

**Royal Commission into Institutional Responses to Child Sexual Abuse**

Response to issues paper 4.

Preventing sexual abuse of  
children in out of home care

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#### Issues paper 4. Preventing sexual abuse of children in out of home care

*This submission responds selectively to the eleven questions posed by the Royal Commission in the issues paper.*

##### A current perspective on sexual abuse in OOHC

In 2011-12 there were 48,420 substantiations of abuse of children and young people aged 0-17 years in Australia (AIHW, 2013, A8). Of these substantiations the AIHW report gives two slightly different figures for substantiations involving sexual abuse. These are 12% on page 12 and 13% on page 14 of the report from the total number of substantiations i.e. of 48,420.

When sexual assault cases are presented as numbers rather than in percentage form in the AIHW report there is further variation. Examples of this variation are present in tables, 1, 2 and 3 below.

Table 1. Substantiations of sexual abuse of children and young people 0-17 years by state and territories for the year 2011-12.

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
S. abuse	3,644	912	350	598	189	43	39	53

Source: AIHW, 2013, Table A5.

This sums to 5,828 substantiation of sexual abuse nationwide. These figures do not indicate which of these children and young people were subjected to this abuse while in OOHC.

The next AIHW table reports a different total number of cases of sexual abuse.

Table 2. Substantiations of sexual abuse of children and young persons aged 0-17 years by gender and state and territories for the year 2011-12.

S. abuse	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Male	779	409	97	139	60	15	12	14
Female	1,913	491	237	419	114	26	17	33
Total	2,692	900	334	558	174	41	29	47

Source: AIHW, 2013, Table A6.

This is a sum total of 4,775 cases of children or young people where there was substantiation of sexual abuse. Again these figures do not indicate which of these children and young people were subjected to this abuse while in OOHC.

The next table offer a further perspective on this issue.

Table 3. Substantiations of sexual abuse of children and young people aged 0-17 by Indigenous status and state and territories for the year 2011-12.

S. abuse	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Indigenous	553	74	98	128	38	3	4	37
Non-indigenous	2,140	827	226	199	130	22	20	10

Source: AIHW, 2013, Table A8.

This is a sum total of 4,509 cases of children and young people where there was substantiation of sexual abuse. As before these figures do not indicate which of these children and young people were subjected to this abuse while in OOHC.

Thus, we have three sets of figures ranging from 5,822 to 4,509 as an indicator of substantiated cases of sexual assault of children and young people in the year 2011-12. There is no AIHW data for the prevalence of the sexual assault of children and young people in present day OOH programs.

Given the limitation of the AIHW data the fact that the NSW Department of Family and Community Services recently indicated that over 500 cases of foster carer reportable conduct are under investigation and that 106 cases relate to sexual abuse is revealing (Browne, 2013).

### The search for the perfect solution

#### *Questions 1 and 2.*

The formulation of question 1 and 2 suggest that the Commission thinks that there are strategies that if adopted will ensure that no child or young person in out of home care will ever again be sexually abused. This is unrealistic.

The assessment and selection of foster carers including kinship carers and staff in group care (day or residential care) programs is a key issue in any attempt to ensure that potential sexual offenders against children and young persons are not recruited to these roles. Short of lengthy in depth psychological investigations of each potential individual carer, this is unlikely to be achieved. And the investigations themselves may be subject to error.

In addition the imposition of in-depth psychological investigations would be a time consuming and expensive process. Such a process might also deter those who will never commit sexual offences against children and young persons from seeking to act in the capacity of foster carers or kinship carers. In that respect such a process may be counterproductive given the clear evidence of a short fall in recruitment of persons to these necessary roles.

#### *Question 3.*

The issue with this question is - what impact on foster carers or kinship carers would enhance monitoring of the type suggested have? Agencies that are responsible for foster and kinship care placements are already expected to provide regular supervision that includes visiting the foster or kinship care dwelling and seeing and talking with a child or young person that is in that placement on a regular basis. It is of course well known that agencies do not always meet these expectations on time.

As to irregular visits to families by other persons the question to ask is – how disruptive would that be to foster carers and kinship carers, given that they are expected to offer a child or young person a stable and as normal as possible 24 hours per day 7 days per week family like experience? Would irregular visits add to or detract from this complex task especially as these visits would be imposed on all foster or kinship carers most of whom are unlikely to commit a sexual offence against the child or young person in their care. If such a proposal were implemented this may well also raise the issue of the human rights of foster and kinship carers.

And where is the evidence that irregular visits would result in the prevention (not detection) of a sexual offence against a child or young person?

There is also the question as to how an increase in the surveillance of foster and kinship carers in this way might deter people from wanting to act as foster or kinship carers?

*Question 4.*

The real question is not about whether OOHC providers should be regulated by the child protection department or by a separate body but who would do the job most effectively. In NSW OOHC agencies are already accredited by the Commission for Children and Young Persons and the creation of a further regulatory body hardly seems justified. Furthermore, the creation of a new body is likely to increase the compliance costs for OOHC agencies.

*Question 5.*

Clearly, all personnel who work with children in OOHC who might be sexually abused need to be well versed as to how this might happen and have mastery of a series of working practices designed to prevent such events.

The AIHW child protection report for 2012-13 however notes that cases of substantiated sexual abuse represent 12 or 13 per cent of all substantiated Australian cases of abuse and neglect. Many of these substantiated cases of sexual abuse involve family members or persons known to the child or young persons' family.

In the same year substantiated cases of abuse or neglect (not differentiated by type) in OOHC (kinship and foster care) in all states and territories totalled 429 although NSW was unable to provide the relevant data so that this figure is not complete (AIHW, 2013, Table A9). It is also more than likely that of the 429 substantiated cases only a limited number were substantiated cases of sexual abuse.

These figures highlight the difficulty of allocating extensive and expensive staff training time to the issue of sexual abuse in OOHC services when other forms of abuse and neglect are more prevalent.

*Question 6.*

There is extensive documentation, including reports of legal proceedings that show that foster care agencies all too often fail to provide foster carers with adequate information about a child or young persons' previous history, including sexual behaviours. Training cannot make up for inadequate information exchange. In that respect the exchange of full information with foster carers who have been asked to care for a child or young person who has a history of sexually abusing other children must come first. It is essential so that foster carers can safeguard their own children from sexual abuse if they are living in the same household as the potentially abusive foster child.

Once the proper information exchange has occurred then training about how to understand and manage the foster child's potentially abusive sexual behaviour has its place. Not before.

*Question 7.*

Before a response can be made to this question more information is needed about the proposed 'exit interview'. With whom, in what format and by whom and what standing will this information be given?

The question also seems to assume that more information will inevitably lead to changes in OOHC practice. The reverse may be true. More information may confirm the wisdom of some current OOHC practices.

*Question 8.*

If an allegation against a carer results in the carer being charged with a criminal offence stemming from a sexual assault of a child or young person then they must be afforded the full protection of the law, as is the case with all citizens charged with a criminal offence. The nature of the offence no matter how heinous must not compromise this right. If convicted then the offender must have the right of appeal, if the case circumstances merits such an appeal.

The difficulty with disclosure by a child or young person stems from the need for the disclosure to be made in a careful, clear and precise manner to relevant persons so that the child or young persons' evidence will be sustainable when tested in Court.

The danger is that too enthusiastic seeking of disclosure from a child or young person, especially those based on the interpretation of behaviour changes, which may have more than one explanation, is that the disclosure evidence may not stand the test of legal scrutiny. In which case the child or young person may be harmed by having been exposed to a stressful lengthy and upsetting legal process to no good end.

Fairness is important for both a child and young person and a carer who is alleged to have committed a sexual offence. Fairness is not the sole property of one party.

*Question 9 and 10.*

Both of these questions focus on the oversight of OOHC services by an unspecified independent body. Again it is difficult to offer a response to these questions given the vagueness of this notion as well as a the lack of clearly argued case to support the proposition that such a body would enhance the handling of allegation of sexual abuse or keep children in OOHC safe from sexual abuse.

What sort of body would this be? Would it be a quasi-legal entity mandated to investigate allegations of sexual abuse of a child or young person? What if it was a young person under investigation for the sexual abuse of another child in the same foster care placement?

Would it be some sort of inspectorate with powers of entry and search of all OOHC placements? And who would decide as to what is safe or unsafe practice in OOHC services?

*Question 11.*

In an ideal world records would be kept forever and any child who had been in care would have open access to their records whenever they choose to do so. Whether this is practical and what the legal implications of adopting such a position are requires considerable careful thought.

Such a position obviously has organisational implications and implications for staff employed in these services at the time of the alleged sexual abuse. There is also the question about who retains client records if an agency providing OOHC services ceases to exist.

*Concluding comment*

None of the above should be read as indicating an attempt to diminish the importance of preventing sexual abuse of children or young people in OOHC. This is a vital task. It is however important that any proposals for inspection or monitoring of OOHC services is undertaken in such a way as not to deter those persons who provide an important and necessary service to the Australian community by acting as foster or kinship carers.

The Royal Commission is of course concerned with children and young people who were abused in OOHC in the past and who are now adults. In that respect it would be unfortunate if the Commission were to make recommendations about future OOHC practices and their regulation given that the data presented at the beginning of this submission suggests that we have limited knowledge of the prevalence of sexual assault of children and young people in today's OOHC services. This is confirmed by the Biehal and Parry review of the international evidence in relation to maltreatment and allegations of maltreatment of children in foster care presented in their 2010 working paper.

#### References

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