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## Submission in response to:

### Issues Paper 3: Child Safe Institutions Royal Commission into Institutional Responses to Child Sexual Abuse

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## Introduction

Berry Street welcomes the opportunity to address issues relating to 'child safe organisations' through a response to the Royal Commission's *Issues Paper 3*.

For over 130 years Berry Street has been supporting, assisting and caring for children and young people that are the victims of abuse, violence and neglect. We have seen, and continue to see, how trauma in early childhood can severely disrupt and impair children's development with lifelong consequences.

At Berry Street nothing is more important than ensuring that children and young people, whose connection to Berry Street stems from some personal experience of harm, abuse, neglect or trauma, are not subjected to any subsequent harm whilst in our care. We acknowledge however that this has and does happen. Berry Street accepts its responsibility to provide the highest quality services and to effectively manage the risks, typically complex and often with critical implications for children's well-being, inherent in providing our services. Further, we accept responsibility to openly and honestly respond to any allegations of a failure in our duty of care towards a child or young person and to do so with their rights and life-long well being as the primary considerations in how we respond.

The passage of time should never diminish our responsibility to fully respond to allegations of abuse and neglect. The passage of time does not of itself provide healing, recovery and restorative justice for childhood victims of abuse or neglect. What can be is the willingness to confront failures in caring for and protecting children, to place the interests of the victims ahead of organisational interests and to fully commit to reparations.

Berry Street has encouraged past and current clients to make submissions to this inquiry and will continue to promote the role and work of the commission. Berry Street has provided this submission as a public submission and does not wish it to be treated confidentially.

## Response to issues raised

### 1. **The essential elements of establishing a 'child safe organisation' that protects children from sexual abuse in an institutional context. In particular, are there core strategies that should be present and others that are less critical?**

Berry Street endorses the range of elements identified in various child safe organisation frameworks and guides, as identified by the Royal commission, that together establish and maintain a 'child safe organisation'<sup>1</sup>. In broad terms these include:

- an **organisational child safety strategy** (and periodic review of same) that is the combination of an organisation's commitments, policies, procedures and other initiatives to prevent and/or minimise potential risks of harm to children and young people
- an **organisational child safety policy**
- an **organisational code of conduct**
- **clear and consistent organisational and independent sector complaints and consultation/feedback mechanisms** that support children to express concerns about safety or disclose harm, and ensure response to any allegations of child abuse or maltreatment, both past and current. Ideally, children and young people should be involved in the development and implementation of such complaints processes, and complaints processes should be in a variety of formats and should be age appropriate and accessible for all children. Children and young people - especially those in out of home care - should have access to an independent advocate. Berry Street does not as yet have a view on the best model for consumer advocacy in out of home care

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<sup>1</sup> We would also add to this list the following: 2006, Office of the Child Safety Commissioner, *A Guide for Creating a Child-safe Organisation*, Melbourne.

(Queensland, for instance, has a community visitors program) but is very supportive of the principle and keen to explore options with the sector.

- **organisational leadership** that models placing children's rights and safety at the centre of organisational concerns and promotes an open and aware culture.
- a range of mechanisms for **enabling and promoting the participation and voice of children** in programs and organizationally.
- **robust recruitment, selection and screening processes** for choosing suitable staff and volunteers, including police check and Working with Children check, and effective interviewing strategies that utilise scenarios and open behavioural questions<sup>2</sup>.
- **risk management planning** in relation to programs and activities.
- **organisational and sector training and education** in what constitutes child safety<sup>3</sup>, and appropriate responses. The curriculum for courses in child and family welfare ideally should also be required to build in content relating to child safety.
- **staff support, supervision and performance monitoring.**

There are two elements that are missing from these frameworks, however, that Berry Street regards as critical: strengthening licensing and regulatory requirements so that they clearly reference 'child safe' core strategies, and establishing transparent processes of auditing against these licensing and regulatory requirements. There is also an opportunity to strengthen the Working with Children check in the service of requiring organisations to adopt child safe organisational strategies. These elements are further discussed below.

### Licensing and regulatory requirements

There is a gap within the current Victorian Children's Services Regulations 2009 which provide a set of minimum standards and regulatory framework for practice standards in a variety of licensed children's services.<sup>4</sup> The regulations and supporting practice guides and resources published by the Victorian Department of Education and Early Childhood Development (DEECD) contain little by way of requirements, guidance or assistance on how children's services provide a child safe environment or respond to allegations of abuse, neglect or mistreatment of children.

The regulations have a predominant focus on the physical environment, staff qualifications, child/staff ratios and the physical safety of children. In relation to management of complaints the regulations do require that should a children's service receive a complaint involving a serious incident then the service is required to notify the Secretary of DEECD within 48 hours of receipt of the complaint. However a serious incident is defined as death, a child going missing from a service, injury or medical issues requiring attendance of a medical practitioner or an incident in which emergency services are called to attend. Complaints procedures are silent on issues relating to the possible abuse or maltreatment of children. The regulations stipulate mandatory education and training requirements for staff. For example the regulations specifically mandate training for all staff in knowledge of anaphylaxis and the requirement that services have anaphylaxis management plans in place. By contrast, the regulations are silent on the need for an organisational child protection policy and silent on the need for all staff to receive induction and training in relation to working as a child safe organisation.

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<sup>2</sup> See for example the training program, *Choose with Care*, run by Child Wise ([www.childwise.net](http://www.childwise.net)). This program identifies that it is not only sexually predatory behaviours that need to be screened for, but also broader behavioural red flags including capacity to work well with authority and teams.

<sup>3</sup> An inclusive definition is needed that recognises that safety is multidimensional and means more than the absence of harm, i.e. one that takes in various forms of abuse and neglect, trauma-informed service models that reduce the likelihood of compounding or triggering pre-existing trauma, various forms of safety, eg cultural safety, a right to non-discrimination based on sexual identity, gender or race, etc)

<sup>4</sup> See for a list of the licensed children's services in Victoria

Commendably, advice and online training in relation to the Child Protection system has been developed and is available on the DEECD website.<sup>5</sup> The focus of the online training is on understanding the statutory child protection system and when to refer issues to Child Protection. There is no focus, however, on organisational responsibility to provide a child safe environment.

As with the Victorian Children's Services Regulations 2009, the Education and Care Services National Regulations 2011 are relatively silent on quality service standards relating to providing a child safe environment or in relation to establishing robust policies and procedures for responding to allegations of child abuse or maltreatment. From January 2012 the regulation of the vast majority of early learning and care services in Victoria (and all other States and Territories) was transferred to the Commonwealth through the Education and Care Services National Regulations 2011. These national regulations establish a national system for quality standards for early learning and care services and delegate monitoring of standards to state and territory agencies. Compliance with these standards by service providers in Victoria is monitored by the Department of Education and Early Childhood Development (DEECD).

The Education and Care Services National Regulations 2011 focus predominantly on issues relating to infrastructure, staffing, staff qualifications and training. They do have a broader focus on the different domains of children's learning and development and include a list of matters on which all agencies must have policies and procedures. Section 168<sup>6</sup> of the regulations lists the matters on which a service must have a policy and procedure. The matters number (a) to (o) and include, among other things, food and nutrition, first aid, sun protection, staffing, fees and charges, governance and management, excursions, enrolment, complaints and the requirement to have a 'child safety policy'. No details exist on what is meant by a child safety policy. Further, the independent national statutory authority with responsibility to drive quality improvement, AECQA<sup>7</sup>, Australia's Education and Care Quality Authority, has as yet developed no resources or advice on creating child safe organisations.

Berry Street thus recommends to the Royal Commission that State regulations for children's services and early learning and childcare services be collaboratively reviewed with key stakeholders in these sectors in each jurisdiction to develop mandatory requirements for the establishment of policies, procedures and training in relation to child safe organisations and robust complaints processes for responding to allegations of child maltreatment.

### **Working with Children legislation**

Berry Street believes that another opportunity is available to the Victorian State Government (and to other jurisdictions across Australia) to significantly improve policies, procedures and practices relating to child safe organisations through the Working with Children legislation. The 2005 Act in Victoria establishes and defines child related work and sets out various obligations on individuals seeking to be employed or volunteer to carry out child related work, and obligations on agencies seeking to engage staff or volunteers in child related work. It would be possible to frame amendments to the Working with Children Act 2005 to require any agency seeking to engage staff or volunteers in child related work to have a child safety policy in place and a robust complaints process for responding to allegations of child maltreatment, and to make it an offence for an agency to seek to engage staff or volunteers in child related work unless the agency has, to the satisfaction of the Secretary of the Department of Justice, met this requirement. Such a mechanism would ensure that all organisations engaged in child related work in Victoria would have a child safety policy and processes for responding to allegations of child maltreatment in place. The introduction of this type of measure should be appropriately supported and guided through the development of practice guidelines and advice that assist agencies to develop and implement effective policies and procedures. Berry Street can envisage a role for the Department of Justice, Department of Human Services and the Victorian Child Safety Commissioner and sector stakeholder groups in developing standards, templates, training and resources relating to the form and content of child safety policies and complaints processes for responding to allegations of child maltreatment.

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<sup>5</sup> See <http://www.education.vic.gov.au/ecsmanagement/educareservices/csprotocols.htm> for information on the online training on the child protection system

<sup>6</sup> See <http://www.education.vic.gov.au/ecsmanagement/educareservices/default.htm>

<sup>7</sup> See <http://acecqa.gov.au/> for more information

**2. The evidence base for the range of strategies associated with making an organisation ‘child safe’. Does this evidence base extend to the physical environment?**

A child safe organisation should include regard for design, decoration and risk management of the physical environment as far as possible. This includes consideration of features of service delivery sites such as line of sight, physical location, provision of exit doors, sound proofing and provision of supervision. It also includes the extent to which the physical space is ‘child and youth friendly’ in terms of welcoming design features, provision of resources and equipment, and the visible promotion of organisational messages that show commitment to child safety, child rights and the inclusion of the child’s voice in service delivery.

Berry Street and other out of home care providers certainly face the issue of poorly designed units for provision of residential care, where physical layout is not ideal in terms of the balance between communal spaces and appropriate private spaces, line of sight, exit doors etc. Residential care units are both a workspace and a home for children and young people and this can prove difficult to manage if units are not purpose built.

**3. How should the effectiveness of ‘child safe’ strategies be tested?**

Consistent with Berry Street’s view about the essential elements for establishing and maintaining a child safe organisation under Question 1 above, effectiveness of ‘child safe’ strategies should be tested as an integral part of external independent auditing tied to compliance with regulatory/licensing requirements.

Alongside this, as already discussed, all stakeholders - especially children and young people - should have the opportunity to provide feedback on how well the organisation is performing in terms of child safety. This includes internal periodic auditing, and effective mechanisms for inviting and promoting participation and feedback from children. The latter ideally should involve children and young people in the initial development and implementation of such processes, and provide a variety of age appropriate and accessible means for that participation and feedback.

As mentioned above, capacity to test the effectiveness of child safety strategies specifically within the out of home care sector would be further strengthened with the development of an independent consumer advocate model.

**4. How ‘child safe’ policies and procedures work in practice?**

‘Child safe’ policies and procedures need to be understood as core practice, as integral to all organisational systems and day to day practices. In Berry Street’s view, ‘child safe’ systems and strategies are yet to be required to be integrated into operations in a systematic way. In 2006 the Office of the Victorian Child Safety Commissioner, for instance, developed a range of helpful resources to support agencies in the development of child safety policies and complaints processes for responding to allegations of child maltreatment<sup>8</sup>, but the take-up has been entirely dependent upon individual agencies’ own commitment. Departmental licensing, regulation and programmatic guidelines all need to require and communicate that agencies focus in a systematic way on child safety.

It would be helpful for organisations to gather stories and case studies of child safe strategies in action within specific institutional settings as a way to support training, supervision and broader organisational understanding of the breadth and depth of the strategies required.

**5. Should there be a universal framework for ‘child safe organisation’ or should strategies be specifically tailored to particular types of institutional settings?**

This need not be an either/or; Berry Street is of the view that a universal framework for ‘child safe’ organisations on the one hand and strategies tailored to particular types of institutional settings on the other are not mutually exclusive. It makes sense to have an overarching set of core elements and

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<sup>8</sup> 2006, Office of the Child Safety Commissioner, *A Guide for Creating a Child-safe Organisation*, Melbourne.

principles that are applicable to all institutions working with children. Agencies could then be required to operationalise this framework for particular types of settings, possibly with some guidance.

The requirement to 'translate' the framework is a valuable mechanism for getting each organisation to grapple with and learn about the meaning of 'child safe' cultures, systems and practices. This can incorporate auditing tools that invite all stakeholders within an organisation to participate in the establishment phase or in ongoing review phases<sup>9</sup>.

It is also vital to have tailored strategies that take into account the context of the institutional setting to be realistic about what is achievable and within reason. For instance, it might be challenging to guarantee safety where there may be violence between two particular young people within a residential care setting; the issue becomes one of whether the organisation is endeavoring to do everything reasonable to minimise the possibility or likelihood of this through a range of strategies, for example, strong advocacy with the Placement Coordination Unit about the appropriateness of placement of one child in the same unit as another, as opposed to ensuring prevention, when a key aspect of the system underpinning the functioning of residential care -departmental placement decisions - is not necessarily entirely within the organisation's control.

## **6. The role of staff performance management systems and disciplinary processes in a 'child safe organisation'.**

All agencies working with children need to accept their responsibility to be 'child safe'. Their duty of care should be embedded in staff codes of conduct, and policies, procedures and practices relating to staff orientation and induction, probationary periods, and ongoing staff performance management, training and supervision. One of the biggest protections is a culture that cares for its employees and volunteers and encourages them to trust their 'gut' and raise issues where they have concerns, and have confidence in their line manager that they will be heard, and that the appropriate response will be activated.

The supervision system needs to provide clear expectations about roles and responsibilities and giving people the best induction, support and training possible to equip them to perform their roles and reflect on concerns and challenges. Supervision needs to be formal and regular and supervisors ideally need to be trained in effective supervision. This can act as one vital alert when something is not going well.

When people are not performing well or are acting in ways detrimental to children's safety, then fair, transparent and timely performance management and/or disciplinary mechanisms need to be activated. Any breach of the code of conduct in relation to child safety should become a matter for staff performance management and/or disciplinary processes (as should any other kind of breach).

## **7. The role and characteristics of governance and management leadership in creating and maintaining a 'child safe' organisational culture.**

The role of governance and management leadership is absolutely critical in creating and maintaining a child safe organisational culture. Boards, executive leaders and other management leaders are responsible for ensuring that the commitment to protecting children is embedded in all aspects of operation, is understood and accepted at all levels of the organisation as paramount, and is recognised as the responsibility of all to enact. The messages from the governance and management leadership need to be congruent, and seen to be congruent, with behaviours.

A key way in which Berry Street has chosen to underpin this culture is through the development of an excellence framework. The Berry Street Excellence Framework draws together overlapping regulatory requirements and our accumulated practice expertise to guarantee a level of quality - a level of excellence - in all that we do. Sustained success in this endeavour will centre on our ability to encourage sound decision-making based on the commitment, knowledge and skills of our people; and to promote

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<sup>9</sup> An example of this is the audit tool contained within the National Safe Schools Framework. Everyone who works within a school can fill this in on-line. See: <http://bullyingnoway.gov.au/resources/pdf/bnw-factsheet-5-nssf-school-audit-tool.pdf>

innovation informed through systems of data collection, evaluation and outcomes measurement. The purpose of the Berry Street Excellence Framework is to:

- establish an agreed organisational approach to measuring organisational performance;
- describe each component of the organisation, how these components relate, and the contribution each component has in the pursuit of excellence; and
- identify specific areas within each component where increased investment, effort and innovation will contribute significantly to improved results.

The Berry Street Excellence Framework sets down how we will extend and maintain a commitment to excellence in all aspects of the organisation's service delivery, operations and broader responsibilities. It describes how Berry Street intends to pursue excellence in the interests of the children, young people, families and communities with whom we work. We understand that excellence is not an arbitrary end point, but a pursuit, a commitment to critical reflection, evaluation and openness to new ways of doing things. We know that it requires significant investment in our staff and carers, their professionalism and the environment in which they perform their role.

Acknowledging that many of our clients have been let down in the past, uppermost in Berry Street's mind is our duty of care and obligation to support, assist and work with them in the most effective ways possible. In particular, vulnerable and disempowered children and young people removed from families and placed in State Care depend on Berry Street (and others) to act in their best interests. We have and accept our obligation to safeguarding the rights of these children and young people and provide them with the best possible environment in which to grow and develop. This requires a commitment to evidence informed professional practice, transparency, accountability, planned resource allocation, risk management and quality improvement. Our organisational Values, in particular Courage and Respect, demand of us that we are open to hearing the voices of children, young people and other clients, that we actively seek their views and that we engage with them in ways that promote self determination and independence.

A variety of overlapping external accreditation, registration and quality assurance regimes apply to service provision within Berry Street. Berry Street considers that maintaining compliance with these systems is the necessary but not sufficient effort we will make towards quality and excellence. Demonstrating that we comply with quality assurance standards grants to us the 'permission' to operate and deliver certain types of services but it does not drive ongoing improvement. Berry Street has chosen to establish an excellence framework in order to move beyond the limitations of external systems of quality assurance to sustainable systems for excellence. Quite deliberately, our framework privileges the standpoint of clients and community as the primary lens through which we should assess and reassess the results achieved by the organisation as we strive to achieve excellence.

#### **8. Should there be any additional enforceable requirements for institutions or particular institutions to maintain a 'child safe' environment?**

As noted above, Berry Street recommends strengthening licensing and regulatory requirements so that they clearly reference 'child safe' core strategies, and establishing transparent processes of periodic auditing against these licensing and regulatory requirements.

## Profile of Berry Street

### Vision and values

The Berry Street believes *all children should have a good childhood - growing up in families and communities where they feel safe, nurtured and have hope for the future*. The Strategic Plan 2007-10 (available at [www.berrystreet.org.au](http://www.berrystreet.org.au)) includes a statement of beliefs and assumptions, the context within which we operate and our 5 values (and what they mean to us) of:

- Courage,
- Integrity,
- Respect,
- Accountability,
- Working Together.

Berry Street provides an extensive range of services for children, young people and families across rural, regional and metropolitan Victoria. We work from 20 offices and a further 34 worksites, with the majority of services in the Gippsland, Hume, North & Western Metropolitan and Southern Metropolitan regions. Berry Street employs approximately 550 (EFT) staff and has the support of over 250 volunteer caregivers and in excess of another 200 other volunteers. The budget for 2010/11 is more than \$53 million. Our greatest challenges today arise from the dreadful impact on children and their families of domestic violence, substance abuse, mental illness, poverty and unemployment.

Today we are the largest independent child and family welfare organisation in Victoria, providing an extensive range of services across metropolitan, regional and rural Victoria, to many thousands of people each year. Incorporated under the Associations Incorporation Act, Berry Street is an independent, Not-for-Profit Public Benevolent Institution with Deductible Gift Recipient and Income Tax Exemption status. Our voluntary Board of Directors has responsibility for governance and stewardship of Berry Street's good name and resources.

### Services

#### Residential care

Berry Street's residential care program is often the 'last resort' for young people whose traumatic childhood means they can't safely live at home or in foster care. Across Victoria, care is provided by rostered staff in small-scale group houses for up to four young people.

#### Foster & kinship care

When children can't live safely at home because of serious child abuse, neglect and family violence, the first preference is that they go to relatives (Kinship Care). Accredited volunteer foster carers also provide care for children and young people in their own homes (Foster Care). Our professional staff ensure these carers are properly screened, assessed and supported, as well as working directly with the children and ensuring they get the help they need to recover.

#### Therapeutic

Through clinical services and counselling programs, including Take Two, we work intensively with the distressed child or young person, their family, carer and other services, to help them recover from their trauma.

#### Education, training & employment

Too many of the young people with whom we work are either excluded from, or have dropped out of, school. We run an independent school with a number of campuses, and an extensive range of other education support and training programs. We strive to: maintain the participation of those who are at risk of disengaging from mainstream school; re-engage young people who are excluded from education or training; and promote pathways for young people into employment.

#### Youth

We know that adolescence is a 'window of opportunity' to help young people recover from traumatic childhoods and prepare them for a successful adulthood. Our youth services include case management, outreach, leaving care, life skills, mentoring, and accommodation.

### **Family**

Our family services support parents to better care for and nurture their children and help resolve conflict between parents and their adolescents. We also play a lead role in the delivery of services for families experiencing family violence: we help women keep themselves and their children safe; and we provide contact services for parents who cannot manage safe access arrangements for their children.

### **Community**

Our community work includes two key approaches. Firstly, we deliver programs in local geographic communities, with a focus on the early years, financial inclusion and capacity building in rural communities. Secondly, we engage with particular groups within the community, with a significant emphasis on supporting Forgotten Australians, Aboriginal children and their families, and new arrival groups. We place a high value on working in partnership with and for these communities.

