

NSW Government Submission

Royal Commission into Institutional Responses to Child Sexual Abuse

Issues Paper 4 – Preventing Sexual Abuse of Children in Out-of-Home Care

The NSW Government welcomes the opportunity to respond to the Royal Commission's Issues Paper 4 – Preventing Sexual Abuse of Children in Out-of-Home Care (OOHC). While NSW is working towards reducing the number of children and young people in statutory OOHC, there will always be children and young people who are not able to live at home safely. Children in OOHC are some of the most vulnerable members of our community. Safeguarding them from harm is a priority and a shared responsibility, with Government, OOHC agencies and carers all playing an important role in ensuring children and young people receive the care and support they need.

Foster and kinship carers in NSW perform an invaluable role in providing love and stability to children and young people in OOHC and provide safe and positive experiences for the children in their care. Unfortunately however it is true that children and young people in care remain vulnerable to sexual exploitation, and for this reason the NSW Government works hard to identify and address such areas of vulnerability, as part of its overall focus on the best interests of children and young people.

OOHC in NSW

In NSW, OOHC services are delivered by the NSW Department of Family and Community Services (FACS), and a range of funded accredited non-government organisations (NGOs). The profile of OOHC services in NSW has steadily evolved over time, partly in response to increases in the OOHC population, and partly in response to major reviews of the sector. The current movement towards transferring Community Services' OOHC functions to the non-government sector is in direct response to recommendations made by the 2008 Special Commission of Inquiry into Child Protection Services in NSW.

As at June 2013, there were 18,300 children and young people in OOHC¹, an increase of 1% from 30 June 2012. In the period between 2006 and 2013 the number of children in OOHC has increased by about 73%. A key factor in this increase was an arrangement called 'supported care' with relative and kinship carers (generally when children cannot live with their birth parents and arrangements were made by relatives to care for these children or where orders were made by the Family Court) which was captured in the definition of OOHC. The 'supported care' cohort of children currently

¹ Department of Family and Community Services (FACS) Annual Report 2012-13, p. 30
<http://www.facs.nsw.gov.au/publications>

make up 32.3% of the total OOHC population and this cohort are not included in OOHC numbers in any other Australian jurisdiction.

It is important to note that there have been significant improvements within NSW in that time as the rate of increase in the population has slowed considerably, especially since 2009/10 (see figures below):

	30 June 2006	30 June 2007	30 June 2008	30 June 2009	30 June 2010	30 June 2011	30 June 2012	30 June 2013
Children and young people in OOHC	10,623	12,712	14,667	16,524	17,400	17,896	18,169	18,300
Rate of increase vs. previous year		19.7%	15.4%	12.7%	5.3%	2.9%	1.5%	1.0%

Source: Community Services Annual Statistical Report 2006-2012. Note: 30 June 2013 figure is published in FACS Annual Report 2012-13.

At 30 June 2012, most children and young people in OOHC were placed in relative and Aboriginal kinship care (52.1 per cent) or in foster care (38.6 per cent), with 2.8 per cent in residential care. The remaining 6.5% are in other forms of care, including restoration to the care of parents, non-related persons, independent living and supported accommodation.

There have been a number of significant NSW inquiries that have made recommendations to improve the OOHC system to deliver better outcomes for children including the Wood Special Commission of Inquiry into Child Protection Services in NSW which reported in 2008. Based on the findings and recommendations of these inquiries, NSW is making a number of changes to the OOHC system.

Since 2009, FACS has introduced reforms towards improving the service delivered to children and young people in OOHC including the introduction of comprehensive health assessments and education plans; memoranda of understanding between FACS and a range of government departments on inter-agency collaboration and co-operation, including information sharing and joint case planning; and building the capacity of the non-government sector to provide intensive family based preservation; and restoration services.

One of the key reforms in NSW is the transfer of OOHC to the non-government sector. The Wood Special Commission of Inquiry found that non-government agencies were better placed to provide the care and support services that children, young people and carers need and recommended that statutory OOHC be transitioned to the non-government sector. The transition allows FACS more time to work with vulnerable families to prevent their children coming into care. Some of the benefits that non-government agencies can provide include:

- Better and more regular access to a caseworker;

- A higher level of support and training for carers;
- Greater involvement of children and young people and their parents in care planning;
- More frequent case plan reviews, where the caseworker works with the carer to support the child or young person's needs (including health, education and special needs);
- Smaller and less formalised management structures that facilitate the implementation of reforms and innovative service models;
- A clear process to solve issues where there are disagreements; and
- Services that have been accredited by the Children's Guardian.

The Ministerial Advisory Group on the Transition of OOHC Service Provision in NSW to the Non-Government Sector has developed 'The 10 Guiding Principles for OOHC Transition'². These describe the whole of OOHC sector agreements that will underpin future OOHC service provision in NSW, and the systemic features required for the OOHC sector to better support children in OOHC.

FACS retains Parental Responsibility for the majority of children in OOHC³, retains the key decision making role in restoration decisions, and develops and approves a child or young person's initial Care Plan (and has a role in implementation). A non-government provider is responsible for placement of a child with an authorised carer, case management, support services, transition and case closure. FACS and the non-government provider have joint responsibility for decisions to apply to change court orders, and for providing after care assistance.

A key priority for the Government as part of the transition is ensuring that the non-government sector has the capacity to support and keep safe children in OOHC. A number of capacity building projects are underway, with further information on these available on the Department's website⁴.

In addition to developing the capacity of service systems, attention is being paid to improving the quality of OOHC and associated services, based on emerging understandings of best practice. FACS has recently introduced a package of comprehensive legislative reforms to the NSW child protection system. The reforms are designed to strengthen support and parenting capacity within vulnerable families; streamline processes towards permanency and stability for at-risk children and ultimately reduce the number of children entering OOHC and staying in care for extended periods of time⁵.

² http://www.community.nsw.gov.au/docswr/_assets/main/documents/oohc_communique.pdf

³ The only non-government provider who holds Parental Responsibility for children is Barnados.

⁴ http://www.community.nsw.gov.au/docs_menu/parents_carers_and_families/out_of_home_care_transition/transition_projects.html

⁵ Further information on the reforms is found at:

http://www.community.nsw.gov.au/docs_menu/about_us/key_reforms/improving_child_protection.html

1. An essential element of OOHC is for a child to be safe and secure. Are there core strategies for keeping children in OOHC safe from sexual abuse, and what is the evidence that supports them?

There are a number of strategies that contribute to the safety of children and young people in OOHC.

A child focused practice framework

As highlighted in the NSW Government's response to Issues Paper 3 – Child Safe Organisations, there is a need for all organisations that provide services to children to promote a child safe environment.

Practice First is a model for child protection service delivery and OOHC case management being implemented by FACS in sites across NSW. Practice First is different to traditional models as it uses Principles of Practice to guide work and support cultural change in FACS. It focuses on a commitment to group decision-making about children and families through group supervision. Group supervision provides a place to unpack the range of factors that may make children vulnerable to child sexual abuse and/or contribute to the capacity of children to disclose, such as age, gender, cultural background, relationship to alleged perpetrator and the level of family functioning. It enables development of safety strategies and planning for sensitive and effective ways to intervene.

The design of Practice First has been influenced by what has worked well in other jurisdictions and by what literature and research has found to be useful. Primary influences include the Structured Decision Making framework, Minnesota Child Welfare Reform, Differential Response Model⁶ and Reclaim Social Work Hackney London^{7ad}. The primary research influences about challenges in contemporary child protection have been Eileen Munro's Report to the English Government, 2012, and the writings of Jan Horwarth and Nigel Parton. The main influences in the development of the Principles of Practice were the literature on strength based work, particularly Berg and Kelly, Andrew Turnell and Robyn Miller.

A rigorous carer assessment and authorisation process

NSW care and protection legislation provides that a designated agency cannot authorise a person as a carer unless the agency has determined that the person is suitable to be a carer.

A designated agency must be satisfied that the person has successfully completed the carer training required by the agency (carer training is addressed in response to Questions 5 and 6 of the Issues Paper). A designated agency must also estimate the risk to any child or young person in authorising the individual as a carer, including any risk arising from the particular place at which the authorised carer will be providing

⁶ Suzanne Lohrbach and Rob Sawyer, American Humane Society

⁷ Reclaim Social Work, Social Work Units – The Way We Do Things Here (2008), London Borough of Hackney

OOHC (this involves a home inspection) and the risk that the individual may be unable to properly perform the functions of an authorised carer.

However, the only legislatively required probity checks for carers are Working With Children Checks (WWCCs). Other probity assessments, including national criminal record checks are left to the designated agencies discretion. Most designated agencies conduct national criminal record checks in addition to WWCCs, as this enables them to obtain and consider a person's criminal record (not including spent convictions) in the context of an authorised carer's duties and, in the case of relative or kinship care, a particular placement arrangement. Designated agencies do not receive such information from a WWCC – they just receive information that the person is or is not cleared for child-related work. Beyond this, carer assessment arrangements vary considerably across agencies.

Care and protection legislation also provides that a designated agency may, for the purpose of determining whether a person is suitable to be an authorised carer, make such inquiries as to individuals aged 14 years and above in the prospective carer's household, including a criminal record check and any other relevant probity check relating to the previous employment or other activities of such individuals.

Any adult living in an authorised carer household must have a WWCC clearance, or a current application for such a clearance, but, other than this, probity assessments of carer household members vary across the sector.

As part of the transition of OOHC to the non-government sector, NSW is working to ensure that the carer assessment and authorisation process is stringent and consistent across the sector. It is currently developing a more comprehensive assessment framework for carers and their household members (aged 16 years and above), which will set minimum assessment requirements that will be consistently applied across all designated agencies. Where a relative or kinship carer is authorised on an emergency basis (see clause 31 of the Children and Young Persons (Care and Protection) Regulation 2012), they will need to meet these assessment requirements before they are fully authorised.

This assessment framework will be provided for in the NSW Carer Register, which is currently being developed by the Office of the Children's Guardian and is anticipated to be operational by July 2014.

The Carers Register will be a centralised register of:

- a) Persons who are emergency or fully authorised by designated agencies, or who have applied for authorisation, to provide statutory or supported OOHC; and
- b) Their household members (excluding children and young people in OOHC).

A carer will not be able to be fully authorised until a designated agency certifies on the Register that all required carer, household member and household assessments have been completed. The Register will also contain details of WWCC applications/

clearances and alert agencies in advance of WWCCs needing to be applied for (in the case of household members under the age of 18) or renewed.

The Register will record the outcomes of carer applications and the surrendering, suspension, cancellation and cessation of authorisations, as well as the outcomes of internal or Administrative Decisions Tribunal (ADT) reviews in these areas. The Register will also flag the existence of reportable allegation investigations into carers that are in progress, and relevant finalised investigations

The Carers Register will be maintained and administered by the Office of the Children's Guardian, which will be responsible for monitoring designated agency compliance with carer and household member assessment requirements.

NSW will provide the Royal Commission with further information on the carer and household member assessment framework and the Carers Register after the government has had the opportunity to consider their final design.

Designated agencies should regularly conduct reviews of carers. Reviews are required when major changes affect a carer's household. A new person residing in the household should trigger such a review and the Carers Register will ensure that persons who join a household during the course of an authorisation are subject to required probity checks.

Carer and caseworker support and training

Carers and caseworkers are required to undertake training on a range of subjects associated with supporting children in OOHC, including training specific to child protection and preventing sexual abuse. For further information on this training please refer to question 5.

Placement assessments

Decisions about placements take into account the circumstances of the particular child or young person, as well as those of the potential placement. Given that some perpetrators of sexual abuse are themselves young⁸, the placement assessment considers, amongst other things, the potential risk posed by other children or young people who reside in the carer's household who will not be subject to a Working with Children Check.

NSW has developed a common placement needs assessment tool to match children entering care with the most appropriate placement type and level of care required. This is called the Child Assessment Tool and is based on the Cleveland Child Assessment Tool which has been in use in the United States for more than 15 years. It was customised for NSW in partnership with Tracey Field from the Annie E Casey Foundation, one of the developers of the Cleveland tool.

⁸ DoCS, Impacts of programs for adolescents who sexually offend: Literature Review, 2005, p.i.

The Child Assessment Tool is able to identify and weigh issues of greatest concern for caregivers that require additional supports or services. The tool is designed to achieve the best possible outcomes for a child or young person entering OOHC by providing:

- Greater consistency, better quality decision-making and refinement of review processes;
- An agreed framework with OOHC providers for making placement decisions; and
- Streamlined assessment and placement processes.

Strong relationships with a Caseworker

Having a consistent support person in the life of a child in OOHC is important. A strong relationship with a trusted adult can act as a deterrent to a potential offender, and also increases the likelihood of a child disclosing sexual abuse or talking about experiences which make them uncomfortable.

In NSW, the transition of statutory OOHC to the non-government sector will see an increase in the proportion of children and young people who will have an allocated caseworker. It is expected that all children and young people will receive closer support and case management from their designated agency than was possible under the previous arrangement. This will help contribute to keeping children safe by ensuring a stronger relationship is established at the local level between a child and their caseworker.

Empowering children in OOHC

Children should be equipped with the confidence and understanding necessary to identify and act on unsafe situations, and empowered to have a voice in developing their care and safety plans. Preventative personal safety and protective behaviours programs work to give children a voice, and empower them to find the language and confidence to talk about the situations in which they feel uncomfortable, unsafe, or to disclose sexual abuse.

School attendance

In recognition that poor school attendance and behavioural problems often provide a window into the circumstances of vulnerable children, the NSW Ombudsman has noted that disengagement from school distances young people from the supports offered by the school environment and puts them at greater risk of abuse and involvement in anti-social and criminal behaviour⁹.

Noting the link between school attendance rates and child sexual abuse rates¹⁰, programs to improve school attendance are a preventive measure. Strategies to support and encourage school attendance should be a core component of the OOHC education plan for each child.

⁹ NSW Ombudsman Report: Responding to Child Sexual Assault in Aboriginal Communities December 2012.

¹⁰ Section 19.3.1 Responding to Child Sexual Assault in Aboriginal Communities December 2012

In NSW, the Department of Education and Communities employs ten OOHC Education Coordinators, who are responsible for coordinating and monitoring of the educational support for children and young people in OOHC. These officers also provide training and development programs for school and regional staff, which may include specific strategies for working with students who have experienced trauma due to sexual abuse.

Effective responses to child complaints or concerns about behaviour towards children

OOHC agencies should have in place policies and procedures to ensure that complaints and concerns are dealt with and responded to appropriately, and that appropriate external authorities are notified.

Monitoring of placements is important following allegations of sexual abuse in circumstances where the alleged perpetrator is a friend or family member of the carer. Carers may not be protective for a range of reasons, including they may not believe the allegation, they may be complicit in the abuse, or they may be a previous victim of grooming themselves by the perpetrator. Any of the above circumstances would trigger the need for a review of the carer's ability to provide adequate care for a child.

If an allegation of sexual assault has been made against a carer about a child in their care, or if there is a charge or conviction, the child protection agency works with the OOHC provider to identify all children previously placed with that carer and assess whether or not those children are currently safe and whether or not they have also been sexually abused.

As well as ensuring that actual incidences of harm to children are dealt with appropriately, having in place the policies and procedures to allow effective responses to complaints or concerns can also have a deterrent effect and prevent harm to children.

The NSW Child Protection Helpline within FACS has procedures to ensure that any allegation of misconduct made against an authorised carer, regardless of how serious, is guaranteed to be forwarded on to the relevant Community Services Centre for action. Furthermore, the report on the allegation is also referred to the FACS Reportable Conduct Unit, a specialised unit within the Department created to investigate complaints made against authorised carers.

Information sharing

The safety of children in OOHC is a collective responsibility. All organisations involved in the life of a child or young person in OOHC should be able to share information on the potential risks an individual may present while working with or caring for children in OOHC. In NSW, Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* allows for the exchange of information between prescribed bodies which include NSW Police, FACS and organisations providing OOHC, health, education and children's services. At present designated agencies are actively using Chapter 16A to share information about carer histories.

One of the primary objectives of the Carers Register is to facilitate designated agencies sharing information about carers and household members. As OOHC transitions to the non-government sector, information holdings about carers and prospective carers, and their household members, becomes more fragmented. There is a risk that carers who have ceased caring with one agency as a result of concerns about their conduct or suitability will seek authorisation with another agency that has no knowledge of their previous care history, however the implementation of the Carers Register will address this risk.

The Carers Register will include information about a person's authorisations and applications for authorisation, or household member status, with each agency with which they have had such contact. A designated agency will be able to view a prospective carer or household member's history with other agencies on the Carers Register and, as part of the assessment process, will be required to seek information under Chapter 16A from any such agencies.

2. Is there evidence for having different strategies to keep children in OOHC safe from sexual abuse depending upon whether a child is in relative or kinship care, foster care or one of the forms of residential care?

There is limited evidence to support the use of specific strategies in different types of care. Strategies should reflect the nature and level of risk within each placement, which can vary within a care type. The nature and level of risk, and strategies to address these, should be identified as part of the placement risk assessment and safety planning that forms part of a child or young person's Care Plan.

3. What are the strengths and weaknesses of models that check OOHC practices by an audit approach, a regular supervisory visit, or an irregular visit by someone like a community visitor?

Each model of monitoring and regulating OOHC practices has its own strengths and weaknesses. These are explored below. Given this, NSW considers that a system which embeds several models of quality assurance provides the most robust system of oversight, and has adopted a hybrid approach which incorporates aspects of each model referred to in the question.

Accreditation audit approach

NSW OOHC agencies are accredited by the Office of the Children's Guardian to provide foster care, residential care, or both. Accreditation is against the NSW OOHC Standards¹¹, and can be for one, three or five years.

The strengths of the accreditation approach include: the application of consistent standards and expectations for the OOHC sector; the ability for sector wide information

¹¹ <http://www.kidsguardian.nsw.gov.au/accreditation/nsw-out-of-home-care-standards>

to be gathered on performance against a particular standard; and the ability to identify areas of excellence and areas for improvement for individual agencies. However, the weakness in this approach is that it is an ongoing process which is resource intensive for both the audit agency and the service provider. As advised by the Office of the Children's Guardian, while accreditation systems outline the particular standards organisations must meet to be accredited as designated agency, they run the risk of being static once a certain standard has been reached and may limit ongoing service improvement.

Contract audit approach

In NSW, FACS manages OOHC placement contracts using the Performance Monitoring Framework¹². This Framework assesses performance against targets outlined within the service specification.

A key strength of this approach is that it provides for regular contact between FACS and OOHC agencies. In addition to formal annual performance monitoring, the management of contracts allows for year round interaction, where issues can be raised and resolved in a timely manner. However, contract management necessarily focuses on outputs and achievement of targets, and not on the outcomes of individual children. The practice of delivering quality OOHC is not tested by this methodology.

The NSW OOHC Taskforce is currently exploring ways to improve the measurement of quality and improved outcomes for children and young people in OOHC. One initiative which has begun is Pathways of Care, an innovative large-scale representative longitudinal study (2010-2016) that follows children and young people aged 0-17 years entering statutory care for the first time. The study will collect detailed information about the characteristics and circumstances of children and young people on entry to care, their experiences in OOHC and their life course development to distil the factors that influence their outcomes. Reporting for Pathways of Care will begin in 2014, and findings will provide the knowledge to further strengthen the NSW OOHC system and improve the life opportunities for children and young people in its care.

Regular supervisory visits

Regular supervisory visits by a caseworker familiar with the child/young person in OOHC and their history allows for an assessment of that child's circumstances and progress against Case Plan goals. Caseworkers also have the ability to identify changes in children and young people over time, and to refer them to services where appropriate. However, this approach is resource intensive, and the capacity of caseworkers to make regular visits can be compromised by high caseloads and administration requirements.

Irregular visits

In NSW, Official Community Visitors who are coordinated by the Ombudsman visit children and young people in residential OOHC. They provide information directly to the

¹² http://www.community.nsw.gov.au/docswr/_assets/main/documents/performance_framework.pdf

Minister for Family and Community Services on the quality of services, and identify and help resolve issues raised by children and young people at the local level.

The key strength of this approach is the wide reaching power Official Community Visitors have to enter premises, access files and speak directly to children, allowing them to make assessments on the quality of service provision. However, this is a point in time analysis.

4. What are the strengths and weaknesses of having OOHC providers regulated by the child protection department, or regulated by a body separate from the child protection department?

Each of the models for regulating OOHC referred to in the question offer strengths and weaknesses (discussed further below). However, overall, NSW considers that the regulation of OOHC providers by a body separate from the child protection department provides a stronger, more transparent regulatory framework.

For this reason, in NSW OOHC providers are accredited and monitored by the Office of the Children's Guardian, an independent government agency separate from the child protection department that reports directly to the Minister for Family and Community Services.

The Office of the Children's Guardian accredits and monitors designated agencies that provide statutory out-of-home care and registers and monitors agencies that provide, arrange or supervise voluntary out-of-home care. It also accredits non-government adoption service providers. The independent role of the agency ensures that agencies that undergo accreditation and monitoring have a common understanding of good practice, work towards quality improvement and encourages greater scrutiny of outcomes and quality service delivery by clients and their families.

FACS is the statutory child protection agency in NSW. In conjunction with partner government agencies and non-government organisations, it provides services and support to families within NSW who have presented with child protection concerns across the child protection spectrum; from early intervention to leaving OOHC. FACS' intervention services help protect children from significant risk of harm.

FACS is also a funder and contract manager of non-government case managed services. Work is progressing to examine the future role of FACS when the majority of OOHC sits within the non-government sector. This will require a re-casting of the role of FACS to include not just contract management but a monitoring role that can assess the experience, health and wellbeing of individual children.

The role will be fundamentally different from the existing OCG role of service accreditation. However, systemic issues identified through monitoring of individuals will be shared with the OCG, and may impact upon an agency's accreditation.

Currently the NSW Ombudsman makes inquiries directly to non-government organisations about the wellbeing of specific children. NSW, through the OOHC

Taskforce, will be looking at options for the improved monitoring of outcomes for individual children and young people in OOHC, including how FACS, Office of the Children's Guardian and the NSW Ombudsman's monitoring responsibilities should be allocated and coordinated.

Other monitoring processes currently under consideration by NSW include: a program of visiting children and young people in their placements based on the UK Ofsted Model and a state-wide roll out of the Viewpoint Tool (mobile technology to survey and engage children and young people about their care experience).

The NSW Ombudsman has a key role in relation to employment-related child protection. Part 3A of the Ombudsman Act 1974 requires the NSW Ombudsman to keep under scrutiny the systems that government and certain non-government agencies in NSW have for preventing reportable conduct and handling reportable allegations and convictions involving their employees. 'Designated agencies' must notify the Ombudsman of all reportable allegations and convictions that arise inside or outside the employee's work.

Possible strengths and weaknesses of the model operating in NSW, where the independent body is the regulator, are listed below:

Strengths

- The performance of OOHC providers can be independently monitored against the OOHC Standards, and providers can be held to account;
- Allows the child protection department to concentrate on its core child protection functions, rather than regulating OOHC providers;
- Regulation by an independent body avoids conflicts of interest arising for the child protection department that is a provider of OOHC, the funder and also the sector regulator;
- May strengthen the relationship of the child protection department as funder with the OOHC providers, by removing some of the tension associated with the regulatory oversight role; and
- The capacity to collect both comparative and independent data across the OOHC sector.

Weaknesses

- The independent body may not have the same knowledge and experience as the child protection authority about the special needs of some children in OOHC, including children with specific disability. The role of the Office of the Children's Guardian is at a much broader systemic or organisation level – not an individual child outcome level, therefore, may not develop policies covering the diversity of children's needs. However in NSW it is noted that the Office of the Children's Guardian's assessors consider agency practice in respect of individual cases and highlight improvements to be made;
- Potential confusion for the non-government sector in understanding the Department's role as funder and the independent body's role as regulator in monitoring OOHC providers' performance; and

- Potential duplication of resources or the perception of duplication, as both the independent body and the child protection department are carrying out monitoring functions.

5. What are the core components of the training needs of those working with children who might be sexually abused including carers, caseworkers and staff of regulatory bodies? What priority should be given to training in relation to sexual abuse compared to other training needs?

And

6. Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?

Training should be mandatory, current and easily accessible. The delivery of training should 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 topics. Content of training should cover:

- Definitions and dynamics of sexual assault;
- Understanding of children's healthy sexual development and introduction to issues of problematic sexual behaviour;
- Healthy boundaries and attachment needs and the establishment of safety boundaries;
- Protective behaviours with children/young people;
- Indicators of sexual abuse and grooming behaviours;
- Appropriate responses to disclosures;
- Impact of trauma on children and young people and changes in behaviour;
- Links between sexual assault trauma and mental health issues;
- Mandatory reporter responsibilities;
- Ways of engaging, communicating and maintaining relationships with children and young people and their non-offending care givers (i.e. parents, care givers or significant others who have not harmed the child);
- Ways of working with other agencies in a collaborative manner; and
- Community resources available to support children, young people and families.

Currently in NSW there are several training options available for caseworkers, carers and other staff working directly with children. These include:

- *Caseworker Development Program*. FACS provides a 16 week mandatory induction program for caseworkers as a foundation for practice, including working with children who might have been sexually abused. There are specific modules and workshops that address sexual abuse of children and young people including grooming, offender behaviour and tactics and impact on disclosures, and sibling sexual abuse;
- *Joint Investigation and Review Team (JIRT) Foundation Skills Course*. FACS Community Services caseworkers and casework managers, NSW Police and

NSW Health staff involved in JIRT are required to complete mandatory training on the Dynamics of Child Sexual Assault, Offender Tactics and Grooming and the Process of Disclosure and Sibling Abuse;

- *Association of Children's Welfare Agencies/Centre for Community Welfare Training (ACWA/CCWT)*. ACWA/CCWT provides a range of training courses for workers in the OOHC sector including, for example in 2013, training on Children who Sexually Abuse Other Children, Identifying and Responding to Children at Risk and Essential Training for Mandatory Reporters;
- *Connecting Carers NSW (CCNSW)* runs several training packages for all carers which are offered twice a year in each region. The packages include Protecting Against and Understanding Sexual Abuse and Managing Sexual Health Issues with Children and Young People in Care;
- CCNSW also delivers *Shared Stories, Shared Lives*, the introductory pre-authorisation carer training package used widely by both FACS and NGOs. It addresses the issue of understanding sexual abuse and other behaviours of children and young people who have experienced abuse; and
- *Education Centre Against Violence (ECAV)*. The NSW Health ECAV provides state-wide specialised training, consultancy and resource development for NSW Health and interagency workers who provide services to children and adults who have experienced sexual assault, domestic or Aboriginal family violence and/or physical and emotional abuse and neglect.

In addition, FACS and ACWA are working in partnership on a therapeutic research project to establish a strategic response to the therapeutic needs of children and young people in OOHC that promotes healing and recovery from exposure to trauma and where recovery is supported by a trauma informed service system. An objective is to propose a continuum of care which incorporates therapeutic foster care and residential services and associated education and training.

Carers of children who have sexually abused other children require specific information and training. It is necessary for carers to understand what is considered 'normal' child sexualised behaviour as distinct from sexually harmful behaviour, and also to understand any underlying problems which may be a causal factor in some children sexually abusing other children.

In NSW, the New Street Adolescent Service provides responses to children from 10 to 17 years old who display sexually harmful behaviours. As part of the program, NSW Health provides information and support for parents and/or carers who are caring these children.

However, more evidence based research undertaken 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 carers of these children need.

7. How should the rate of sexual abuse of children in OOHC be determined, noting that the National Standards for Out-of-Home Care require reporting of substantiated claims of all types of abuse? Would a form of exit interview assist in capturing information? What should be introduced to ascertain whether information on child sexual abuse in OOHC is resulting in changed OOHC practices?

The safety of children in OOHC is currently reported in the OOHC National Standards and the Report on Government Services. These measures are based on national rules and differences in systems, policies and legislation mean that these measures are not necessarily comparable.

The two nationally agreed measures for safety in OOHC are published in Report on Government Services and the latter is a measure in the OOHC National standards:

- Proportion of children in OOHC who were the subject of a notification which was substantiated; and
- Proportion of children in OOHC who were the subject of a substantiation and the person responsible was living in the household.

However, there are limitations to the extent that both these measures can be used to determine the rate of sexual abuse of children in OOHC. These measures are based on national rules – differences in systems, policies and legislation mean that these measures are not necessarily comparable across jurisdictions.

Given the rate of under-reporting of child sexual abuse, it is not clear that there is a plausible model for determining the rate of sexual abuse. Any recommendation from the Royal Commission on this issue would be welcome.

Exit interviews

A formal and structured exit interview may not be the most suitable or reliable method for capturing this information. It may not provide the most comfortable or safe environment for disclosure. Further, disclosure is not always a single event and often occurs many years after abuse. An exit interview is unlikely to capture reports of abuse in these circumstances.

However, it is acknowledged that some children may disclose abuse soon after they leave care. If conducted sensitively, a system of interviews as part of leaving care preparations may capture invaluable insights from recent service users. Allowing children the opportunity to provide feedback on their experience of being in care may provide a systematic means for an organisation to identify possible areas of improvement for their practices, or the OOHC system in general. Negative experiences of the care-leaver in particular may provide important learning opportunities.

Different ways to address allegations and ascertain information

NSW employs a number of strategies to allow information about sexual abuse in OOHC to be used to improve practice. The FACS Reportable Conduct Unit investigates allegations of reportable conduct against authorised carers. The information and

evidence gathered during an investigation sometimes identifies areas for improvement in the FACS response to a child or a class of children. The Reportable Conduct Unit is then able to make specific recommendations about a particular practice to a FACS operational unit, or to a strategic policy and practice development unit for consideration of a broader practice issue.

In addition to this, the NSW Ombudsman reviews the investigations of more serious matters undertaken by FACS and as an outcome of the review may make recommendations about the need for change in OOHC practices in FACS or across the OOHC sector.

8. What is the usefulness and validity of different ways to address allegations of sexual abuse brought against carers? In particular, which approaches enhance participation by the child particularly approaches best suited to seeking possible disclosures of abuse (including disclosures that might be inferred from behavioural changes) from children? Are the current processes fair? What appeal processes should be available for carers?

In NSW, allegations of sexual abuse against carers are addressed through either a criminal or administrative investigation, or both.

Criminal investigation

All allegations of sexual abuse against carers are initially assessed within the criminal justice system.

The Child Protection Helpline (operated by FACS 24 hours a day, seven days a week) directly refers reports about sexual abuse to the Joint Referral Unit, a collaboration between NSW Police, FACS and NSW Health, for assessment of criminality. The Joint Investigation Response Team (JIRT) response utilises three government agencies – FACS, NSW Police and NSW Health, to provide a more effective criminal investigation process to ensure the best outcome for the child or young person is achieved.

The JIRT approach is of great benefit in enhancing the participation of the child in the investigation and seeking possible disclosures of abuse, in that it uses staff with specialist training in interviewing children about sexual abuse. The interviews are conducted in an environment that is child friendly and non-threatening so the child may feel sufficiently comfortable to disclose sexual abuse. Another approach that enhances the participation of children is the free narrative technique. This allows them to tell their story without being led by other's words or suggestions. Care is taken not to re-traumatise a child or young person in the interests of including them in the process.

If a matter does not meet the criteria for action by a JIRT team but there may be a criminal element, the report is referred to the Police Local Area Command and to the local Community Services Centre (CSC) within FACS.

Administrative investigation

Within FACS allegations of reportable conduct are investigated by the Reportable Conduct Unit if the employee is a carer and by the Professional Conduct and Performance Unit if the employee is a salaried employee and a carer. This type of investigation is undertaken in accordance with the Ombudsman's investigation guidelines.

The allegation of reportable conduct can also be investigated by the NSW Ombudsman under Part 3A of the *NSW Ombudsman Act 1974*. Under the reportable conduct scheme the NSW Ombudsman oversees and monitors an agency's investigation of allegations of sexual abuse against its employees, including carers. The Ombudsman monitors the process on a number of levels:

- The agency's immediate response to an allegation to ensure the safety of the child victim and other children in care;
- That any risk to the carer is identified and managed;
- That the level of investigation reflects the seriousness of the allegation;
- That sufficient evidence is collected to make a finding about the carer's conduct; and
- That the process is fair, unbiased and that evidence is properly considered and weighted in making a finding.

That procedural fairness is afforded to all, and in particular that the carer is given both an opportunity to formally respond to the allegation and sufficient information about the allegation so they can make a meaningful response.

The oversight by the NSW Ombudsman in administrative investigations ensures accountability in managing allegations against carers, and opportunities for feedback and improvement on agency processes.

Limitations in investigations

While the above ways of addressing allegations of sexual abuse against carers are both useful and valid, some limitations should be noted.

Often allegations of sexual abuse are made several months or years after the alleged incident and the actual date is unknown. This affects the capacity to conduct physical examinations, collect DNA or other physical evidence. Allegations of child sexual abuse generally do not have witnesses. This means it is often the word of one person against another. The evidence of children can be vague and lack key information such as dates, times, locations and specific details.

Due to the number of staff working in residential care services it is sometimes difficult to ascertain who was on duty when the alleged incident occurred, and at times the alleged perpetrator cannot be identified. The high mobility of many children in OOHC can sometimes make it difficult to ascertain the location of the alleged incident and who may have been in contact with the child at the time.

Fairness of investigations

Carers, like all other people, are entitled to procedural fairness. The risk with internal investigations is that the reported conduct is sometimes sustained without any probative evidence, leaving the carer with a question mark against them and no resolution of whether or not the conduct has actually occurred. A range of measures ensure the current FACS processes of investigations in NSW are fair.

The alleged offender is given an opportunity to formally respond to a child's disclosure of abuse, and is also given sufficient information about the allegation to make a meaningful response.

Investigations endeavour to be unbiased and to consider evidence properly when making a finding. FACS will undertake an internal review by an investigator who was not involved in the initial investigation.

While the principles for current processes are viewed as fair, outcomes for carers may be affected by a carer's lack of cooperation with investigations which can affect their opportunity for a balanced investigation. An issue to be considered as part of the transition of OOHC services to the non-government sector is the sectors' capacity to conduct fair and consistent investigations.

Appeals processes for carers

Appeal processes will depend on whether the matter has been dealt with by a court or through some type of organisational investigation. Avenues of appeal are a requirement of procedural fairness.

In NSW, the ADT provides an avenue for carers to have some decisions made by FACS and other OOHC service providers reviewed by an independent body including:

- the decision to authorise or not to authorise a person as an authorised carer, to impose conditions of an authorisation, or to cancel or suspend a person's authorisation as an authorised carer; and
- the decision to grant to, or to remove from, an authorised carer the responsibility for the daily care and control of the child or young person.

It provides carers with access to natural justice and procedural fairness as carers are provided with the opportunity to tell their story, present evidence and have a final decision made by an independent body.

It should be noted that if FACS substantiates a finding of child sexual abuse as part of a reportable conduct investigation this is a decision that is not reviewable by the ADT.

Carers are not always aware of the complaints and appeals processes available to them. Information about the complaints process should form part of a carer's training and induction. Strategies to address allegations of abuse are required to be communicated clearly in policy.

It should also be noted that current appeal processes do not always take the needs of the young person into account. Care should be taken not to re-traumatise a child or young person in the interests of including them in the process.

9. What measures could be used to assess whether the safety of children from sexual abuse in OOHC is enhanced by independent oversight of the handling of allegations of sexual abuse?

It is unclear if there is any single method of determining how much offending is prevented by independent oversight of the handling of allegations of sexual abuse.

While a comparison of reporting rates from before and after the introduction of independent oversight, or from jurisdictions with and without independent oversight, may provide one measure, on their own these would not be a reliable indicator due to the rate of under reporting.

A more appropriate measure of the extent to which independent oversight enhances the safety of children in OOHC may be the extent to which the independent oversight increases the ability of OOHC agencies to respond effectively and efficiently to allegations of abuse.

A qualitative approach to measuring this would be to take a sample of reportable conduct matters which the NSW Ombudsman has been monitoring, identify where the Ombudsman's input to the investigation process has influenced or enhanced the quality of the reportable conduct investigation, and examine the response of the OOHC agency. This would help ascertain the impact of the Ombudsman's influence on the outcomes for the relevant child and carer. Whilst this methodology would not provide a quantifiable measure of any related enhancement it may provide qualitative insights and case studies.

10. What are the strengths and weaknesses of different oversight mechanisms in keeping children safe from sexual abuse in OOHC?

In NSW, there are a number of oversight bodies which help keep children in OOHC safe. These include:

- *The NSW Ombudsman* reviews the systems and functions of agencies and makes recommendations for improvement and may also review and provide recommendations in relation to the situation of a child or group of children in care. The Ombudsman is independent from government and provides public scrutiny to Government systems and processes;
- *The Office of the Children's Guardian* accredits, registers and monitors agencies which arrange, provide or supervise OOHC; and
- *FACS* funds and monitors OOHC providers and holds statutory responsibility for the children and young people in the NGO's care, as well as undertaking the provision of OOHC services itself.

The oversight bodies provide comprehensive oversight of the OOHC system from multiple aspects. However, the multiplicity of oversight bodies, each with a separate mandate, has also created a system which could appear complex and somewhat fragmented. For example, the Office of the Children's Guardian measures compliance of policy and practice against the OOHC Standards as an ongoing process, and FACS monitors the funding and service levels of OOHC non-government agencies. Neither monitors the outcomes and attainment of individual children and young people. This results in the absence of system-wide monitoring of outcomes for children and young people over the course of their lives in care. One of the responses in NSW to this gap is the establishment of the Pathways of Care longitudinal study as outlined above in Question 3.

Within NSW oversight bodies are in regular communication with each other and with FACS, including through the application of Memoranda of Understanding (MoU) facilitating information exchange. The fragmented nature of oversight does suggest however that further progress is required in this area. The MoU between FACS and the Office of the Children's Guardian is currently being reviewed in order to address this.

11. What implications exist for record keeping and access to records, from delayed reporting of child sexual abuse?

Delayed reporting of child sexual abuse is not uncommon. However, investigating historical allegations is difficult. If a victim comes forwards after many years to report abuse, it is often the case that historical records can't be located, or that they are scarce and do not include contemporaneous details of any allegations that may have been made at the time. This lack of records, together with difficulties related to finding contemporary witnesses, can have a negative impact on the investigations that follow or any legal claims made by the victim.

The challenges posed by delayed reporting highlight the importance of accurate, thorough and contemporaneous record keeping and tracking. It is noted that record keeping and access practices have improved significantly since the 1980s, so that it could reasonably be expected that this will become less of an issue going forward.