



**Australian
Human Rights
Commission**

**AUSTRALIAN HUMAN RIGHTS COMMISSION
RESPONSE TO THE ROYAL COMMISSION INTO
INSTITUTIONAL RESPONSES TO CHILD SEXUAL
ABUSE: ISSUE PAPER 4:**

**PREVENTING SEXUAL ABUSE OF CHILDREN IN OUT
OF HOME CARE**

8 November 2013

ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

Table of Contents

1	Introduction.....	3
2	Recommendations.....	3
3	Outline of children’s rights in the context of children in out-of-home care.....	4
4	Data on the abuse of children in out-of-home care	5
5	The National Standards for out-of-home care and the biennial national survey of children and young people in out-of-home care	6
6	Ensuring the child’s right to be heard in out-of-home care casework and complaint mechanisms	7
	6.1 Complaint mechanisms	7
	6.2 Case planning and management.....	8
7	Carer recruitment, selection, training and support	9
8	Accreditation schemes for counsellors who treat adults and young people who sexually offend against children.....	9

1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) in response to its call for submissions on preventing sexual abuse of children in out-of-home care. The Commission welcomes the opportunity to provide comment.
2. The issue of child sexual abuse raises a number of important children's rights. The implementation of policies and practices that prevent sexual abuse of children in out-of-home care is critical to enhancing the protection of children's rights.
3. This submission does not address each of the questions posed in the Issues Paper, but concentrates on some issues relating to preventing sexual abuse in out-of-home care from a national perspective. It starts with a consideration of children's rights in relation to children in out-of-home care, as articulated in the United Nations *Convention on the Rights of the Child* (CRC). This submission then comments briefly on:
 - national data on the abuse of children in out-of-home care
 - the National Standards for out-of-home care (the National Standards) and the national biennial survey of children and young people in out-of-home care
 - ensuring the right to be heard for children in out-of-home care
 - out-of-home carer recruitment, training and support
 - accreditation schemes for counsellors who treat adults and young people who sexually offend against children.

2 Recommendations

4. The Commission recommends that:
 1. Work should continue through the National Framework for Protecting Australia's Children 2009-2020 (the National Framework) to develop and standardise national reporting on reasons for placement in care, and abuse in care, including types of abuse and perpetrators of abuse.
 2. The National Standards should incorporate a measurement of child involvement in child complaint mechanisms as part of its framework.
 3. The National Standards for out-of-home care measure the nature and extent to which children's views are included in case planning and review.
 4. Under the auspice of the National Framework, the current suite of programs to recruit, select, train and support carers should be reviewed, with a view to developing evidence based practice guidelines. This should include training modules focusing on child safety, supervision, grooming, and responding to sexual abuse.

5. Schemes in Australia, as well as schemes used internationally, that accredit sexual offender counsellors and programs should be reviewed in the context of developing evidence based options for providing therapeutic support and treatment to adults and young people who sexually offend.

3 Outline of children's rights in the context of children in out-of-home care

5. Many articles of the *Convention on the Rights of the Child* (CRC) relate to the rights of children in out-of-home care.
6. Article 20 of the CRC states that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
7. Article 3 of the CRC provides that in all actions concerning children, whether undertaken by social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 3 also requires States Parties to ensure that institutions, services and facilities responsible for the care or protection of children conform to 'standards established by competent authorities, particularly in areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'¹
8. Article 19, read in conjunction with article 34, outlines the obligation of States Parties to take appropriate measures to ensure that children are properly protected from violence, abuse and neglect, including sexual abuse and sexual exploitation.
9. Article 12 of the CRC establishes the right of every child capable of forming their own views, the right to express their views in all matters affecting the child and have their views considered. Processes to facilitate the views of children should be accessible, inclusive and meaningful to them, and take into account the evolving capacities of children and their best interests at all times.² One of the key elements in establishing 'child safe organisations' and preventing sexual abuse of children in out-of-home care is to make sure that children's views and concerns are heard and acted upon.
10. Article 4 of the CRC requires States Parties to undertake all appropriate measures to implement the rights recognised under the CRC. With regard to economic, social and cultural rights, this obligation involves States Parties undertaking such measures to the maximum extent of their available resources.
11. In addition, the UN has produced *Guidelines on the Use and Conditions of Alternative Care for Children* to assist and encourage governments to optimise implementation of the treaty with regard to children in alternative care. The Guidelines were welcomed by the United Nations General Assembly by consensus on 18 December 2009, through Resolution A/RES/64/142, signalling that no UN member States had objections to their

content.³ The Guidelines cover all types of alternative care, and are used by the United Nations Committee on the Rights of the Child (UN Committee) when examining reports of States Parties to the Convention.

12. In June 2012, the UN Committee considered Australia's fourth report on progress under the CRC and issued Concluding Observations, including recommendations on Australia's implementation of children's rights. The UN Committee indicated that it was concerned about the increase in the number of children placed in out-of-home care in Australia and the absence of data documenting the criteria and decision leading to the placement. The UN Committee was also disturbed at reports of inadequacies and abuse occurring in the systems of out-of-home care including inappropriate placement; inadequate screening, training, support and assessment of carers; shortage of care options; poorer outcomes for children in care than for general population; abuse and neglect of children in care; inadequate preparation for children leaving care; and placement of Aboriginal and Torres Strait Islander children outside their communities and the need for more Aboriginal carers.
13. It recommended that Australia take all necessary efforts to examine the root causes of the extent of child abuse and neglect and provide general data on the reasons children are placed in care. It recommended measures to strengthen programs for family support by targeting the most vulnerable families.⁴

4 Data on the abuse of children in out-of-home care

14. In its Concluding Observations, the UN Committee raised specific concerns that data on important areas of the CRC, including child abuse, are sparse or not available, and that existing data is not disaggregated or analysed. The UN Committee recommended that Australia strengthen its existing mechanisms of data collection to ensure that data allows for disaggregation by reference to children who require special protection. Children in alternative care are one such group requiring special protection.
15. As of 30 June 2012, there were 39,621 children living in out-of-home care in Australia,⁵ and 40,962 with child protection orders.⁶ The number of children in care increased 27% since 2008.⁷ In 2011-2012, Aboriginal and Torres Strait Islander children were nearly 10 times as likely to be in out-of-home care as non-Indigenous children.⁸ There is no national data available on the reasons why children are placed in out-of-home care.⁹ However, the most common types of maltreatment recorded in relation to substantiations are: emotional abuse (36%), neglect (31%), physical abuse (21%) and sexual abuse (12%).¹⁰
16. There is some data to show the numbers of children in out-of-home care who are abused whilst being in care. Perpetrators of abuse include: the primary carer, the partner or relative of the primary carer, an older sibling or foster sibling, or someone outside the family setting. The Australian Institute of Health and Welfare data, which is used for reporting against Standard 1 of the National Standards relating to stability and security in care, shows that

522 children in out-of-home care were the subject of child protection substantiations during the year 2011-2012, and the person believed responsible was living in the household providing care.¹¹

17. Additionally, the Productivity Commission's Report on Government Services in 2013 includes for the first time data on the rates of children in out-of-home care in some states and territories who were subject to a substantiated notification while in care, regardless of whether the person responsible was living in the household.¹² This report indicates that in 2011-2012, there were 1,658 children in care who were subject to a substantiated notification. The rates of substantiated abuse in care range from 1.9% to 6% of children in care, depending on the jurisdiction. The rates of abuse where the person responsible was living in the household, as discussed above, range from 0.3% to 3.7% depending on the jurisdiction.¹³ However, the data for the former is experimental, and in both cases data is missing from some states and territories.
18. **Recommendation:** Work should continue through the National Framework for Protecting Australia's Children 2009-2020 to develop and standardise national reporting on reasons for placement in out-of-home care, and abuse in out-of-home care, including the types and perpetrators of abuse.

5 The National Standards for out-of-home care and the biennial national survey of children and young people in out-of-home care

19. The National Standards for out-of-home care were finalised as part of the First Action Plan 2009-2012 of the National Framework. Implementation of the National Standards commenced on 1 July 2011.
20. The National Standards for out-of-home care are an important means of ensuring national consistency and delivering improvements in the quality of care provided to children and young people.
21. There are 13 standards and 22 related measures under the National Standards, which focus on the following needs of children in care: health; education; care planning; connection to family; culture and community; transition from care; training and support for carers; belonging and identity, and safety, stability and security.
22. Two Standards and their measures are particularly relevant to the safety of children in out-of-home care from sexual abuse. These are:
 - Standard 1 - Children and young people will be provided with stability and security during their time in care.
 - Standard 2 – Children and young people participate in decisions that have an impact on their lives.
23. The Measures against the standards are being progressively introduced, and reporting against the full set of 22 measures will occur by 2015. Currently all

22 measures are quantitative in nature. The Commission welcomes any efforts to integrate qualitative data into reporting under the Standards, in particular data which draws on the views of children in out-of-home care themselves. In part, this may be possible through Australia's first national survey of children in out-of-home care, which has been committed to under the Second Action Plan 2012-2015 of the National Framework. Collecting data from children themselves, and using this to measure outcomes of the National Standards, is critical to ensuring that our systems are keeping children safe and secure.

24. The Commission acknowledges the commitment of the Australian Government to the continuous improvement of measures for the National Standards, and that a list of items is being advanced for reporting beyond 2015.¹⁴ For example, the existing measurement 1.2 under Standard 1, about the rate and number of children in out-of-home care who were the subject of child protection substantiation and the person believed responsible was living in the household, has been flagged for improvement.¹⁵

6 Ensuring the child's right to be heard in out-of-home care casework and complaint mechanisms

25. The National Standards state that children and young people in out-of-home care should have their rights respected and should be treated in accordance with the CRC.¹⁶
26. In particular, article 12, which outlines the right of the child to be heard and to have their views taken into account, is one of the four general principles of the CRC.¹⁷ Ensuring that children can raise concerns about their safety in care, and be taken seriously, should be an essential component of the National Standards.

6.1 Complaint mechanisms

27. The UN Committee has stated that children should have access to complaint mechanisms which provide:
- access to appropriate information, including information about policies and complaints procedures in formats appropriate to their age and capacities
 - adequate support, if necessary
 - feedback on weight given to their views
 - procedures for remedies or redress.¹⁸
28. The *Guidelines on the Use and Conditions of Alternative Care for Children*, described above, state that:

Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement. Such mechanisms should include initial consultation, feedback, implementation and further

*consultation. Young people with previous care experience should be involved in this process, due weight being given to their opinions. This process should be conducted by competent persons trained to work with children and young people.*¹⁹

29. The Commission outlined, in its submission on Issues Paper 2 of the Royal Commission, the importance of complaint mechanisms to hear the views of children. In order for children in out-of-home care to raise concerns and make complaints, there must be clear mechanisms for them to do so.
30. The extent to which children in out-of-home care can make complaints is not specifically measured in the National Standards for out-of-home care. By not measuring how children in out-of-home care are heard through complaint mechanisms, the National Standards run the risk of overlooking critical data about the protection of children and their human rights.
31. **Recommendation:** The National Standards for out-of-home care should incorporate a measure of child involvement in child complaint mechanisms into its framework.

6.2 Case planning and management

32. Another area where it is important that there are mechanisms to hear the views of the child in out-of-home care is in case planning and management. The UN *Guidelines on the Use and Conditions of Alternative Care for Children* specify that decision-making on alternative care should involve full consultation at all stages with the child, according to the child's evolving capacities.²⁰ Case planning and the relationship between a caseworker and child in care, is a key opportunity for children to express their views about how happy and safe they are in a care placement.
33. However, research indicates that children in out-of-home care do not always feel that they are able to participate in decisions about their care placement. For example, the CREATE Report Card 2013 reported that less than one third of respondents (1069 children in out-of-home care, aged 8-17 years) knew anything about the care plan developed for them, and only one third of those who did know something of its contents had been involved to a significant extent in its preparation.²¹ While Standard 4 of the National Standards stipulates that each child and young person must have an individualised plan that details their health, education and includes their views and other needs, there is no measure of the quality of that plan, or the involvement of the child or young person in that plan.
34. Having said this, it is important to acknowledge that Standard 2 of the National Standards specifies that children and young people should participate in decisions that have an impact on their lives. This standard is to be measured by collecting information on the proportion of young people who report that they have opportunities to have a say in relation to decisions that have an impact on their lives and that they feel they have been listened to (Measure 2.1). This data will be a welcome measurement.

35. **Recommendation:** The National Standards for out-of-home care measure the nature and extent to which children’s views are included in case planning and review.

7 Carer recruitment, selection, training and support

36. As noted earlier, the UN Committee, in its 2012 Concluding Observations, articulated particular concerns in respect of carer suitability, training, support and monitoring.
37. It is essential that there are rigorous processes and standards for the recruitment, selection, training and support of carers for children in out-of-home care. At present there are different selection, training and regulatory processes across the different jurisdictions. Not only are there differences across the jurisdictions but there are also differences between organisations that provide out-of-home care within jurisdictions. This means that it is possible that the quality of out-of-home care that children experience can differ according to where they are geographically placed. It also means that it is conceivable that a carer who is deregistered in one jurisdiction or by one organisation could possibly become a carer in another jurisdiction or organisation. Standards and processes for the recruitment, selection, training and support of carers should be nationally consistent, with the transfer of information about carer status shared across borders and agencies.
38. **Recommendation:** Under the auspice of the National Framework, the current suite of programs to recruit, select, train and support carers should be reviewed, with a view to developing evidence based practice guidelines. This should include training modules focusing on child safety, supervision, grooming, and responding to sexual abuse.

8 Accreditation schemes for counsellors who treat adults and young people who sexually offend against children

39. Where abuse in out-of-home care has been alleged or substantiated, both children and carers should have access to counselling and therapeutic support.
40. The Commission considers that establishing a publicly accessible register of accredited counsellors who can provide therapy to adults and young people who sexually offend against children, has the potential to ensure offenders obtain timely specialist therapeutic treatment.
41. As an example of such a scheme, the NSW Child Sex Offender Counsellors Accreditation Scheme (CSOCAS) establishes a public register of accredited counsellors who have the appropriate knowledge, qualifications, and experience, to provide counselling and therapy to those who sexually offend against children, including specialised counselling for children who offend against other children.²² In respect of young people who offend, it is generally considered that these behaviours are not symptomatic of entrenched pathologies and can be successfully treated and redressed.^{23 24 25}

42. It is understood that this scheme is unique to NSW, and not currently operating in other Australian jurisdictions.^{26 27}
43. Counselling support should be readily available, in particular where a young person has offended against another young person. Further, a sustained program of counselling and treatment should be available for the child who has experienced abuse.
44. **Recommendation:** Schemes in Australia, as well as schemes used internationally, that accredit sexual offender counsellors and programs should be reviewed in the context of developing evidence based options for providing therapeutic support and treatment to adults and young people who sexually offend.

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 3.

² Committee on the Rights of the Child, *General Comment No. 12 on the right of the child to be heard*, UN Doc CRC/C/GC/12 (2009), paras 53 and 54.

³ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland.

⁴ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Australia*, UN Doc CRC/C/AUS/CO/4 (2012), paras 50 and 52.

⁵ Australian Institute of Health and Welfare, *Child Protection Australia 2011-12*, Child Welfare Series No 55 (2013), p 78.

⁶ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013* (2013), 15.14.

⁷ Australian Institute of Health and Welfare, *Australia's welfare 2013*, Australia's Welfare No 11 (2013), p 176.

⁸ Australian Institute of Health and Welfare, note 3, p 41.

⁹ Australian Institute of Health and Welfare, note 4, p 176.

¹⁰ Australian Institute of Health and Welfare, *A picture of Australia's children* (2012), p 101.

¹¹ National Framework for Protecting Australia's Children 2009-2020, *Annual Report to the Council of Australian Governments 2011-12* (2013), p 201.

¹² Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013* (2013), Table 15.1.

¹³ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2013* (2013), Tables 15.1 and 15.2.

¹⁴ Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, *An outline of National Standards for Out-of-Home Care* (2011), p 23.

¹⁵ Department of Families, Housing, Community Services and Indigenous Affairs, *An outline of National Standards for out-of-home care – A Priority Project under the National Framework for Protecting Australia's Children 2009-2020* (2011), p 23

¹⁶ Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, *An outline of National Standards for Out-of-Home Care* (2011), p 6.

¹⁷ Committee on the Rights of the Child, *General Comment No. 12 on the right of the child to be heard*, UN Doc CRC/C/GC/12 (2009), para 2.

¹⁸ Committee on the Rights of the Child, *General Comment No. 12 on the right of the child to be heard*, UN Doc CRC/C/GC/12 (2009), para 48.

¹⁹ *Guidelines for the Alternative Care of Children*, GA Resolution 64/142, UN Doc A/RES/64/142 (2010), para 99.

²⁰ *Guidelines for the Alternative Care of Children*, GA Resolution 64/142, UN Doc A/RES/64/142 (2010), para 57.

²¹ J McDowall, *Experiencing Out-of-Home-Care in Australia – the Views of Children and Young People* (CREATE Report Card 2013) (2013), p xix.

²² NSW Commission for Children and Young People, *2011-2012 Annual Report*, p 33.

²³ Center For Sex Offender Management, *Understanding Juvenile Sexual Offending Behaviour: Emerging Research, Treatment Approaches and Management Practices* (1999).

²⁴ J. A. Hunter, *Understanding Juvenile Sex Offenders: Research Findings and Guidelines for Effective Management and Treatment* (2000).

²⁵ D. Finkelhor, R. Ormrod and M. Chaffin, *Juveniles Who Commit Sex Offenses Against Minors* (2009).

²⁶ Australian Crime Commission, *Australia's Response to Sexualised or Sexually Abusive Behaviours in Children and Young People* (2010), p 67.

²⁷ NSW Commission for Children and Young People, note 15, p 43.