

**From:** Lines, Wayne (OMB) <Lines.Wayne@ombudsman.sa.gov.au>  
**Sent:** Friday, 8 April 2016 11:00 AM  
**To:** Out of Home Care  
**Subject:** Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care (OOHC)

**Categories:** Orange Category

In my capacity as the South Australian Ombudsman I submit comments in response to two sections of the consultation paper: Regulation and oversight (Chapter 4) and Information sharing (Chapter 5).

### **Regulation and oversight**

I agree with the proposal that each jurisdiction have the core oversight functions relating to OOHC conducted by a body external to, and independent of, the lead department and service providers. Such a body will improve accountability and be in a better position to objectively identify deficiencies and recommend improvements. This body will need the same powers of a Royal Commission to obtain information and documents and summons witnesses to give evidence. It should also have the power to enforce implementation of its recommendations.

A reportable conduct scheme in every jurisdiction whereby an independent body has oversight of complaints handling in regard to all child abuse reports is desirable. The key elements of the scheme should be reflected in each jurisdiction's scheme and there should be express provision for the sharing of relevant information across jurisdictions.

I also agree with the proposals that there be nationally consistent standards and processes for assessing and authorising carers and accrediting all OOHC providers as well as a register of carers in each jurisdiction that is accessible by all jurisdictions' accredited OOHC service providers and oversight bodies.

### **Information sharing**

Since 2013 my Office has been responsible for promoting and supporting the implementation of the SA Cabinet endorsed *Information Sharing Guidelines for promoting safety and wellbeing (ISG)*. The ISG apply to all state government agencies and relevant non-government organisations and provide for a consistent, clear and guided state-wide approach that respects privacy and facilitates appropriate sharing of personal information that actively promotes the safety and wellbeing of vulnerable people.

It is reaffirming that the need for improved information sharing remains a high priority for the Commission. However within the Paper there is a misunderstanding and misreporting of the scope of the ISG. References on pages 67 and 71 suggest that information sharing under the ISG is based ONLY on serious threat to life, health or safety. That is incorrect. Depending on the circumstances, the ISG in fact allows for early intervention at low thresholds upon anticipation of risk, and also promotes disclosure where there is evidence of serious or imminent risk of harm (and at all stages along that continuum).

The ISG promotes obtaining consent for disclosure in all cases where safe and reasonable. The ISG prioritises and requires disclosure (without consent) on **suspicion** of harm for children (in accordance with South Australia's *Children's Protection Act 1993*) and also permits disclosure (with or without consent) where serious threats to life health and safety apply for adults. A child's right to safety always overrides an adult's right to privacy.

In response to the Paper, I provide these dot points for consideration:

- ISG allows for information sharing for the purposes of identifying, preventing and responding to child protection concerns
- The removal from privacy legislation of the test of 'imminence' (2012 amendment to *Privacy Act 1988 (Cth)* and *Australian Privacy Principles* and new Circular 12 in SA's *Information Privacy Principles 2013*) has been critical in enabling information sharing for early intervention and has meant that no additional legislative reform is required for interagency information sharing

- ISG administrative arrangements, (strengthened by a Cabinet Direction) are simplified and spelt out in a procedure (the ISG decision making steps and practice guide) to enable front line staff to understand when they can and cannot share information
- information can be shared about a range of individuals and groups – including with or about carers or others who are not clients of the service (but they pose a risk of harm to self or others)
- ISG is already applied by a broad range of SA NGOs, government agencies and local government councils providing both child and adult services ( they do not have to be a ‘prescribed body’ or under a contractual obligation)
- Local Government Councils in SA have also chosen to implement the ISG
- ISG applies to both adult and child service providers and applies to **all children** - those in care and those not in care
- The ISG has a deliberate pro-disclosure approach to enable and promote early intervention. It provides for information sharing with or without consent where one suspects or anticipates harm, abuse or neglect if services aren’t coordinated; from low thresholds where there are wellbeing concerns, through to where there is serious harm, abuse or neglect
- ISG encapsulates 2 different **concurrent** tests for disclosure without consent – the disclosure threshold for information sharing for **children** (is upon suspicion of harm, abuse or neglect – see step 8 of the ISG practice guide and consent is not required) and for **adults** (where the disclosure is necessary to prevent or lessen serious threats to life, health or safety - step 7 of the practice guide),
- Importantly for domestic violence matters, ISG can also apply where there is an escalation to imminent risk of harm (as for Family Safety Framework)
- **In this way, the ISG applies a range of concurrent tests to protect safety of vulnerable children and adults.**
- The ISG process protects against privacy breaches by:
  - ensuring there is a legitimate purpose for the disclosure (step 3),
  - obtaining consent where reasonable and practicable (steps 5 & 6)
  - maintaining consistency with both the Commonwealth legislation and the SA IPPs (step 7)
  - ensuring decisions to share without consent are evidence based (informed by an assessment of both risk and protective factors) and approved by a senior member of staff - this promotes protection of privacy because it ensures risk assessments are checked and it is agreed the disclosure is necessary for safeguarding purposes. What it also does is prioritise the safety and wellbeing needs of children over protection of privacy for an adult.
- Like Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) the ISG process:
  - enables 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
  - enables 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
  - compels 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 prioritises safety and wellbeing of children over confidentiality and privacy
  - emphasises the need for interagency communication and collaboration

I support the proposal that all jurisdictions have nationally consistent arrangements for intra-jurisdictional and inter-jurisdictional exchange of information related to the safety and wellbeing of children. However, there is a strong case for cross jurisdictional information sharing for the safety of adults too and if effort is to be applied to developing an information sharing arrangement across all jurisdictions, it should be applicable to children and adults. I submit that the ISG and its decision making steps and practice guide process could easily be adapted at a national level to fulfil this objective if local police and child protection agencies were referenced. This would not necessarily require any legislative reform. The strength of the ISG is the procedure itself, which explains in the simplest terms what decisions staff need to make to ensure earlier and more effective interventions. Any scheme for information sharing really does need to describe a process for staff to follow. Any protocol without such a process can be difficult for staff to interpret and apply, frequently leading to information not being shared even where it can or is required by law. The answer may well lie in a combination of the ISG and provisions within Chapter

16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and, in my view, this possibility should be explored further by the Commission.

Wayne Lines

**Ombudsman**

Ombudsman SA

Level 9, 55 Currie St, Adelaide SA 5000

T 08 8226 8699 | F 08 8226 8602 | Toll free 1800 182 150 | E [lines.wayne@ombudsman.sa.gov.au](mailto:lines.wayne@ombudsman.sa.gov.au)

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