Government of South Australia

Office of the Guardian
for Children and Young People

Submission to Royal Commission into Institutional Responses to Child Sexual Abuse

Consultation Paper, Institutional Responses to Child Sexual Abuse in Out-of-Home Care

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1. Introduction

GUARDIAN FUNCTIONS 1.1 Among other statutory functions, the South Australian Guardian for Children and Young People acts as an advocate for the interests of children and young people under the guardianship, or in the custody, of the Minister for Education and Child Development. It is in this capacity that the following submission is made, predominantly in the South Australian context.

GCYP has made a number of submissions in recent years to commissions of inquiry and parliamentary select committees. GCYP has also produced evidence-based policy papers. This submission is prepared based on highly relevant previous submissions and papers. All submissions and papers referred to are attached as appendices.

It has been well reported that child protection services in South Australia are over-stretched and under-resourced. This is a key risk factor in the likelihood of abuse occurring and in the inadequacy of a response to notification and substantiation, including for those already in care.

Indeed, there is a current Royal Commission into Child Protection Systems in South Australia.

OUT-OF-HOME CARE (OOHC) 1.2 The OOHC system is not working as it should. The demand for appropriate family-based placements for children is high and the complexity of needs is deep. The likelihood of significantly expanding the numbers of carers is low. Consequently, there is increased risk of 'short-cuts' in process, such as children being placed before carer registration and training are complete and children being placed with carers who already have a full 'quota' of children or have not been approved for that particular age group.

RISK FACTORS FOR SEXUAL ABUSE IN OOHC 1.3 Children and young people in out of home care are among the most vulnerable and disadvantaged in our community and protecting them from sexual abuse is a difficult and demanding task. The protection of children from harm is a public matter, not just a private family or organisational matter. While we need to deal with allegations of abuse with fair process and natural justice for all parties, every investigation of abuse is also an opportunity to educate others about prevention.

Risk factors for sexual abuse in care have a lot in common with risk factors for abuse in general. However, sexual abuse commonly requires deliberate targeting of vulnerable children. Fundamental to protecting children from abuse is the presence of trusted adults and peers. Disclosure is more likely to occur in the context of a trusting relationship.

We do not know the full extent of sexual abuse in care. We should expect though that we have better mechanisms to prevent, monitor and report on abuse in care.

RESIDENTIAL CARE IN SOUTH AUSTRALIA

1.4   The proportion of children who live in residential care in South Australia is more than double the national rate. The number of facilities has grown from 18 in early 2008 to over 60 now. The speed of growth has impeded implementation of departmental plan for consistent quality improvements. There has also been over-reliance on interim arrangements, notably placing children in rented accommodation with carers engaged through an agency on eight-hour rotating shifts. As of 4 April, 154 children and young people were accommodated in interim arrangements. Just over half were aged 10 years and under.

Significant issues continue to plague residential care provided by Families SA:

- Physical environment of large congregate care units accommodate too many children and young people in one house for adequate individual attention.

- Recruitment practices and subsequent supervision and support of residential staff.

- Training for dealing positively with challenging behaviours.

- Education for young residents on sexuality, sexual health and protective behaviours, and knowledge by staff of teenage sexuality issues.

- Solid complaints mechanisms that are known to the residents and readily accessible.

RIGHTS OF CHILDREN IN CARE

1.5   It is a fundamental right for children to have a say in decisions that affect them and encouraging children to speak up is a critical safety measure.

The Charter of Rights for Children and Young People in Care (SA) was initially launched in 2006. Developed by the Guardian for Children and Young People in consultation with children and young people, carers, social workers and other service providers, it was enshrined in legislation in 2010. The *Charter* was reviewed in 2015 via consultation workshops with children and young people in care, resulting in minor revisions to strengthen some rights and improve promotions of the *Charter.* The SA Minister for Education and Child Development accepted the revisions and tabled the revised *Charter* in Parliament in February 2016.

2. Identifying and responding to sexual exploitation and child to child abuse

RESPONSES TO CHILD SEXUAL EXPLOITATION

2.1   A protocol has been established between Families SA, non-government organisations and SA Police regarding responding to children in residential care who are missing from placements. The agency response is informed by baseline risk assessments and a dynamic urgency assessment at the time the child is missing from placement.

The level of urgency – extreme, high, medium or low – determines the response by SA Police and/or Families SA.

GCYP has questioned whether it has increased the safety of children and young people in OOHC. There is no data or evidence available to draw any conclusions.

The protocol applies to children and young people in residential care settings only, not all children and young people in OOHC.

2.2   In 2009 an amendment to the *Children's Protection Act 1993 (SA)* introduced legally enforceable written directives not to harbour, conceal or communicate with a child under the guardianship of the Minister.

Section 52AAB gives the Chief Executive the power (delegated to Families SA Case Management Supervisors) to issue a Written Directive when a child or young person is being harboured or concealed or communicated to by a person in the community and put at risk. The formal notice directs a person not to communicate with and/or to harbour or conceal a child under the care or guardianship of the Minister, or make any attempts to do so.

Section 52AAC makes harbouring or concealing a child under the care or guardianship of the Minister an offence. It is also an offence to assist another person to harbour or conceal a child or to prevent the return of a child.

CHILD TO CHILD ABUSE

2.3   As a result of the South Australian *Children in State Care Commission of Inquiry* in 2008, GCYP acquired new responsibilities for advocating, where necessary, for children who made allegations of sexual abuse in care, and monitoring the investigations conducted by SA Police and the departmental Care Concerns Investigation Unit (CCIU).

In September 2015, GCYP commenced an internal analysis of the notifications of alleged serious sexual abuse in care referred by the CCIU between November 2008 and October 2014 (inclusive).

GCYP was only able to collate data based on notifications it received. It is acknowledged that GCYP received notifications that did not meet the criteria as per the agreement with CCIU and SAPOL and did not receive notifications it should have, particularly those within the residential care settings.

Between November 2008 and October 2014, GCYP received 236 notifications of alleged serious sexual abuse of children in care, affecting 422 children and young people (including three per cent of children not in care but affected by an incident involving a child/ren in care).

Children in residential care are disproportionately represented. It is possible that the disproportion is influenced by:

- the greater external scrutiny of residential care and possibly likelihood of reporting, and/or

- the higher needs of the children and young people and are possibly more vulnerable to sexual abuse, including sexually harmful behaviour towards other children.

However, GCYP is not confident that it received all notifications of alleged sexual abuse in residential care

Child to child incidents accounted for 40 per cent of the notifications received.

Child to child incidents of alleged sexual abuse are more likely in residential care settings than in family-based arrangements.

Based on the notifications received by GCYP, young males are more affected by alleged sexual abuse when in residential care settings as opposed to young females who appeared at greater risk in family-based placements (i.e. foster and kinship care).

PREVIOUS GCYP SUBMISSION AND POLICY ADVOCACY

2.4   The GCYP submission to the *Children in State Care Inquiry 2005* is attached in the appendices and addressed the following relevant topics:

- Institutional and family-based care (item 5.2)

- Safety in out-of-home care (item 5.4)

- Response to abuse in care (item 5.5)

- Home-based care preferred over residential care (item 6.1)

- Listening to children and young people (item 6.2)

- Employment screening (item 6.5)

- Special investigations (item 6.6)

- Protection now from sexual abuse while in care (item 7)

2.5 In December 2008 GCYP released an information paper, *What works best in residential care* identifying several factors that contribute to best practice:

1. Residential care works best when it is seen as a positive choice

2. Residential care works best when its purpose is clear

3. A high-quality care environment

4. A positive living environment

5. An environment where relationships are valued

6. The right services

7. Valuing education

8. Working with communities and families

The information paper is attached in the appendices.

3. Improving the quality of data on child sexual abuse in OOHC

PROPOSED DATA MODEL

3.1 GCYP supports the data model proposed in the discussion paper.

3.2 GCYP further recommends that data should be disaggregated by age and gender per care environment.

3.3 It is critical to note that relying on numbers of reports and confirmation is a very imprecise measure because of probable under-reporting and a reactive and under-resourced child protection system with limited capacity to assess reports quickly. While GCYP reports on the recorded allegations of serious sexual abuse in care it is notified of, we do so with a high degree of caution. The data is sparse, but more importantly, it is not an accurate picture of incidence.

There is still inadequate recording and reporting of the full circumstances of alleged abuse in care.

ADDITIONAL CRITICAL FACTORS

3.4 To achieve an accurate picture of incidence of sexual abuse in out of home care, the system must, among other things:

- Listen to and act on what children and young people have to say about their lives in care.

- Provide specific training for children, carers and workers that promotes self-protective behaviours.

- Monitor and improve the quality of care.

- Provide rigorous complaints and review mechanisms, which are accessible to, and tailored for, children and young people.

4. Improving regulation and oversight to better prevent and respond to child sexual abuse in OOHC

CURRENT SA MODEL

4.1 GCYP does not licence, accredit or regulate out of home care agencies. GCYP has the legislated mandate to advocate, monitor the circumstances for children and provide advice.

4.2 In 2008 the then Department of Families and Communities published the *Standards of Alternative Care in South Australia*, which were developed with the non-government sector and applied to all OOHC service providers, Families SA employees and all carers.

There is no routine monitoring or reporting of practice against these standards.

AUTHORISATION OF CARERS

4.3 In SA the government department with responsibility for statutory child protection registers and approves carers. The *Standards for Alternative Care in South Australia* states that the Registration and Licensing Service will ensure the registration and approval of carers will comply with departmental and legislative requirements. OOHC providers are required to conduct assessment and review and forward to Registration and Licensing. Families SA makes the final decision and in cases of non-approval there is no avenue for appeal or review (Standard 3.3.5).

Standard 3.3.8 requires that carer reviews occur at a minimum of annually. The review is to involve feedback from all stakeholders including

the child and caseworker.

GCYP does not have information on the compliance with assessment, registration and review of carers but is aware of children being placed with carers prior to the completion of registration. There is no routine monitoring or reporting of practice against these standards.

INDEPENDENT OVERSIGHT OF COMPLAINTS	4.4	Rigorous complaints and review mechanisms are fundamental to dealing with systemic issues that contribute to abuse in care.

Most non-government and government agencies have introduced complaints policies and mechanisms. Indeed, such mechanisms are increasingly required as part of contracts for the provision of services and quality assurance systems. There is a world of difference though between having a written policy and the use of complaints mechanisms and responsiveness to complaints.

There is considerable work to be done in the application of complaints policies, particularly in increasing their accessibility to children and young people.

GCYP REVIEW OF COMPLAINTS	4.5	GCYP does not routinely receive a copy of all complaints made by children and young people in OOHC.

In its monitoring of specific residential care environments, GCYP requests to review complaints that are made by children and young people.

GCYP expects:

- Residents are provided with information about their rights and responsibilities.

- A secure complaints process is in operation at all times and is transparent to authorised oversight bodies.

- Residents are assisted to raise concerns about their care environment without fear of retribution, including requests for individual advocacy.

- Complaints are responded to in a timely and respectful manner.

- Complaints are systemically recorded and reported.

In its monitoring GCYP measures this by:

- Evidence of clear communications with residents about their

rights and responsibilities.

- Complaints / feedback forms are readily available in care environments.

- Residents report that they use the complaints processes and are given the opportunity to voice their complaints to independent people such as GCYP or the Ombudsman.

- Reading all written complaints and recording the timeliness by:

  o Date of complaint

  o Date of receipt of complaint by manager

  o Date and nature of response.

GCYP monitoring has found that complaints mechanisms are overly dependent on informal means, that is, trusting that the child is comfortable with talking to an adult. Informal means are very important but should be supported by more formal mechanisms such as promoted phone numbers, suggestions boxes, feedback on line and residents' meetings for those who live in residential care.

5. Potential improvements in information sharing to better protect children in OOHC

INFORMATION SHARING PROVISIONS

5.1 The *Standards of Alternative Care in South Australia* state that sharing of information about a child or young person between approved services will occur in accordance with acting in the best interests of the child (Standard 8.3).

5.2 The *Information Sharing Guidelines* (ISG) were launched in 2008, defining a process for information sharing that promoted earlier and more effective service coordination in response to risks to safety and wellbeing of children and young people. The SA Cabinet directed the guidelines by implemented throughout the public sector and by relevant NGOs.

In 2013 Cabinet directed that the scope of the ISG should be broadened to include information sharing for all vulnerable people including all adults, consequently aligning information sharing practice across both adult and child services. Cabinet endorsed the ISG to apply to all government agencies and relevant NGOs to provide for a consistent, clear and guided state-wide approach to appropriate sharing of information

that promotes safety and wellbeing, whilst respecting privacy.

6. Applying the child safe elements to the OOHC sector

ELEMENTS

6.1 GCYP supports the nine child safe organisational elements proposed, which reflect the ACCG *Principles for Child Safety in Organisations* submitted to the Commission in 2013 as part of the ACCG response to *Issues Paper 3.*

6.2 Across Australia, State and Territory governments adopt different approaches to promoting child-safe organisations in their jurisdictions – legislative obligations, contractual requirements and funding of projects. Recognising the heightened vulnerability of children in OOHC, the Commission has the opportunity to make recommendations on the most appropriate and effective role for government, for example, promoting a universal approach in OOHC.

PREVIOUS ACCG SUBMISSION

6.3 The Australian Children Commissioners and Guardians (ACCG) submission to *Issues Paper 3 – Child Safe Institutions* 2013 recommended an evaluation framework to review the National Guidelines, improve data collection and analysis and undertake program specific evaluations.

The National Guidelines offer a universal framework for a child safe organisation. ACCG suggested that resources should be made available to tailor 'child safe child friendly' strategies to particular types of organisational settings. ACCG suggested three approaches to do this:

- According to the risks evident in particular organisational contexts.

- According to the needs and circumstances of particular groups of children and young people.

- To address the risk of harm presented by some children and young people in some contexts.

The ACCG is of the view that it be mandatory for organisations to develop and implement policies and procedures and suggested that enforcement could take different forms, including:

- legislation or regulation,

- licensing or registration procedures from different service

sectors,

- contractual funding agreements, or

- a national 'child safe organisation' accreditation scheme.

The ACCG also suggested requirements that could be imposed on organisations.

7. A national strategy to prevent child sexual abuse in OOHC

NATIONAL
STRATEGY

7.1 There should be a national strategy on child sexual abuse prevention education for children in OOHC and the strategy should be embedded in the existing National Framework. Regardless of which state or Territory a child in OOHC lives, all children should be afforded the same expectations and protections to prevent child sexual abuse.

PREVIOUS GCYP
SUBMISSIONS

7.2 The GCYP submission to the *Children in State Care Inquiry 2005* is attached in the appendices and identified that existing system of preventing, responding to and dealing with allegations of sexual abuse in care is not sufficient to protect children. GCYP recommended further actions to prevent sexual abuse in OOHC:

1. Empowering children and young people

2. Training in self-protection

3. Creating and maintaining child-safe environments

4. Support of good case practice

5. Support of out of home care

6. Standards of care

7. Advocacy, complaints and review

7.3 The GCYP submission to the *SA Royal Commission into Child Protection Systems 2015*, attached in the appendices, highlighted that despite efforts since 2005, the OOHC system is not working as it should. There is little or no choice in placements for children, and there are serious comprises in placement decisions. These circumstances have been influenced by:

- The past ten years has seen the number of children in OOHC almost double from 1,791 in 2006 to 3,003 in early 2016.

- The growth in numbers of children requiring guardianship services and OOHC has strained child protection services and OOHC providers, and not least the carers of children.

- The growth in demand has been met, in the first instance, by expanding the use of relatives and kin as carers for children, and more recently, significant expansion of the use of residential care.

- An over-reliance on interim arrangements, notably placing children in rented accommodation with carers engaged through an agency on eight-hour rotating shifts.

It is a fundamental right for children to have a say in decisions that affect them and encouraging children to speak up is a critical safety measure.

GCYP MONITORING OF ALLEGED SEXUAL ABUSE IN CARE	7.4	The internal analysis of notifications of alleged serious sexual abuse in care referred to GCYP by the CCIU for monitoring, between November 2008 and October 2014 (inclusive), as referred in 2.3 of this submission, found in addition to 2.3 that:

- Given that GCYP is not confident that it received all notifications of alleged sexual abuse in residential care, the real proportion is probably higher.

- Sixty per cent of children and young people affected by allegations of sexual abuse in care were aged between 11 and 16 years and boys accounted for nearly two-thirds of that group.

- The cultural identity of children and young people affected by alleged sexual abuse in care was generally reflective of the profile of children in care.

- Sixteen per cent of children and young people identified within notifications referred to GCYP were reported to have a disability.

- Eighty-one per cent of the children and young people identified in the notification referred to GCYP were subject to long-term guardianship orders. Three per cent of children were not subject to any order. These children were identified as children of carers, either foster or relative, or neighbours to the care environment.

- Just over half were allegations of abuse of children (currently in care) by adults. Historical allegations of abuse of children previously in care and who are now adults were counted as

'other'.

- Forty-two of the 236 notifications were referred for prosecution.

- Eleven of the 42 matters referred for prosecution resulted in a conviction, or nearly five per cent of all notifications. GCYP does not have information on whether this proportion is reflective of all prosecutions of matters involving child victims.

- The CCIU conducted care concern investigations in 45 per cent of matters it referred to GCYP for monitoring.

- The CCIU substantiated allegations, either in part or in entirety, in almost a quarter of these investigations. The deficit in the quality of care was confirmed in 29 per cent of completed investigations.

- As at 30 September 2015, 21 care concern investigations were continuing.

GCYP also summarised outcomes by care environment.

8. Improving support for children and young people

THERAPEUTIC FRAMEWORK FOR OOHC SERVICE DELIVERY

8.1   South Australia is lacking a sector-wide therapeutic care framework that defines therapeutic care.

With regards to the SA context, GCYP is in full support of the Commission's considerations to:

- Establish a nationally consistent therapeutic framework for OOHC service delivery –expand trauma-informed therapeutic treatment and advocacy and support services.

- Enhance placement stability.

- Provide better workforce planning and development for residential care staff.

- Increase support when leaving care, and in the care leaver's post-care life.

THERAPEUTIC CARE ENVIRONMENTS

8.1   There are only a very small number of truly therapeutic care placements, that is carers high trained and supported in the provision of care that is healing and individualised, often full-time and intensive. The gaps largely stem from lack of foresight and sound planning, the anticipation of the

type of care that is needed in the near future and the strategies to provide this.

| PROTECTIONS IN SPECIFIC CARE ENVIRONMENTS | 8.2 | With regards to considerations to improve protections against child sexual abuse for children in kinship-relative care, GCYP's analysis of notifications of alleged sexual abuse (with recognised limitations, as referred in 2.3 and 7.3 of this submission) does not demonstrate required 'special' attention. |

However, GCYP suggests that considerations of protections to prevent child sexual abuse in all care settings needs to differentiate the unique risks in each care environment. The analysis of notifications of alleged sexual abuse provides indicative information that young males are at greater in residential care settings and females are at greater risk in family-based settings (that is, foster and kinship care). Additionally, child to child abuse appears more likely in residential care settings.