

Royal Commission into Institutional Responses to Child Sexual Abuse
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By email: solicitor@childabuseroyalcommission.gov.au

November 2013

To Whom It May Concern,

Submission to the Royal Commission Issues Paper 4: Preventing Sexual Abuse of Children in Out of Home Care

The Australian Psychological Society (APS) welcomes the opportunity to make a submission in response to Issues Paper 4 relating to preventing sexual abuse of children in out of home care (OOHC). The APS has also previously responded to the consultation on Issues Paper 3: Child-safe Institutions.

Optimal child development requires a safe and supportive physical, social and psychological environment. Children in OOHC are among the most vulnerable in the community and the APS believes society has an obligation to protect children and young people from harm. In relation to the prevention of child sexual abuse, the APS supports a holistic approach which delivers prevention activities operating at multiple levels including targeting the individual child, parent, family and perpetrator, as well as institutions and the broader environment. The APS commends the Commission for the consideration of prevention of child sexual abuse as context dependent, hence the specific inquiry into OOHC.

In reviewing the fact sheet and areas of interest put forward by the Commission for this consultation, the APS notes that whilst it is important to have different oversight mechanisms (e.g. regulation of OOHC providers), these should not just focus on intervention regarding instances of abuse or supporting disclosure.

Rather, the system must also have mechanisms to identify areas of risk in order to prevent sexual abuse and enable early intervention in the setting of OOHC. Therefore in this submission, the APS has used a public health model of prevention highlighting aspects of primary, secondary and tertiary prevention, with particular attention on determining risk and the development of strategies for safe and secure OOHC.

This submission draws, in particular, on the work of Dr Darryl Higgins (Australian Institute of Family Studies), Amanda Jones and Professor Jill Astbury, each APS members with key expertise in this area.

Our members understand that it is everybody's responsibility to address the unacceptable levels of child sexual abuse in Australian society. To support our members in this endeavour and to promote community wellbeing more broadly during the inquiry period, the APS has embarked on a number of activities. These activities include the formation of a Reference Group to provide expert advice to the APS to facilitate an effective and appropriate response to the Royal Commission. Furthermore, the October 2013 edition of InPsych (the APS quarterly magazine) featured child sexual abuse as its feature topic, providing members with important information on relevant issues. This is in addition to the existing APS Ethical Guidelines on reporting abuse and neglect, and criminal activity to support the professional practice of our members.

The APS has made a commitment to support the work of the Commission and as such we would be happy to provide further comment about this Issues Paper specifically, or any other aspect of the Royal Commission more broadly should you require it; or for further information about our submission please contact me directly on 03 8662 3314.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Louise Roufeil', written in black ink.

Dr Louise Roufeil
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Australian Psychological Society

APS Submission to the Royal Commission Issues Paper 4: Preventing Sexual Abuse of Children in Out of Home Care

1. Definition of sexual abuse

It is important to consider how sexual abuse is defined because definitions vary between Australian states and territories. The World Health Organisation (2006) defines child sexual assault or abuse broadly as:

...the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violate the laws or social taboos of society. Children can be sexually abused by adults or other children who are – by virtue of their age or stage of development – in a position of responsibility, trust or power over the victim.

Irrespective of the situational context for child sexual abuse, a consistent approach to defining the behavior is required. This should provide both a universal working definition of sexual abuse across all states and territories, and, examples of behaviour which may amount to sexual abuse of a child.

Recommendation 1:

A universal working definition of sexual abuse be adopted by all Australian states and territories and examples of behaviour which may amount to sexual abuse of a child be provided that support the accepted working definitions.

2. Primary Prevention

Core strategies for keeping children in OOHC safe and secure must include measures to identify and intervene before child abuse occurs. It is evident from the Royal Commission fact sheet that the OOHC system varies greatly between states and territories and is not operating effectively across all jurisdictions to protect children from harm. For example, the Victorian Ombudsman in an investigation of child protection in OOHC in 2010 identified that despite ongoing reforms of the OOHC system, OOHC placements were not providing the secure and safe environments needed and that some children were victims of further abuse and neglect.

Increasing education and awareness

Large scale community awareness programs and school-based educational programs can seek to address child sexual abuse at a population level before abuse can occur. Whilst the old adage of 'stranger danger' is often taught in schools, this approach needs to be re-oriented to recognise risks 'close to home'. Age-appropriate child sexual abuse prevention messages can be incorporated into comprehensive sex education programs in schools such as teaching children

to recognise unwanted sexual behaviour. Through incorporating these messages into education, this can increase general dialogue in young people about these issues. This can reduce shame and stigma and in turn facilitate disclosure.

Recommendation 2:

Community awareness and school-based education need to be utilised to develop knowledge of acceptable behaviours in children and encourage a dialogue between young people.

3. Early intervention strategies – taking action on the early signs of child sexual abuse

Early intervention should be targeted at individuals and groups who exhibit early signs of perpetrating abusive behaviour, or children at risk of being sexually abused in OOHC. Early intervention strategies can also be targeted at circumstances in which there are strong signs that maltreatment may occur. Irenyi, Bromfield, Beyer and Higgins (2006) found that previous experience of child maltreatment (physical or emotional abuse, neglect, family violence) can increase the vulnerability of children to sexual abuse. Those children who have previously experienced sexual abuse are likely to be psychologically vulnerable as this abuse betrays the 'most basic of trusts' (Victorian Ombudsman, 2010). Whilst primary prevention is ideal, given the particular vulnerability of children in OOHC, it is important to consider the role of prevention and empowerment to build awareness of their rights, knowledge and self-protective skills.

Protective factors

Understanding the risk and protective factors for child sexual abuse is important for developing effective prevention strategies. It is also important that professionals are aware of factors that place children at risk of harm and the factors that can protect them from harm. Children must be supported to develop positive attributes such as resilience and self-esteem and educated about sexuality, sexual health, body awareness and privacy. In some instances, research has identified behaviours and assertive strategies which can assist to deter or prevent sexual abuse (Irenyi et al., 2006). Empowering children to respond assertively to unwanted sexual contact by telling the offender that contact is unwanted can be one factor to prevent them from experiencing the abuse.

Recommendation 3:

Implementation and evaluation of protective behaviour programs specifically designed and delivered in the OOHC setting.

Independent advocates

A suggested approach to ensuring that children feel safe and secure in OOHC is the use of an independent consumer advocate who acts in the best interests of the child. The independent consumer advocate model can provide a participation and feedback mechanism for children in OOHC. Children, through an advocate, can be an important source of feedback as to how safe and secure they feel within OOHC.

The Victorian Children and Young Person's Commissioner (the Commissioner) has oversight powers in relation to Victorian children and young people in OOHC. The Commissioner does not however, have powers to act as an independent advocate for these children. Some promising programs that come closer to this approach include the Community Integration Program (CIP) in Victoria that was established to connect young people living in residential care with their local community. It involves volunteers from the community getting to know a vulnerable young person and supporting them to connect with others involved in a local activity, group or event that interests them. However, this program only applies to children living in residential settings and not to children in foster care settings and does not replace a rigorous and accountable system of safety and security for children in OOHC.

Another program with potential is the newly introduced Independent Visitor Program for Youth Justice Centres in Victoria, which commenced operation at the Parkville Youth Justice Centre Precinct in April 2012. This year will see the establishment of the program at the Malmsbury Youth Justice Centre. Independent Visitors are a group of carefully recruited volunteers from a range of backgrounds who have personal and professional skills that support appropriate interaction with young people in custody. The role of the Independent Visitor is to provide information and assistance to help young people's experience of being in custody, to monitor their safety and wellbeing and to promote their rights and interests. Independent Visitors attend the Parkville Youth Justice Centre Precinct on a monthly basis and are able to enter and inspect the Centre and talk to any young person in custody. They can observe the general routines of the Centre and talk to staff about services being provided to the young people. After each visit, they meet with the General Manager of the Centre to discuss their observations and discussions with staff and young people. Within seven days of each visit they are required to provide a written report to the Principal Commissioner.

The Victorian Ombudsman investigation of child protection in OOHC in 2010 looked at two alternative jurisdictions for approaches to scrutiny of the OOHC system:

1. Queensland: The Queensland Commissioner for Children and Young People and Child Guardian has more than 200 Community Visitors who regularly visit children and young people throughout Queensland in foster homes, residential services, mental health facilities and detention centres to monitor their safety and well-being. Job descriptions state that prospective Community Visitors must have 'an understanding and knowledge of, and commitment to resolving child protection issues'. The role of the Community Visitor is to assess if the children feel safe and have access to services appropriate to their needs.
2. Alberta, Canada: The Children and Youth Advocate. In 1989, advocacy on behalf of children and young people became a distinct feature of Alberta's Children's Services system. The Office of the Child and Youth Advocate provides individual and systemic advocacy for children. It also provides training and support to individuals and organisations who are interested in advocating for vulnerable children and their families. The Child and Youth Advocate recognises that when children live away from their parents, parents and extended family are less able to advocate for the children. Under legislation children are entitled to seek assistance from the Child and Youth Advocate.

Recommendation 4:

It is recommended that all states and territories, develop a role similar to an independent advocate for all children in OOHC in Australia

Statement of rights for children and young people in OOHC

The Victorian Charter for Children in Out-Of-Home Care is a good example of a positive statement of what children in these circumstances can expect from their care. See the following link for more information on the Victorian Charter:

<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/charter-for-children-in-out-of-home-care>

Recommendation 5:

It is recommended that all Australian states and territories adopt a Charter of Rights for children and young people in OOHC.

Situational risk management

As discussed in the previous APS submission to the Royal Commission, it is important to implement risk management strategies based upon situational indicators and patterns from cases of sexual abuse in OOHC. This could be further broken down into the different settings e.g. foster care and independent

living arrangements, and different time spans e.g. short term versus long term care.

Increased awareness of situational indicators and patterns of opportunities specifically related to child sexual abuse in OOHC need to be effectively addressed in prevention and risk management strategies. Situational interventions should seek to make it more difficult (i.e. a greater cost and less benefit) for perpetrators to perform the crime such as making sure that contemplated abuse is difficult, entails more risks, has fewer rewards and is perceived as inexcusable (Clarke, 1997 in Smallbone et al, 2009). In OOHC, it is also important to consider assessments of safety where other young people in the home or placement display sexually concerning behaviours.

Promoting child-safe institutions

At an organisational level, as presented in the APS submission on child-safe institutions, it is important to have whole-of-organisation approaches to the prevention of child sexual abuse that involve effective:

- Screening procedures for known perpetrators; and
- Management of situational risks; and
- Creation of positive organisational cultures (Higgins, 2013a).

For OOHC provided by community service organisations, it is important that they implement a multifaceted approach to prevent known perpetrators from caring for children. This should include screening measures such as police checks, Working with Children Checks and mandatory reporting, in addition to other recruitment measures which can provide further screening such as examinations (e.g. inclusion of vignettes which describe ethical conundrums regarding overlapping relationships, breaches of trust, keeping secrets, making decisions about the child without consultation, and intrusions into another's personal space etc). Where OOHC is being provided by carers in a family-like setting, a similar approach should be included in the screening, selection and training processes. Additionally, the inclusion of adult members of the household other than the direct care-giver should be considered as part of this process.

It is well known that many sexual abuse allegations often do not reach a criminal court as there is not sufficient evidence to meet the required standard of proof. As such, other methods of protection of children are necessary in this complex system, including those in OOHC. Whilst current protocols may dictate referral to police of allegations of the sexual abuse of children, this may not result in criminal prosecution or conviction of an alleged offender. Other systems or processes should exist in all Australian states and territories to support the investigation of allegations of physical and sexual abuse of children in OOHC.

In Victoria, the *Children, Youth and Families Act 2005* places strong emphasis on the wellbeing and safety of children who cannot live safely at home, and sets out procedures and principles for the protection of children including their best interests. The Act also provides for:

- New processes for investigating allegations of physical and sexual abuse against a child or young person in OOHC; and
- The creation of a Suitability Panel to assess whether an allegation of physical or sexual abuse against a child is proved and whether, as a result, an individual is found to pose an unacceptable risk of harm to children and is therefore disqualified from being registered to care for children.

Recommendation 6:

That all Australian states and territories adopt processes for the protection of children in OOHC where allegations of sexual or physical abuse of children are raised.

4. Intervention strategies – intervening after abuse has occurred

Effective strategies for tertiary prevention (where abuse has already occurred) must also be implemented to provide support and treatment to children who have been sexually abused in OOHC. These should aim to deal with the sexual abuse, prevent its consequences (such as mental health problems) and ensure that the child is now safe and secure. Children who are victims of child sexual abuse are likely to be experiencing a range of psychological and behavioural problems ranging from depression and post traumatic stress disorder (PTSD) to social impairment and substance abuse (Maniglio, 2009). Further abuse can also exacerbate the risk of more severe and damaging adverse consequences in adulthood (Lamont, 2010).

Disclosure

Disclosure is a complex process and children are faced with many barriers to disclosing sexual abuse. The OOHC system must provide an environment where it is clear what is unacceptable behaviour and where early disclosure is encouraged. Supporting early disclosure is vital as disclosure within one month of sexual assault occurring is associated with a significantly lower risk of subsequent psychosocial difficulties in adult life including lower rates of PTSD and major depressive episodes (Ruggiero et al., 2004). A study of 412 female co-twins reported that of the victims who told someone about the sexual abuse, 71% claimed that the disclosure effectively stopped the abuse (Bulik, Prescott, & Kendler, 2001).

Delay in the disclosure of childhood sexual abuse is linked inevitably with other delays harmful to the child. These include delay in putting in place adequate means to protect the child from further victimisation, delay in the child receiving meaningful assistance including necessary psychological and physical health care, and delay in redress and justice for the victim (Astbury, 2013). Part of the complexity of disclosure is that in order for a child or young person to disclose abuse, particularly sexual abuse, they need to self-identify as a victim of abuse, believe that they should speak up, and that doing so will be efficacious.

Experiences of disclosure can be either positive or negative depending on the reactions of the person to whom the sexual abuse is disclosed. As noted earlier, there needs to be a clear and trustworthy process in place, independent of the community service organisation or carer that encourages children to disclose child sexual abuse safely and confidentially. An independent process will enable stronger legal options for victims and the facilitation of immediate referral of all complaints to the police or appropriate child protection authority for investigation. An independent advocate could be a key part of this process. Further considerations are also required regarding how to ensure the immediate and ongoing safety of the child who has disclosed abuse and that of other children once allegations of abuse are raised. Given that abuse is associated with re-victimisation, appropriate and immediate treatment and support may be successful in preventing further experiences of victimisation.

This process could be supplemented by the adoption by institutions of a common set of guidelines about the questioning and interviewing of children who disclose an alleged abuse. These guidelines could include consideration of properly trained people to do the interviews/questioning, independent support for a child or young person in the process and where necessary, access for a young person to independent legal advice. If allegations of physical or sexual abuse occur in relation to children in OOHC, including where children make disclosures or allegations to independent advocates, there should be a set of common protocols between respective state/territory governments and institutions about referral to police and child protection authorities.

Recommendation 7:

Processes need to be put in place that are independent of the community service organisation (or carer) that encourages children to disclose child sexual abuse safely and confidentially. Institutions and service organisations need to develop a common set of guidelines about the questioning and interviewing of children in OOHC who disclose an alleged abuse.

5. Areas of Importance:

Kinship Care

It is important to recognise that the overwhelming majority of children in out of home care are currently in home based care, that is, living in people's homes in the community, and that of these children, the proportion represented by kinship care placements is growing rapidly. Kinship care is defined as "care provided by relatives or a member of a child's social network when a child cannot live with their parents" (DHS, 2007, p. 6). Over the past decade in Victoria, for example, kinship care has emerged as a central element of the Victorian child protection system and as a key source of OOHC placements. Placement with a relative (kin) or a member of a child's extended social network (kith) is now mandated as the first option for consideration by the Department of Human Services (DHS) through the Children, Youth and Families Act (2005).

For a number of years, however, the level of attention paid to the adequacy of kinship care arrangements does not appear to have been commensurate with program growth. In Victoria, for example, formal policy and program responses lagged behind practice, as the number of DHS supported kinship care placements increased. The characteristics of kinship carers however, are somewhat different from those of carers in other forms of OOHC. Kinship carers are older (often grandparents), have higher health needs, and are likely to be relatively financially disadvantaged having retired, and often relying on income support such as a pension. Kinship carers may have different motives for caring for young people compared to other carers. In addition, kinship carers have a very different relationship with the birth parents; such family relationships can be fraught, contributing to stress and mental health problems. In some cases, kinship carers may be ill equipped for their role due to a range of complex factors. These vulnerabilities can pose additional risk to the child.

Placing a child/young person with family through kinship care is, on balance, a preferable option, and can facilitate keeping siblings together, however, there are a number of issues which need to be considered in order to ensure that placement with kin is a suitable option, and maximises the safety, well-being and development of the child.

Assessment

All potential kinship care placements should be subject to a comprehensive assessment which takes into account the specific needs of children and young people, and the capacity of kith or kin to provide quality care. Assessment processes need to balance the benefits of care by a family member, or friend,

with a rational consideration of the carer's age, health, attitudes, circumstances and capacity to provide long term care.

Training

Appropriately funded training and support are needed in the kinship care program. In particular, carers require knowledge about the impacts of trauma on the children they care for; services which are available for children and young people; carer rights and responsibilities; as well as healthy parenting strategies. Ongoing training and support has implications for quality of care, and for carers capacity to cope in the longer term.

Standards

It can be difficult to apply home based care standards to kinship care, as the motivation, knowledge, and preparedness of kinship carers is often substantially different from that for general foster carers. Specific standards need to be established to address quality of care and abuse concerns specific to the kinship care context.

Access

Access between biological parents and their children is more complex for kinship care compared to other OOHC options. Kinship carers may need to negotiate emotionally complex family relationships, which can impact on access arrangements. Kinship carers can also be faced with repeated court cases and uncertainty relating to the stability of the placement. Strategies to deal with access arrangements need to be specifically included in the program model.

Respite

A systematic approach to the provision of respite for kinship carers is required. This is particularly important given the age and health of many kinship carers, and the importance of additional stimulation, relationships and opportunities for children and young people. The growth in kinship care relative to other forms of OOHC represents a very different landscape to for putting mechanisms in place for safety in care.

Indigenous children

Many Indigenous Australian children experience kinship-related models of OOHC. Addressing child sexual assault in this context requires an understanding of the complex nature of family and kin (extended family members) connections that are unique to Indigenous Australians. The causes of child sexual assault in Indigenous communities are complex and inter-related and not exactly the same as for non-Indigenous communities (Cripps & McGlade, 2008). Robust evaluations of prevention interventions for child sexual assault (not specific to

OOHC) in Indigenous communities are scarce and much of the evidence that does exist comes from interventions designed to target the broader issues of family violence/child maltreatment and neglect. It seems clear, however, that failure to understand the unique historical, cultural and intergenerational routes of family violence in Indigenous communities renders prevention efforts ineffective. Importantly, prevention interventions in western communities may not always translate to Indigenous communities.

Intervention efforts in Indigenous communities need to address both risk *and* protective factors. Too much attention on informing families and workers about risk factors (e.g., grooming behaviours) can inadvertently stigmatise targeted groups and create a culture of fear (France et al, 2010). Thus, primary intervention needs to include community empowerment strategies in order to foster a culture of resilience. Willis (2011) also warns that educating young people to resist sexually offensive behaviours and encouraging reporting has the potential to be dangerous if it is not accompanied by broader community support and effective police/criminal justice action. In other words, education and awareness-raising can result in more violent assaults and retribution if community safety is not also enhanced. This raises two key issues when Indigenous families are involved. A particularly strong barrier to reporting in Indigenous communities is the fear of retribution against the victim's family, or against the perpetrator's family. Within the tight kinship structures of Aboriginal communities, disclosure can be perceived as bringing shame both to the victim and to the perpetrator and their families. Another real barrier is the lack of culturally appropriate support services available to such families, making it difficult for some Aboriginal people to overcome reticence, their fear of being misunderstood, and their often well justified fear of the consequences of disclosure, especially in legal/criminal justice contexts (Gillies, 2013).

In line with the view that the causes of child sexual assault in Aboriginal communities are complex and inter-related and not always the same as for non-Aboriginal communities, strategies to ensure the safety of Indigenous children in kinship-based models of OOHC must also be complex and inter-related and in particular, address the cultural, historical, and intergenerational etiological factors unique to the situation, and the likely implications not just for the designated kinship carer(s) but for the wider and mutually reliant kinship network.

Recommendation 8:

That efforts to improve the safety of Indigenous children in kinship-based care are holistic in nature and recognise and address the multiple inter-related factors surrounding child sexual assault in Aboriginal communities.

Summary of Recommendations:

Recommendation 1:

A universal working definition of sexual abuse be adopted by all Australian states and territories and examples of behaviour which may amount to sexual abuse of a child be provided that support the accepted working definitions.

Recommendation 2:

Community awareness and school-based education need to be utilised to develop knowledge of acceptable behaviours in children and encourage a dialogue between young people.

Recommendation 3:

Implementation and evaluation of protective behaviour programs specifically designed and delivered in the OOHC setting.

Recommendation 4:

It is recommended that all states and territories, develop a role similar to an independent advocate for all children in OOHC in Australia

Recommendation 5:

It is recommended that all Australian states and territories adopt a Charter of Rights for children and young people in OOHC.

Recommendation 6:

That all Australian states and territories adopt processes for the protection of children in OOHC where allegations of sexual or physical abuse of children are raised.

Recommendation 7:

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Recommendation 8:

That efforts to improve the safety of Indigenous children in kinship-based care are holistic in nature and recognise and address the multiple inter-related factors surrounding child sexual assault in Aboriginal communities.

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About the Australian Psychological Society

The APS is the premier professional association for psychologists in Australia, representing more than 21,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning. A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing.

This submission has been developed through the cross-collaboration of two teams at the APS: Professional Practice and Psychology in the Public Interest.

- The Professional Practice team develops guidelines and standards for practitioners, provides support to APS members, and liaises with community groups and other professional organisations whose work may impact upon the psychology profession.
- Psychology in the Public Interest is the section of the APS dedicated to the application and communication of psychological knowledge to enhance community wellbeing and promote equitable and just treatment of all segments of society.