

**DEPARTMENT OF CHILDREN AND FAMILIES SUBMISSION TO THE ROYAL COMMISSION INTO
INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**

**CONSULTATION PAPER ON INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE
IN OUT OF HOME CARE**

This submission follows previous information and data provided to the Royal Commission by the Northern Territory Government on the drivers of child protection in the Northern Territory, the policy framework for the provision of Out of Home Care, the delivery of operational programs and services and specific case details in response to Notices to Produce. Representatives of the Department of Children and Families have also participated in the Out of Home Care focused hearing and roundtable activities.

The information provided in this submission is intended to be a broad response to the Royal Commission's key findings to date and it is acknowledged that detailed recommendations will follow in a future final report on Out of Home Care.

Overview

The opportunity to provide feedback is welcomed. The consultation paper draws reasoned conclusions and highlights issues of common concern across the child protection system within Australia. One of the key issues identified is that of inconsistencies between jurisdictions in a range of areas including terms of thresholds, definitions, and data collection.

The Northern Territory recognises that greater consistency between jurisdictions would enable an easier comparative analysis of the effectiveness of service delivery and related outcomes for children in care. Like all jurisdictions, the Northern Territory is continuously seeking to improve its child protection legislation, policy and practice. At times this requires the design and adoption of solutions that preference its unique circumstances above national consistency.

Many of the suggestions for Out of Home Care improvement contained in the consultation paper are consistent with a direction the Department of Children and Families could support in-principle. The endorsement of the suggestions and any subsequent recommendations would require a consideration of the governance, regulatory and resourcing implications subject to government approval and budgetary processes.

The Royal Commission has outlined the following areas of concern and seeks stakeholder feedback to inform its recommendations:

- improve data collection and reporting;
- child sexual abuse by carers and staff;
- child sexual exploitation;
- child to child sexual abuse;
- strengthen regulation and oversight mechanisms;
- improve information sharing;
- child safe organisations;
- better approaches to preventing child sexual abuse; and
- improve support to children and carers.

1. Improve data collection and reporting

The Northern Territory supports the principle of improved data collection and reporting and recognises that significant data limitations exist. The data model outlined in the paper would provide better information concerning allegations of sexual abuse. However, given the limitations of Out of Home Care data capture, limited systems' connectivity and the complexities associated with the client base, the Northern Territory does not have existing capacity to implement the proposed data model.

The Community Care Information System used in the Northern Territory to manage core child protection data is reaching the end of its economic life and options for a future platform are being considered. A procurement process will be required with technical, logistical and resourcing challenges. While further investment in the current system to enhance functionality is not viable, consideration could be given in the new specifications build to a more comprehensive data model relating to sexual abuse. A timeframe for this major exercise has not yet been confirmed.

The universal mandatory reporting requirements in place in the Northern Territory are designed to ensure that all abuse, including sexual abuse is reported.

2. Child sexual abuse by carers and staff

Potential foster and kinship carers are screened by the Department of Children and Families' to determine their suitability. All potential carers must meet a number of screening and safety checks:

- an Australia wide police check for criminal history;
- a Working with Children Clearance (Ochre Card);
- a child protection history check;
- a medical report;
- referees reports;
- home and environment safety report; and
- referee check for current or prior caring experience.

In addition, each adult who resides with an applicant also needs to be determined as a fit and proper person to have daily contact with a child.

The Care and Protection of Children (Placement Arrangement) Regulations allows carer assessment and support workers and case workers to seek information about the carer from any person at any time, in order to determine their continued eligibility to remain an authorised carer. The carer is required to provide their consent for this to occur or provide any information requested.

The re-authorisation processes include the review of:

- the placements made during the period and any identified issues;
- the carer's skills and perceived strengths and weaknesses;
- participation in any training and identifying further training needs;
- any critical incidents and the outcome of these; and
- any changes in family or personal circumstances and what impact these may have on the carer, the environment and their ability to provide care.

The Department of Children and Families staff and agency staff employed to provide residential care are required to undergo criminal history and Working With Children Checks and meet identified conditions of employment.

The Department continues to monitor and refine its employment and assessment processes. The opportunity to improve carer information sharing with other jurisdictions is strongly supported.

3. Child sexual exploitation

Section 16 of the *Care and Protection of Children Act* states that exploitation of a child includes sexual and any other forms of exploitation of the child. Sexual exploitation includes sexual abuse of the child and may involve the child as a participant or spectator in an act of a sexual nature, prostitution or pornographic performance. Any standardisation of definition would likely require amendment to the Northern Territory provisions.

Sexual exploitation is captured for routine data reporting as a specific type of harm, however, detailed information about the circumstances of allegations and substantiations is more difficult to extract from case notes for analysis. There have also been past issues where potential sexual exploitation of children by unknown perpetrators has been recorded as 'parental neglect' on the basis that child protection systems must focus on the acts or omissions of parents/care givers. Under section 84C of the *Care and Protection of Children Act*, the Department of Children and Families is required to report substantiated harm or exploitation of a child in care to the Northern Territory Children's Commissioner. Efforts to strengthen policy and procedures and cross sectoral protocols are underway (see national work underway in Section 6).

4. Child to child sexual abuse

It is recognised that sexual behaviour of children and young people can be considered to occur across a spectrum, from healthy and developmentally appropriate sexual behaviours that are part of a normal experiential process, through to those that are harmful to the child or others.

The Royal Commission seeks feedback on the use of 'sexually harmful behaviours' as an appropriate non stigmatising term. It is acknowledged that current labels and definitions of sexual behaviours in children and young people vary nationally, with many terms, such as 'concerning' sexual behaviours, 'sexually abusive behaviours' and 'problem sexual behaviours' having a basis in legal definitions related to the age of consent and criminal responsibility.

The Department of Children and Families commonly uses the term 'concerning sexual behaviours' to cover behaviours that are problematic and include behaviours that:

- put the child at risk and/or interfere with their development or relationships;
- are viewed by the child or others as problematic;
- involve an aspect of coercion, aggression, bribery, secrecy, lack of consent and/or inequality (in ages or developmental abilities);
- include sexually abusive behaviours, which are harmful or abusive for the child or others;
- are in contrast with family and community values; and/or
- take place out of context (eg in public).

As with all other behaviours that may be challenging, concerning sexual behaviours are viewed in relation to the developmental stage of a child or young person, their trauma history (including whether behaviours are a reactive response to a child's experience of trauma), and social, cultural and environmental contexts.

The Department of Children and Families acknowledges that the jurisdictional response to child to child sexual abuse in care could be improved. The Department currently responds to allegations of child to child sexual abuse in care on a case by case basis through a reportable incident management process. In a small jurisdiction with the demographic characteristics and limited specialised services of the Northern

Territory, there are substantial challenges to deliver best practice responses to children both in care or residing with their family who are involved in child to child sexual abuse.

5. Strengthen regulation and oversight mechanisms

The Northern Territory Out of Home Care system involves limited outsourcing of care services and functions, with the majority of home-based Out of Home Care services managed and provided by the Department of Children and Families. All authorised foster and kinship carers in the Northern Territory are recruited, trained, assessed and supported by the Department.

Regulation and oversight mechanisms are legislated and supported by policy and guidelines to achieve accountability and transparency. Complaints mechanisms exist for the Department's clients, stakeholders and members of the public both through the Departmental Complaints Management Unit and the Office of the Children's Commissioner.

The Northern Territory Children's Commissioner has powers under both the *Care and Protection of Children Act* and the *Children's Commissioner Act* to monitor the ways in which the Department deals with suspected or potential abuse in care matters. The Northern Territory would seek to ensure that there are not layers of complex external body oversight and accreditation proposed that are disproportionate to delivery of the current system.

Recent calls for a nationally consistent reportable conduct scheme could have significant cost and structural implications for the Northern Territory if the comprehensive nature of the current New South Wales scheme is taken as a proposed model.

6. Improve information sharing

The importance of child protection related information sharing, including in Out of Home Care contexts, is acknowledged. To this end, the Northern Territory is participating in national collaborative projects under the direction of the Children and Families Secretaries Group to address systemic inadequacies and inconsistencies.

In harnessing the momentum for change and informed by Royal Commission's findings to date, an investigative project has been scoped to better understand and improve inter-jurisdictional information sharing arrangements. A staged approach has been suggested to examine legislative mechanisms, cultural, policy and practice gaps and barriers and the requirements of interaction between government and non-government organisations.

An associated carer information sharing project is underway, to develop a national carer register utilising a minimum data set approach as a first step in responding to concerns about deficits in the current information sharing regime, noting that full system integration, and the associated legislative and privacy constraints will be examined by the broader project activity.

Part 5.1A of the *Care and Protection of Children Act* is the legal basis for the Northern Territory's information sharing framework for child safety and wellbeing. Authorised information sharers are encouraged to establish efficient and collaborative information sharing relationships with each other. These provisions are much clearer than what could be applied to sharing information about alleged offenders/perpetrators. This will need to be addressed through any project activity.

The New South Wales provisions under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* have not been examined in detail with respect to applicability as a national model.

7. Child safe organisations

The concept of a child safe organisation is strongly supported in the Out of Home Care environment. The incorporation of child safe principles and elements are intrinsic to a well run system of care.

The Third Action Plan under the National Framework for Protecting Australia's Children identifies project activity to review and implement the National Framework for Creating Safe Environments for Children, Organisation, Employees and Volunteers, originally proposed in 2005. This work is linked to addressing the barriers to information sharing across and within jurisdictions.

The Department of Children and Families is developing training that will improve participants' response to concerning sexual behaviours. The training package will enhance the capacity of all operational staff (including foster carers, residential care workers, purchased care providers, carer assessment and support workers, case workers, remote staff and funded family support services) to:

- support children, young people, families and carers to implement child sexual abuse prevention strategies and activities (including protective behaviours);
- understand, identify and effectively respond to sexual behaviours of children and young people, including behaviours of concern; and
- reduce situational opportunities for child sexual abuse by raising awareness of contexts of child sexual abuse perpetration, including child to child sexual abuse.

8. Better approaches to preventing child sexual abuse

Better preventative and awareness approaches through education and training are supported. A national framework with core elements would be beneficial, however, it is likely that it would need to be responsive and adaptable to the specific cultural and practical needs of the Northern Territory. It is important to note that face-to-face delivery of education materials and campaigns would likely be required for the Northern Territory's remote communities.

9. Improved support for children and carers

The Northern Territory acknowledges that improved support for children and carers, greater home based care options, the provision of therapeutic care and treatment services for children in out of home care, and placement stability is beneficial to a child's quality of care.

The Northern Territory is currently working with an external partner to develop a therapeutic model of residential care which is due to be implemented in the second half of 2016. Developed in partnership with the Australian Childhood Foundation, the therapeutic model of residential care will introduce a consistent and coherent service model, operational framework with policies and procedures, implementation plan and workforce development plan which support the social, emotional, physical, cultural and developmental needs of children and young people in care.

The developing model is trauma informed and contextualised to the Northern Territory, with a strong focus on the needs of Aboriginal clients. It will provide a framework for residential care service delivery that both guides and equips Departmental staff to stabilise, support and manage children and young people in residential care settings in a way that improves their outcomes and ensures a safe and positive environment.