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 1: Working With Children Check,* 17 June 2013, p 2.

[272] Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks Report*, 2015, http://www.childabuseroyalcommission.gov.au/getattachment/db91b479-ff88-46dc-a1bd-8425ea5a0944/Working-with-Children-Checks-Report (viewed 5 February 2016).

[273] As we outline in our *Working with Children Checks Report*, WWCC operate to detect people who have already been reported or have otherwise come to the attention of authorities. See Royal Commission into Institutional Responses to Child Sexual Abuse, *Working With Children Checks Report*, 2015, p 3. See also Australian Human Rights Commission, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper 1: Working with Children Check*, 17 June 2013, p 12, on the need for laws and protocols to ensure

comprehensive protection of children through information exchange, beyond working with children processes.

[274] *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*, April 2009 (amended 19.08.2011), cl 25, http://www.dhs.vic.gov.au/__data/assets/pdf_file/0004/481396/Transfer-CP-orders-and-Proceedings-and-IA-0811.pdf (viewed 16 October 2015).

[275] See *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance*, April 2009 (amended 19.08.2011), cl 25 (and cl 3, definition of 'Department'). As the South Australian child protection agency told us, child protection history information released under the Protocol to its interstate counterparts is for the use of the interstate child protection agency only Department for Education and Child Development, Families SA, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, SA.0029.001.0001, 2015, p 23.

[276] The *Information Sharing Protocol Between the Commonwealth and Child Protection Agencies* (2009), www.dhs.vic.gov.au/__data/assets/pdf_file/0008/442592/commonwealth-protocol-jan09.pdf (viewed 29 February 2016), covers jurisdictional child protection agencies and the following Department of Human Services programs: Centrelink, Medicare, and the Child Support Agency.

[277] See Allen Consulting Group 2011, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Final report,* Report to the Department of Families, Housing, Community Services and Indigenous Affairs, Sydney, 2011, p 40.

[278] See *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, s 248B. However an exchange may occur only if it is in accordance with protocols, including recommended privacy standards for the interstate bodies, made by the NSW Minister for Family and Community Services in consultation with the NSW Privacy Commissioner.

[279] *National Framework for Protecting Australia's Children 2009–2020.* The *Information Sharing Protocol Between the Commonwealth and Child Protection Agencies* (2009) was implemented as part of the First Action Plan 2009–2012 under the National Framework. The Second Action Plan 2012–2015 includes exploring the expansion of information sharing protocols between child protection agencies and Commonwealth agencies.

[280] *National Framework for Protecting Australia's Children – Third Three-Year Action Plan 2015–2018: Driving Change: Intervening Early*, Commonwealth of Australia, 2015, pp 5, 12, https://www.dss.gov.au/sites/default/files/documents/12_2015/pdf_third_action_plan_for_protecting_australias_children.pdf (viewed 29 February 2016).

[281] This research will focus on strengthening safeguards to enhance the suitability of carers, examining risks in existing carer information sharing systems, and identifying potential inter-jurisdictional action to address these issues: Department for Education and Child Development, Families SA, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, SA.0029.001.0001, 2015, p 31.

[282] Act for Kids, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, pp 4, 8. See also Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 10. See Transcript of M Walk, T13146:5-17 (Day 125), on the effect of the 'privacy debate' on information sharing in the child protection system in NSW prior to the introduction of Chapter 16A of the *Children and Young Persons (Care and Protection Act) 1998*

(NSW). See Transcript of C Taylor, T13272:36-47, T13273:1-2 (Day 127), on the impact of concerns about privacy and confidentiality on child protection agency practice in Queensland. On the effect of privacy in child protection (including OOHC) contexts, see Australian Law Reform Commission, *For your information: Australian Privacy Law and Practice*, Report 108, 2008, pp 508–511; The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, pp 979–985; Allen Consulting Group 2011, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Final report*, Report to the Department of Families, Housing, Community Services and Indigenous Affairs, Sydney, 2011, pp 43–44; Parenting Research Centre, *Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, pp 76, 91, 97–98; M Keeley et al., *Opportunities for information sharing: Case studies: Report to the NSW Department of Premier and Cabinet*, UNSW Social Policy Research Centre, Sydney, 2015, pp 50, 60–61.

[283] See, for example: Transcript of C Taylor T13272:44–T13273:2 (Day 127). See also Queensland Commission for Children and Young People and Child Guardian, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse *Issues Paper 3: Child Safe Organisations*, October 2013, p 37.

[284] See, for example, *Universal Declaration of Human Rights*, proclaimed 10 December G.A. res. 271A (III), U.N. Doc A/810, art 12 and the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, G.A. res. 2200A (XXI) (entered into force 23 March 1976), art 17.

[285] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 16.

[286] See *Convention on the Rights of the Child,* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 19 and 34 on children's right to protection from sexual abuse and sexual exploitation.

[287] See Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 10; Queensland Commission for Children and Young People and Child Guardian, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse *Issues Paper 3: Child Safe Organisations*, released October 2013, p 37. See also Transcript of M Walk, T13146:6-11 (Day 125), on the clarification of the paramountcy of children's safety, welfare and wellbeing by Chapter 16A of the *Children and Young Persons (Care and Protection Act) 1998* (NSW).

[288] See endnotes 206 – 212 and related discussion. There are also provisions allowing disclosure for the purposes of investigating or reporting concerns about serious misconduct and unlawful activities, and for law enforcement purposes – see, for example: *Privacy Act 1988* (Cth) s 16A; *Privacy and Data Protection Act 2014* (Vic) s 15, Schedule 1 IPP 2.1 (e) and (g). An exemption from restrictions on disclosure under the *Privacy Act 1988* (Cth) for employee records allows private sector employers to disclose personal information directly related to their employment relationship with a past or current employee. This enables disclosure of concerns to prospective employers about conduct (within the course of employment) relating to children, without requiring a serious threat to be identified first (see *Privacy Act 1988* (Cth) ss 6, 7(1)(ee), 7B(3). The potential benefit of this exemption appears to be limited, as it does not apply to employees of Commonwealth or state/territory public sector agencies.

[289] See *Privacy Act 1988* (Cth) s 16A(1) and Schedule 1 APP 6.2; the *Privacy Act* allows disclosure for this purpose where 'it is unreasonable or impracticable' to obtain consent to disclose. See also

Information Privacy Principles Instruction 2013 (SA) cl 4(10)(c); *Information Privacy Act 2009* (Qld) Schedule 3 IPP 11(1)(c); *Personal Information Protection Act 2004* (Tas) Schedule 1 PIPP 2(1)-(d).

[290] The *Information Act* (NT) allows for disclosure where there is 'a serious or imminent threat of harm to, or exploitation of, a child' (see Schedule 2 IPP 2.1(d)(ii)), but deals with threats to life, health or safety of individuals in general, differently (see endnote 291 below).

[291] See, for example: *Privacy and Personal Information Protection Act 1998* (NSW) s 18(1)(c) and 19(1); *Privacy and Data Protection Act 2014* (Vic) Schedule 1 IPP 2.1(d). The *Information Act* (NT) also refers to 'serious and imminent threat' to life, health or safety of individuals (see Schedule 2 IPP 2.1(d)(i)), but deals with threats of harm to, or exploitation of a child differently (see endnote 290 above).

[292] On this point, see The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, vol 3, pp 1042–1043. See also: Australian Law Reform Commission*, For your information: Australian Privacy Law and Practice*, Report 108, 2008, pp 2324–2325.

[293] In *Case Study 2: YMCA NSW's response to the conduct of Jonathan Lord*, a number of separate observations relating to Mr Lord and his actions did not cause serious concern when considered in isolation. When considered cumulatively, however, they painted a more complete and concerning picture. Risks or incidents of abuse may become much clearer when information is considered in combination with other information from a range of sources over time.

[294] The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, pp 1043–1046; *Privacy and Personal Information Protection Act 1998* (NSW) ss 18 and 19(1). As the Wood Report noted, there are some exceptions to ss 18 and 19, but these are of limited assistance in facilitating exchange of child protection information. It should also be noted that s 19(1) addresses sensitive information without explicitly labelling it as such. Instead, s 19(1) lists certain types of information (including information relating to sexual activities) as subject to special restrictions. Provisions in other jurisdictions explicitly label similar types of information, which are subject to special restrictions, as sensitive information – see for example, *Privacy and Data Protection Act 2014* (Vic) Schedule 1.

[295] Ombudsman SA, *Information Sharing Guidelines for promoting safety and wellbeing* (2013), p 6.

[296] See, for example, *Privacy Act 1988* (Cth) ss 72, 73 and the *Privacy and Personal Information Protection Act 1998* (NSW) s 41.

[297] *Privacy and Data Protection 2014* (Vic), Part 3 Div 5 and 6. The Commissioner is also empowered to certify that certain acts or practices comply with privacy obligations: *Privacy and Data Protection 2014* (Vic), Part 3 Div 7.

[298] Victoria, *Parliamentary Debates*, Legislative Assembly, 12 June 2014, p 2109 (RW Clark, Attorney-General).

[299] Australian Law Reform Commission, *For Your information: Australian Privacy Law and Practice*, Report 108, 2008, pp 508–510; NSW Law Reform Commission, *Privacy legislation in New South Wales, Consultation Paper*, 2008, p 6. Confusion about the application of privacy laws has been a consistent theme in inquiries and reviews relating to child protection – see: The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, pp 980–982; Australian Law Reform Commission*, Family Violence – A National Legal Response*, Report 114, 2010. See also: National Council to Reduce Violence against Women and their Children, *Time for action: The national council's plan for*

Australia to reduce violence against women and their children, 2009–2021, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2009, p 154; Ombudsman Victoria, *Own motion investigation into the Department of Human Services child protection program*, Melbourne, 2009, p 16.

[300] As noted above (see endnote 206), private sector organisations are generally regulated by Commonwealth privacy legislation. In some circumstances, however, private sector organisations may also have to comply with state/territory privacy legislation at the same time as having to comply with Commonwealth privacy legislation. Such regulatory overlap may affect private sector organisations contracted or funded by government, as well as private health providers. See, for example, *Health Records and Information Privacy Act 2002* (NSW) s 11; *Health Records Act 2001* (Vic) s 11; *Privacy and Data Protection Act 2014* (Vic) s17(2). It has been reported that where NGOs receive joint funding from both state/territory and Commonwealth bodies, they are uncertain as to whether the information they hold is subject to state/territory or Commonwealth privacy legislation, for example see: Allen Consulting Group 2011, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Final report,* Report to the Department of Families, Housing, Community Services and Indigenous Affairs, Sydney, 2011, p 40. See also Parenting Research Centre, *Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, pp 91, 97; M Keeley et al., *Opportunities for information sharing: Case studies: Report to the NSW Department of Premier and Cabinet*, UNSW Social Policy Research Centre, Sydney, 2015, pp 20, 64, 88.

[301] See, for example: *Crimes Act 1914* (Cth) s 70; *Privacy Act 1988* (Cth) s 13G; *Privacy and Personal Information Protection Act 1998* (NSW) s 62.

[302] See M Keeley et al., *Opportunities for information sharing: Case studies: Report to the NSW Department of Premier and Cabinet*, UNSW Social Policy Research Centre, Sydney, 2015, pp 4, 52.

[303] See, for example, Allen Consulting Group 2011, *Operational review of the information sharing protocol between the Commonwealth and child protection agencies: Final report*, Report to the Department of Families, Housing, Community Services and Indigenous Affairs, Sydney, 2011, p ix; The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales, 2008, pp 986–987; Parenting Research Centre, *Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse, Royal Commission into Institutional Responses to Child Sexual Abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2015, pp 97, 98; M Keeley et al., *Opportunities for information sharing: Case studies: Report to the NSW Department of Premier and Cabinet*, UNSW Social Policy Research Centre, Sydney, 2015, pp 38, 39; Australian Law Reform Commission, *Family Violence – A National Legal Response*, Report 114, 2010, pp 1427, 1443.

[304] On the role of secrecy in child sexual abuse in institutional contexts see: Professor Stephen Smallbone, *JDiBrief*, 'Sexual abuse in schools' UCL, 2013, http://www.ucl.ac.uk/jdibrief/crime/sexual-abuse-in-schools (viewed 29 February 2016); Western NSW Local Health District, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, p 3.

[305] See endnote 227, above.

[306] See, for example: Transcript of J Eyles, T14638:1-13 (Day 142); Transcript of K Finn, T14672:8-20 (Day 142). See also Transcript of J Reed, T14694:39-46 (Day 142).

[307] P Sawrikar, *Culturally appropriate service delivery for Culturally and Linguistically Diverse (CALD) children and families in NSW child protection system (CPS): Final Report:* report prepared for NSW Department of Human Services, UNSW Social Policy Research Centre, Sydney, 2011, p 13; J Kaur, *Cultural Diversity and Child Protection: A review of the Australian research on the needs of culturally and linguistically diverse (CALD) and refugee children and families,* Queensland, 2012, p 32; Australian Law Reform Commission, *Family Violence – A National Legal Response*, Report 114, 2010, pp 1398–1399, citing the Department of Communities (Qld), *Review of the Domestic and Family Violence Protection Act 1989: Consultation Paper,* 2010, p 36.

[308] AbSec have told us about the familial and cultural complexity of kinship placements of Aboriginal children who have sexually harmed other children, and the need the for appropriate cultural approaches in providing information to kinship carers: AbSEC, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Sexual Abuse of Children in Out of Home Care*, 11 September 2013, p 14.

[309] This is reflected in jurisdictional charters of rights for children in care which affirm the right to privacy of all children in care (see, for example: *Child Protection Act 1999* (Qld) s 74, Schedule 1(f). See also NSW Department of Family and Community Services, *Charter of Rights* (young people aged 13–18) p 16, http://www.community.nsw.gov.au/__data/assets/pdf_file/0019/322255/charter_13-18.pdf (viewed 18 December 2015) and Office of the Guardian for Children and Young People (SA), *Charter of Rights for Children and Young People in Care*, http://www.gcyp.sa.gov.au/charter-of-rights-2/ (viewed 18 December 2015).

[310] Determining children's capacity to consent to disclosure of their personal information may be complex. Generally, privacy laws do not prescribe the age at which individuals may be considered capable of consent to disclosure. The general law on capacity, which is relevant in this context, recognises that children may have capacity to consent, depending on their maturity, understanding and ability to communicate, assessed on a case-by-case basis (see *Gillick v West Norfolk & Wisbech Area Health Authority* [1986] AC 112 and *Secretary of the Department of Health and Community Services v JWB and SMB (Re Marion) (1992)* 175 CLR 218 on children's capacity to consent to medical treatment; see also *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12. This understanding of capacity to consent is reflected in some privacy legislation, which also expressly enables authorised representatives (such as persons with parental responsibility) to consent where a child does not have capacity (see, for example: *Health Records and Information Privacy Act 2002* (NSW) s 7; *Health Records Act 2001* (Vic) s 85; *Privacy and Data Protection Act* 2014 (Vic) ss 28(1), 28(3)). However, in some cases, privacy legislation may exclude children from consenting, and restrict the power to consent to those with parental responsibility (see *Health Records (Privacy and Access) Act 1997* (ACT) s 7(4), 25).

[311] We note here the Queensland Commission for Children and Young People and Child Guardian's view that 'where there is a conflict between a child or young person's right to privacy and their right to safety (for example, the need to report a disclosure of abuse to the appropriate agency), the right safety and well-being is paramount' (Queensland Commission for Children and Young People and Child Guardian, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper 3: Child Safe Organisations*, October 2013, p 37).

[312] See, for example: *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245F.

[313] CREATE Foundation, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, p 10.

[314] *ABC & Ors v State of Queensland & Anor* (2015) QDC 321 (11 December 2015).

[315] Mackillop Family Services, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, MCK.0001.001.0001, 2015, p 14.

[316] Berry Street, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, BER.0001.001.0001, 2015, pp 10, 26. See also, Mackillop Family Services, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, MCK.0001.001.0001, 2015, p 14.

[317] See, for example: Uniting Church, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, p 10.

[318] Life Without Barriers, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, LWB.0001.001.0001, 2015, p 23.

[319] Mackillop Family Services, 'Response to areas to be examined for Case Study 24', Exhibit 24-0001, MCK.0001.001.0001, 2015, pp 14, 17.

[320] See New South Wales, *Parliamentary Debates,* Legislative Assembly, 5 March 2009, p 13036 (L Burney, Minister for Community Services).

[321] See New South Wales, *Parliamentary Debates,* Legislative Assembly, 5 March 2009, p 13036 (L Burney, Minister for Community Services). See also The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW,* New South Wales, Recommendation 24.6, and pp 983–984, 998–999, 1056–1058. While the New South Wales child protection agency has retained its power under s 248 to support its statutory role, the introduction of Chapter 16A circumvents previous reliance on the child protection agency as the OOHC information centre – see Transcript of M Walk, T13145:42-T13146:17 (Day 124).

[322] See New South Wales, *Parliamentary Debates,* Legislative Assembly, 5 March 2009, p 13036 (L Burney, Minister for Community Services). See also The Hon. J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW,* New South Wales, 2008, p 983.

[323] *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245C(1), 245D(2).

[324] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 245A. Recent amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) Chapter 16A, specifically s 245CA, permit any person to provide information to accredited OOHC service providers (including the NSW child protection agency) about authorised and prospective carers, or any persons residing at the same property as carers and prospective carers. This information may be used to determine suitability of a person to be a carer.

[325] *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6) and Children and Young Persons (Care and Protection) Regulation 2012 (NSW) r 8.

[326] See *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 245B(1), 248(6) and Children and Young Persons (Care and Protection) Regulation 2012 (NSW) r 8(j), compared, for example, to *Care and Protection of Children Act 2007* (NT) s 293C(1)(e).

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September 2013, p 3; NSW Ombudsman Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, pp 4, 16; NSW Office of the Children's Guardian Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues Paper No 4: Preventing Child Sexual Abuse in Out of Home Care*, 11 September 2013, pp 16, 21; Transcript of S Kinmond, T15067:3-T15068:25, T15076:45-T15077:7 (Day 146); Transcript of K Boland T14941:1-29 (Day 145).

[328] *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 245D.

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[331] Disclosure of information identifying confidential sources may sometimes be necessary to prevent or respond to child sexual abuse. Other provisions in the *Children and Young Persons (Care and Protection) Act 1998* (NSW) allow disclosure of information identifying confidential sources of voluntary or mandatory reports of risk of significant harm to children where necessary to investigate the voluntary or mandatory report of risk of significant harm, to assist investigation of an alleged serious offence against a child, or where necessary for the safety, welfare or wellbeing of any child. See *Children and Young Persons (Care and Protection) Act 1998* (NSW) Ch 3, Part 2.

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[342] M Keeley et al., *Opportunities for information sharing: Case studies: Report to the NSW Department of Premier and Cabinet*, UNSW Social Policy Research Centre, Sydney, 2015, p 52.

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[478] More information about the Sexual Assault Report Anonymously (SARA) can be found at https://www.sara.org.au/report/ (viewed 27 November 2015).

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