

4 CHILDREN IN STATE CARE COMMISSION OF INQUIRY

Chapter 4 State response

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Evidence given to the Inquiry demonstrates that from the 1940s to 2004¹, children in State care have been sexually abused regardless of their age, gender, race or the type of placement, whether large congregate care in institutions, smaller group care, residential care units, foster care, secure care or the family home. The evidence from people who were children in State care (PICs) shows that the State must

- implement strategies to prevent such sexual abuse
- provide an environment to encourage children in State care to disclose
- respond appropriately when disclosures are made.

Only in recent decades has child protection assumed prominence as a community and government issue. Even so, child protection measures initially emphasised physical rather than sexual abuse and tended to cover all children; it was not until the 1980s that children in State care were identified as a distinct group.

In 2003, the Layton report made some recommendations concerning children and young people in State care, as well as many recommendations for the overall child protection system.² In the following year, the State Government released its policy for the reform of the child protection system³ and, in 2005 and 2006, published its reform agenda dedicated to children and young people in

State care.⁴ As the first specific South Australian Government policy in child protection, the reform agenda is a significant development and a sign of positive change.

Despite this, there is still much to be done to recognise and repair the human damage inflicted and to rebuild confidence in the State's system of caring for and protecting the children under its guardianship. The momentum and goodwill evident in the improvements to government policy must be maintained and underpinned by the necessary resources. It is hoped that the evidence from this Inquiry will inform the State about the sexual abuse of children in its care, and result in important additions to its reform agenda, along with sufficient resources to fund them.

Child sexual abuse

As set out in the submission from Relationships Australia (SA), reports and studies⁵ from as early as the 1950s demonstrate that child sexual abuse is a significant international problem, even taking into account the lack of standardised data collection.⁶ Overseas studies⁷ estimate that prevalence rates range from 20–35 per cent for females and 7–20 per cent for males; Australian studies⁸ put the incidence at 20–27 per cent (females) and about 16 per cent (males). In Indigenous communities, studies describe an 'epidemic', at rates far exceeding those for

¹ The Inquiry relates only to conduct before 18 Nov. 2004, see terms of reference (3), schedule 1: 2.

² Department of Human Services 2003, *Our best investment: a State plan to protect and advance the interests of children*, report prepared by Robyn Layton QC, DHS, Adelaide.

³ Department for Families and Communities (DFC) 2004, *Keeping them safe*.

⁴ DFC 2005, *Rapid response: whole of government services for children and young people under the guardianship of the Minister*; DFC 2006, *Keeping them safe – in our care*.

⁵ As set out in J Breckenridge, J Cunningham, K Jennings, *Respond SA adult childhood sexual abuse service evaluation report July–Dec. 2004*, Centre for Gender-Related Violence, University of NSW, pp. 14–5, viewed 30 Dec 2004 <www.respondsa.org.au>.

⁶ Analysis of studies set out in Children in State Care Commission of Inquiry (CISC Inquiry) submission from Relationships Australia (SA), Apr. 2007, p. 8.

⁷ For example, AC Kinsey, WB Pomeroy, CE Martin and PH Gebhard, *Sexual behavior in the human female* (Philadelphia, PA: WB Saunders, 1953) (paperback, New York: Pocket Books, 1965); D Finkelhor, *Sexually victimized children* (New York: Free Press, 1979); D Russell, 'The incidence and prevalence of intrafamilial and extrafamilial sexual abuse of female children', 7 *Child Abuse and Neglect*, 1983, pp. 133–46; L Kelly, L Regan and S Burton, 'An exploratory study of the prevalence of sexual abuse in a sample of 16–21-year-olds (London: University of North London, 1991); D Finkelhor, 'The international epidemiology of child sexual abuse', 18 *Child abuse and neglect*, 1994, pp. 409–17; P Cawson, C Wattam, S Booker and G Kelly, *Child maltreatment in the UK: a study of the prevalence of child abuse and neglect* (London: NSPCC, 2000).

⁸ For example, RJ Goldman and DG Goldman, 'The prevalence and nature of child sexual abuse in Australia' in *Australian Journal of Sex, Marriage and Family*, 1988, 9:2 pp. 94–106; JM Fleming, 'Prevalence of childhood sexual abuse in a community sample of Australian women' in the *Medical Journal of Australia*, 1997, vol. 166, pp. 65–8; RO De Visser, AMA Smith, CE Rissel, J Richters and AE Grulich, 'Sex in Australia: experiences of sexual coercion among a representative sample of adults' in *Australian and New Zealand Journal of Public Health*, 2003, vol. 27, no. 2, pp. 198–203.

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non-Indigenous communities.⁹ Studies¹⁰ since 1993 of children with disabilities are unanimous in their findings that these children are two to four times more likely to be sexually abused than children without disabilities.

Research shows that most perpetrators of childhood sexual abuse are adult males, although there is growing awareness of abuse by siblings and males under 16. Most offenders also engage in multiple offences, against more than one child.¹¹ The Relationships Australia (SA) Respond SA helpline for adult victims of child sexual abuse reports that the vast majority of perpetrators were immediate and extended family members (77 per cent), followed by acquaintances and authority figures whom the child knew and was encouraged to trust (14 per cent) and the remainder were strangers, members of clergy and residential care workers.¹²

To ensure the child keeps the sexual abuse a secret, perpetrators use various tactics, from threats, bribes, punishment and blackmail to the more subtle process of gradually gaining their trust by 'grooming', which involves treating them as someone special and giving them gifts and compliments. These tactics can lead to a great deal of confusion in the child's mind about what constitutes abuse and who is responsible. A common tactic in regard to intrafamilial abuse is to create alienation in the mother-child relationship by telling the child that the mother is inadequate, unloving or in some way bad or fragile.¹³

The debilitating effects of child sexual abuse can continue throughout adulthood, especially if the secret is kept by the victim or disclosure is met with an inappropriate or inadequate response. A practitioner working with child victims of sexual abuse told the Inquiry:

The psychological impact has the ongoing impact on the rest of their lives ... there is a particular problem with sexual abuse of children, and that is the secrecy with which it's engaged ... [the victims] internalise the responsibility for it faster than children with other forms of abuse ... I think that's partly because they don't tell anybody so they carry it for longer alone.

There was debate among the various experts who gave evidence to the Inquiry about the science of explaining the effects of child sexual abuse and the diagnostic labels for the symptoms. However, they agreed that although the effects of child sexual abuse vary, it often has significant lifelong consequences, especially if appropriate immediate treatment is not provided.

Sexual abuse of children in State care

The evidence to the Inquiry from 242 people demonstrates the grim reality that many South Australian children were sexually abused while in State care from the 1940s. During the past eight years in Australia, there have been several investigations of the historical abuse (including sexual) of children in care. The reports indicate the prevalence of abuse among this particularly vulnerable group of children. Dr Jan Breckenridge, director of the Centre for Gender-Related Violence, University of NSW, told the Inquiry:

... kids in care are absolutely a captive audience for people who are interested in sexual relationships with children. I think that when you've got male and female children who have been abused before ... may not be given a lot of credibility by other staff. They may have even disclosed and not been

⁹ Referred to in J Breckenridge et al, *Respond SA evaluation report*. DPC WA *Putting the picture together; OSW Non-reporting and hidden recording of sexual assault*; NT Govt *Little children are sacred*, p. 16.

¹⁰ For example, data collected by Kaye and by Crosse & Ratnofsky, (1993), provided by National Data Archive on Child Abuse and Neglect, Cornell University, cited in D Sobsey, W Randall and RK Parrila, 'Gender differences in abused children with and without disabilities', *Child abuse and neglect*, vol. 21, no. 8, 1997, pp. 707-20, Elsevier Science Ltd.; F Briggs, *Developing personal safety skills in children with disabilities*, Jessica Kingsley Publishers, London, 1995; A Tomison, 'Child maltreatment and disability', *Issues in child abuse prevention*, no. 7, 1999, National Child Protection Clearinghouse, NSW, Australian Institute of Family Studies; PM Sullivan and JF Knutson, 'Maltreatment and disabilities: a population-based epidemiological study,' *Child abuse and neglect*, vol. 24, no. 10, 2000, pp. 1257-73, Elsevier Science Ltd.

¹¹ Relationships Australia (SA) submission, Apr. 2007, p. 9, citing its own client data from Respond SA; and citing Kelly, Regan and Burton (1991), which estimated that 85 per cent of peer sexual abusers and 95 per cent of adults who sexually abuse children were male; and citing a Canadian study (Abel et al. 1985), which found that convicted male sex offenders reported an average of 533 offences and 336 victims each. This is consistent with Laing's data from the New South Wales Pre-trial Offender Diversion Program (1999).

¹² Relationships Australia (SA) submission, p. 9; information covers the period July 2004 - June 2006.

¹³ *ibid.*, p. 10.

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believed in the past. It's very easy to take advantage of their situation.

In 1999, the Forde Inquiry reported on the abuse, mistreatment or neglect of children in Queensland institutions. It heard what it described as repeated reports of physical and sexual abuse in government and non-government institutions over decades, resulting in irreparable damage to lives. It heard complaints of sexual abuse perpetrated either by other residents, staff or visitors to institutions, with many victims saying their disclosures of abuse were met with disbelief and often punishment.¹⁴ The Forde Inquiry also found that children with a history of abuse are 'especially vulnerable to further abuse and neglect' in out-of-home care (when a child lives in a care placement away from the family home) and may be reluctant to complain if earlier disclosures were not believed or kept safe.¹⁵

In January 2004, the Tasmanian Ombudsman's interim report on the abuse of children in State care¹⁶ found that sexual abuse accounted for 25 per cent of abuse in out-of-home care. In June 2006, the final report stated that 189 adults had made claims for compensation based on their sexual abuse as children in State care.¹⁷

Also in January 2004, the Crime and Misconduct Commissioner reported on the abuse of children in foster care in Queensland¹⁸, which included allegations of sexual abuse.

The Commonwealth Government, in its *Forgotten Australians* (2004) report on children who had experienced institutional or out-of-home care¹⁹, received 'extremely graphic and disturbing descriptions of sexual abuse and assault on girls and boys by a wide range of perpetrators'. The report described the abuse as 'widespread' and covering all States and types of institutions (government

and private, including religious), as well as foster care. Perpetrators included other older children, however most perpetrators were staff members, including religious and lay, or adult workers.

Dr Jenny Pearce, Professor of Young People and Public Policy, University of Bedfordshire, gave evidence to this Inquiry about the experience in the United Kingdom. She said she believed sexual abuse figures for children in care are 'high' because

... a large number of the young people who come into local authority care are there because they have been sexually abused previously, and often it's a repeating pattern, that the young person is vulnerable to further sexual abuse because they have already been sexually abused. The sexual exploitation context of sexual abuse, which often is linked with young people who run away from care, is high.

The role of the State Government in child protection

The 20th century

As mentioned, the State Government has long played a role in protecting children. The *Children's Protection Act 1899* outlined penalties for neglecting or ill-treating children. Government inspections of institutions and foster homes for 'destitute' children were mandated in the State Children Act in the early 20th century, however monitoring of these children was often irregular or inadequate. Government reports of the period downplay the mistreatment of State children; one annual report suggests that 'any State child who is not well treated for more than four months ... only has himself to thank'.²⁰

¹⁴ L Forde, Report of the *Commission of Inquiry into abuse of children in Queensland institutions* (Forde Inquiry), Aug. 1999, executive summary, p. 1v.

¹⁵ *ibid.*, pp. 15–16.

¹⁶ Department of Justice, Tasmania, *Interim report on abuse of children in State care*, 7 Jan. 2004, *Final report Nov. 2004* <http://www.forgottenaustralians.org.au/PDF/Review_of_claims_of_abuse_November_2004.pdf> (J O'Grady, Ombudsman Tasmania).

¹⁷ Department of Justice, Tasmania, *Review of claims of abuse from adults in State care as children*, final report (J O'Grady, Ombudsman Tasmania), phase 2, p. 6.

¹⁸ Crime and Misconduct Commission, 2004, *Protecting children: An inquiry into abuse of children in foster care*, Jan. 2004 (Protecting children 2004), Queensland, <<http://www.cmc.qld.gov.au>>

¹⁹ Senate Community Affairs Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Commonwealth of Australia, 2004, <http://www.aph.gov.au/senate_ca> at [4.46]–[4.47].

²⁰ SCC annual report 1908, p. 16.

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Until the 1960s there were no standard government procedures for preventing sexual abuse of children in State care, or supporting and responding to disclosures, which led to an ad hoc approach. Government employed a range of possible responses, including removing the victims or child perpetrators from placements, firing or transferring staff perpetrators, closing institutions, or revoking foster care licences. In extreme cases of persistent allegations of abuse, institutions were closed; for example, Kurbingai Hostel in 1962. Sexual activity among children in institutions or foster care was viewed as 'sexual perversion' or 'subnormal sexual misconduct' requiring psychiatric treatment or punishment. There was rarely an appropriate therapeutic response for the child.²¹

The issue of child protection assumed increasing prominence from the 1960s. The Social Welfare Advisory Council, created in 1966 as part of the Social Welfare Act, prepared for the Minister the first official departmental report into non-accidental physical injury to children. The report advocated a register of all cases of maltreatment and called for the introduction of reporting of abuse. In 1969, amendments to the Children's Protection Act provided for mandatory reporting for the first time. Following the *Community Welfare Act 1972*, a central register of reported cases of abuse was established and was maintained in the department's research unit. The first departmental report recognising sexual abuse as a form of non-accidental injury was issued in 1976. In the late 1970s, the department formalised its procedural response to child abuse, which defined non-accidental physical injury or maltreatment as including sexual abuse. In 1979, the department issued a child abuse resource manual to staff, which contained one article on sexual abuse.²²

A departmental report into child sexual abuse prepared for the Minister in the early 1980s²³ argued for increased staff

training relating to child abuse and recommended that the definition of 'maltreatment' in the Community Welfare Act be amended to include 'sexual abuse'. It was the first report to discuss State children as a distinct group. The department also introduced educational and preventative programs, operated child protection panels in metropolitan and country areas, and devoted a specific section in its annual reports to child protection.²⁴

Several bodies investigated child protection in the 1980s. From 1981, the Children's Interest Bureau conducted research into physical and sexual abuse and lobbied for independent advocacy for children. The inter-agency Child Sexual Abuse Task Force (1984–86) recommended coordination across agencies, expeditious legal processing, community education and therapeutic residential care for vulnerable children. Another department-commissioned report (Bidmeade 1986) advocated the appointment of a commissioner to promote children's rights both at the systemic level and in specific cases. The South Australian Child Protection Council (1987–95) reported to the Minister and a joint Health and Welfare Child Protection Unit was established among several government agencies.²⁵

In the 1990s, the focus was on protection of children generally, with little specific reference to children in State care. A 1991 Select Committee on child protection reported that many issues identified in previous studies still required action. The *Children's Protection Act 1993* extended the types of people required to make mandatory notifications and established a Children's Protection Advisory Panel as a statutory body.²⁶ In response to the Act, the department initiated several procedural changes, including the development of new procedural guidelines, new training courses for staff and efforts to increase inter-agency coordination.

²¹ CWPRB annual report 1954, p. 14; SRSA GRG 29/6/1946/4830, vol. 15, CWPRB minutes, (minute 1095), Sep. 1948; SRSA GRG 29/6/1945/239/ Monthly reports from heads of institutions, Superintendent to CWPRB secretary, 3 Oct. 1945; SRSA GRG 29/6 236/1962, 'Kurbingai Hostel, Semaphore', CWPRB minutes, 28 June 1962.

²² The Social Welfare Advisory Council was established pursuant to section 20 of the *Social Welfare Act 1926–1965*. DSW annual report 1966, p. 4; SRSA GRS 4164/1, unit 48, file 20/13/5, DCW, *Non-accidental injury to children in SA 1976*, Statistical report from Central Register; Community Welfare Advisory Committee, *Non-accidental injury to children* pt. 4; Departmental officers, Northern country region to district officers, 19 Sep. 1979. No file reference.

²³ DCW *Report to the Minister of Community Welfare in South Australia on the sexual abuse of children*, 1981.

²⁴ DCW annual report 1982–83, p. 24.

²⁵ SRSA GRS 8780/4, Children's Interest Bureau minutes, Sally N McGregor, Children's Interest Bureau, South Australia, 26 Sep. 1984; DCW, *Review of procedures for children in need of care*, report prepared by I Bidmeade, Oct. 1986; DCW annual report 1986–87, p. 20.

²⁶ The panel replaced the Child Protection Council. See SRSA GRS 4164/2, SACPC final report, 23 Feb. 1995; *Children's Protection Act 1993*, s. 11 (2).

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The South Australian Child Abuse Prevention Strategy (1996) focused on all forms of child abuse and issued 17 recommendations dealing with community involvement, resources, education, accountability and children's rights. The department revised its child protection response practices, developed a central intake service for reports of child abuse and instituted a multi-tiered risk assessment system. Many advisory committees, including the Children's Interest Bureau, recommended a focus on children in State care. In response, the Minister acknowledged that children in State care were particularly at risk of sexual exploitation, and should be empowered 'to raise issues or make complaints' and educated in protective behaviour.²⁷

2003: Layton report

The next major review of child protection in South Australia, undertaken by Robyn Layton QC in 2002–03, had a broad community focus as its terms of reference. Layton's report (*Our Best Investment, 2003*) made 206 recommendations spanning government agency practices, justice system reforms, public education, screening and monitoring of workers involved with children, and legislative reform. Several recommendations addressed sexual abuse²⁸, while others dealt with physical and emotional abuse.²⁹ A chapter³⁰ on children in State care noted expert opinion that these children have 'much higher levels of need' than children in general. The report recommended the appointment of a Children and Young People Guardian³¹ to focus on the more than 1200 children under the guardianship of the Minister, stability in care placements³², a 'whole of government' approach to case management³³ and transitional arrangements for young people leaving long-term care.

2004: *Keeping them safe* – State response to child protection

In May 2004, the government responded to the Layton report with *Keeping them safe: the South Australian Government's child protection reform program*. It was introduced as the government's 'bold program to reform our child protection services and systems', articulating 'the policy choices we have made'. It recognised that 'the system has, in some areas, fallen out of step' and that 'our key agency responsible for child protection lost capacity when it was subsumed in the Department of Human Services and it lost its way'.

Keeping them safe noted that during the previous decade there had been increasing notifications of suspected child abuse and neglect, including sexual abuse, on a national basis. As a result, resources were so overstretched that it 'has become untenable and puts at risk our capacity to keep children safe' and 'the child protection system has reached a point where it is no longer sustainable to continue without significant change to the current practices'. The government stated that 'the need for change is indisputable and our commitment to change unequivocal'; 'there is now a need for a fundamental culture change and a new sense of direction'.

The reform agenda referred specifically to the 'Minister's children', acknowledging that they 'often are missing out'. It stated that many guardianship children do not have an allocated caseworker or a case plan and have not been given a baseline medical, dental or educational assessment. It gave undertakings in various areas, including improvements to case planning and review processes; complaint mechanisms; special investigation processes; individual plans in education; transition for young people leaving care; and support, training and consistent payments for foster carers.

²⁷ SRSA GRS 8780/4/9, Children's Interest Bureau board meetings, March–April 1999, Minister of Human Services to CIB chairperson, 3 Mar. 1999.

²⁸ Layton, recommendations 101, 129, 145, 174.

²⁹ *ibid.*, recommendations 22–23.

³⁰ *ibid.*, ch. 12.

³¹ *ibid.*, recommendation 4.

³² *ibid.*, recommendation 68.

³³ *ibid.*, recommendation 67.

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2005: *Rapid response* – State response to protection of children in State care

In October 2005, as part of *Keeping them safe*, the government released *Rapid response: whole of government services*³⁴, which focused on children in the care of the Minister. The document recognises a need for change, confirming that ‘it is widely recognised that children and young people removed from their family of origin have much higher levels of need than other children’. As part of its discussion of general reforms, the document also covers sexual abuse, including prevention and the State response to its disclosure. The document says it is likely that children and young people in care have suffered ‘serious developmental delays or significant trauma associated with physical or sexual abuse and neglect’ or ‘serious dysfunctional family relationships or abandonment’. The development of this reform agenda involved a working group and an across-government guardianship steering committee, plus consultation with services providers, young people under guardianship and two Guardianship Regional Service Network projects (southern and northern regions).

In December, the government released *Rapid response progress report 2007*³⁵, which summarises progress made by various departments in implementing the reform agenda.

The *Rapid response* reform agenda includes five main strategies with corresponding recommendations.

Strategy 1 – to provide a system of robust management, case planning and review. Recommendations included:

- completing and implementing a case management model that takes into consideration the cultural and spiritual needs of Aboriginal children and young people (recommendation 1.1) and complements the case management models used by Disability Services (1.2)
- CYFS (Children Youth and Family Services) to endorse and implement the Life Domain Tool³⁶ as part of the case planning process (1.3)

- formalising case planning every six months (1.5), with children and young people to participate and be informed (1.4)
- making [each child’s] statutory annual review open to external examination by the Office of the Guardian (1.6)
- permitting all children and young people to view the contents of their case file (1.7).

Rapid response noted that by June 2005, CYFS had started developing a case management model to ‘facilitate a consistency of approach to managing the needs of children and young people under guardianship within DFC [Department for Families and Communities] and other agencies’. It reported that the Life Domain Tool (1.3) was awaiting endorsement/implementation and that the Guardian was attending, at a minimum, six annual reviews a quarter (1.6). While Families SA noted in the December 2007 progress report that it was still undertaking ‘a major service and practice reform’ through its new case management system, it did not specifically address how that model was taking into consideration the cultural and spiritual needs of Aboriginal children and young people (1.1) and the models used by Disability Services (1.2). It also did not address the implementation of recommendations 1.3–1.7 since June 2005.

Strategy 2 – to increase the capacity of the system to provide psychological, developmental, physical health and educational assessments. Recommendations included:

- increasing the capacity of CYFS psychological services to ensure a comprehensive court-ordered assessment with input from school staff (2.1)
- relevant staff from schools to provide input to CYFS psychologist to assist in assessment (2.2)
- CYFS psychologists to provide strategies to education staff to work effectively with children and young people (2.3)
- direct involvement of Aboriginal education coordinators (2.4)

³⁴ DFC, *Rapid response*.

³⁵ *ibid.*

³⁶ The Life Domain Tool is a mechanism for social workers to gather information from young people and others involved in their care and use that information in case planning. There are eight domains to be considered: Placement/relationships with caregiver family; connections with family/kin; education and employment; health; identity; emotional, behavioural; social skills and peer relationships; and life skills.

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- creating a register of general practitioners with specific interest in child development, abuse and neglect, who are willing to provide basic health assessment when entering care (2.5, see also 3.2)
- DECS [Department of Education and Children's Services] to actively support children and young people in community sport and recreation (2.6).

Rapid response noted that at June 2005 no progress had been made towards ensuring that all children and young people coming into care had their psychological and developmental needs assessed (2.1) because of difficulties in filling existing vacancies in psychological services. CYFS was identifying a range of workplace strategies to address the issue. It was reported that the Department of Further Education, Employment, Science and Technology (DFEEST) and CYFS were working to involve DFEEST's Aboriginal education coordinators in assessment and case planning for young Aboriginal people (2.4); and that engagement in physical education and recreation (2.6) is specifically targeted in individual education plans. The Children, Youth and Women's Health Service was reported to be working with various organisations to explore how to establish lists of general practitioners (2.5) as a matter of priority.

In its 2007 progress report, Families SA reported that since it had established a separate business unit, Psychological Services, in late 2005 the recruitment and retention of psychologists had improved 'markedly'. It stated that the unit provided family assessments, baseline psychological assessments, consultation services to Families SA non-psychological staff, training on psychological issues and some therapeutic intervention. The department did not specifically address whether all children and young people coming into care now had their psychological and developmental needs assessed (2.1) or what progress had been made in relation to 2.3. DECS did not report on 2.2 or 2.4 and DFEEST did not report on 2.4.

Strategy 3 – to increase the capacity of the system to provide services required by children and young people under guardianship through all relevant government departments. Recommendations referred to:

- therapeutic services, psychological (3.1), including giving priority attention to a more assertive response to the therapeutic needs of children and young people; health regions to support foster carers to provide effective and responsive parenting; increasing the number of Families SA psychologists to enable them to provide therapeutic services; health regions to arrange for the transition of young people to adult mental health services, where required
- medical and allied health services (3.2), including annual health care plans for children under guardianship and a recording system to enable easy transfer of information between health agencies
- country services (3.3), requiring health regions to manage the health response to children and young people in their geographic boundaries
- hospitals (3.4), requiring hospitals to develop and implement a policy of rapid response within hospital units and developing an identifier for children and young people under guardianship
- dental services (3.5), requiring SA Dental Service (SADS) to develop and implement a policy to provide priority access for orthodontic treatment
- disability services (3.6), including the requirement that the Intellectual Disability Services Council (IDSC) and Novita Children's Services will, as a priority, accept referrals from CYFS psychologists
- education (3.7), including identifying guardianship status in schools, developing individual education plans, data tracking education outcomes, using suspension/exclusion from school as the last resort, involving Aboriginal education coordinators in the education needs of Aboriginal children and young people, and waiving TAFE fees

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- recreation and sport (3.8), facilitating participation
- preparation for successful transition from care to independence (3.9).

Rapid response noted that at June 2005, in relation to 3.1–3.5, health regions had extended therapeutic services to children and young people involved in the child protection system; Child and Adolescent Mental Health Service (CAMHS) Southern Region was providing additional direct services with children and their families between the ages of two and 12 where abuse had been confirmed and the child was under guardianship; Child Protection Services was providing direct intervention with children aged two to 12 (some of them under guardianship); CAMHS, Inner Southern Community Health Centre and Child Protection Services were providing training for foster parents and schools on the needs of children under guardianship; CAMHS Northern Region was creating a liaison position for CYFS officers to provide consultation and informal training on mental health issues to CYFS staff; therapeutic groups for children under guardianship had been negotiated with CYFS; and a small number of youths between 16 and 18 were receiving counselling through the newly established sexual assault counselling service.

In relation to country services, it was reported that the Port Augusta and Whyalla hospitals and the South East Regional Community Health Service were giving informal priority to guardianship children. It was also reported that the SA Dental Service had been prioritising access by guardianship children to orthodontic services and dental clinic services for the previous 12 months.

The 2007 progress report noted, regarding 3.1–3.5, that the health regions and Families SA had released in that year a set of health care standards to clarify what children and young people under guardianship and their carers could expect from the health sector. Health regions had made an initial health assessment available to all children and young people within two months of being placed in care and an assessment practice guide had been

distributed to Families SA staff. Also, a small pool of private medical specialists experienced in abuse and neglect had agreed to bulk bill for services provided to guardianship children. A protocol also had been developed to facilitate the transition of children and young people in care to adult mental health services where needed.

The Children, Youth and Women's Health Services (CYWHS) reported that data exchange between the Women's and Children's Hospital (WCH) and Families SA to identify guardianship children was complete, enabling the hospital to provide the department with monthly reports, as well as automatic information on inpatient and emergency presentations. The Central Northern Adelaide Health Services (CNAHS) and Southern Adelaide Health Services (SAHS) had each established a working party to implement various matters, including data and information exchange with Families SA.

Country Health SA (CHSA) reported that it had taken the lead role in implementing these reforms across country health units, including ensuring that the units were aware of *Rapid response* obligations and participating in information sessions. The next stage was reported to be the development of checklists and compatible information technology systems to assist in identifying and providing services to guardianship children.

The SA Dental Service had agreed to develop and implement a policy to prioritise orthodontic treatment for guardianship children who met certain criteria.

The 2007 progress report noted, in relation to 3.6, that the Office for Disability and Client Services (ODACS) had created a Central Intake team to provide immediate information and support to the individual and/or their family being assessed, with guardianship children given the highest priority. Also, ODACS reported its commitment to 'engaging Families SA in the delivery of service improvements' with the release of its *Joint service review for children and young people with disabilities under the guardianship or care of the Minister*.

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In relation to 3.7, DECS noted in the 2007 progress report that training in individual education plans was provided to 1500 people from DECS and Families SA in 2005 and was also being given to preschool directors and DECS district early childhood initiative coordinators. It reported that about 62 per cent of students had an individual education plan. As well, DECS had adapted its database to record details of children and young people under guardianship so that schools were aware of the guardianship status, the Families SA district centre and the name of the caseworker. DECS had presented information about its discipline policy to 750 Families SA staff and delivered a training program, 'Working with students at risk', to 300 educators, primary school counsellors and leaders. It had provided SMART (strategies for managing abuse-related trauma) training to 60 Families SA youth workers and residential care workers from Community Residential Care and Families SA houses; to preschool staff; and to staff working on Aboriginal lands. Also, in relation to career planning, school counsellors were providing advice, assisting students to complete their transition plans and liaising with TAFE where necessary.

DFEEST reported that fees would be waived for students who embarked on their negotiated training and employment plan before their 26th birthday. Along with automatic entry into preparatory education or non-competitive courses, five per cent of places in competitive courses would be quarantined for guardianship students.

In relation to 3.8, the Office for Recreation and Sport stated in the 2007 progress report that it encouraged organisations in the industry to apply for funding to conduct programs for guardianship children and young people. It funded the Service to Youth Council and Baptist Community Services, and also gave financial assistance to a young person in foster care.

Housing SA noted in the 2007 report that, in relation to 3.9, it had developed with Families SA and Disability SA an agreed housing services referral/access model for young people transitioning from guardianship to independent

living. Service delivery guidelines had been developed and it had been using guardianship as an indicator on application forms since July 2006.

Strategy 4 – to increase information sharing and continuity of information relevant to the child's and young person's education, health, wellbeing and life opportunities.

Recommendations included:

- a sharing agreement between agencies for relevant information on children and young people under the guardianship of the Minister (4.1)
- guidelines on the transfer of records between agencies on health and educational history, assessments, interventions and expected outcomes (4.2)
- CYFS case managers to keep accurate and up-to-date records of the child's or young person's health, educational and family history (4.3)
- the consent of the child or young person to be sought when disclosure of sensitive personal information is contemplated (4.4)
- informing the child or young person of the purpose and occurrence of any medical, psychological or additional educational support services and appointments by the CYFS case manager or carer (4.5)
- CYFS to provide carers with the level of information necessary for them to provide effective and safe parenting for the child or young person in their care (4.6)
- information to be shared with the child or young person in a way that is respectful to them and is appropriate to their age and development (4.7)
- the development of an electronic information and recording system to enable the easy transfer of information between health agencies and CYFS (4.8)

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- agencies to develop an identifier for children and young people under the guardianship of the Minister (4.9)
- agencies providing services to children and young people under guardianship will record and report to the DFC on service demand, use and gaps (4.10).

In 2005, the government released its *Information sharing and client privacy statement: For children and young people under the guardianship of the Minister*.³⁷

In the 2007 progress report, Families SA noted in relation to 4.2, 4.3 and 4.8–4.10 that it was reforming its case management system and one of the outcomes would be links to key agencies in education and health.

Strategy 5 – to adopt collaborative, holistic, multi-agency regional service networks responding to children and young people under the guardianship of the Minister.

Recommendations included:

- establishing the regional guardianship service networks (RGSN) (consisting of agencies that provide services to children and young people under guardianship) within regional geographical boundaries (5.1)
- where appropriate, linking existing networks in order to avoid duplication of the RGSN (5.2)
- RGSN to establish a memorandum of understanding detailing their commitment to *Rapid response* (5.3)
- agencies providing services to children or young people under guardianship to develop policies and guidelines that are responsive to their needs (5.4)
- each agency represented on the RGSN to articulate a rapid response in their service agreements (5.5)
- RGSN to ensure that their regional service system remains responsive to the needs of children and young people under guardianship.

In its December 2007 progress report³⁸, Families SA

reported that it had established three guardianship service coordinator positions (one for each region) to lead the development of the RGSN. It also reported on the progress of two networks, including the northern region, which has launched its *Working together agreement* for children and young people under guardianship, which has been signed by the South Australia Police, various health services, SA Dental Service, DFEEST, Drug and Alcohol Services, Families SA, Housing SA and Disability SA.

2006: Keeping them safe – in our care: State response to protection of children in State care

In September 2006, the government released *Keeping them safe – in our care: draft for consultation*. It related specifically to children in State care, and stated that: 'We have not always taken on board what we have learned as a nation from major inquiries like the *Forgotten Australians* and *Bringing them home: the stolen generation* and what we are learning now from the Mullighan Inquiry in South Australia'.³⁹ It set out eight actions, each divided into 'principles', 'what we know' and 'what we will do'. They were:

- Stronger families
- Care planning
- Care packages
- Getting it right for Aboriginal children
- Connected care
- Children with complex care needs
- Valuing foster carers and foster parents
- Residential and leaving care.

In May 2007, the government released *Keeping them safe – in our care: consultation responses*. The consultation phase had received 42 written submissions (from 33 organisations and nine individuals) and held face-to-face sessions with more than 600 people.⁴⁰

³⁷ For more details, see 'Helping the carers to care' in this chapter. In Dec. 2006, the government released its *Keeping them safe – child protection: information sharing protocol, practice guidelines* with the first guiding principle being that 'the child's right to safety overrides the adult's right to privacy'. The guidelines apply to all children in South Australia, rather than specifically to children and young people under guardianship. The guidelines were written as a joint venture between the DFC and the Department of Health and apply to Families SA employees and defined Health services.

³⁸ DFC, *Rapid response*.

³⁹ DFC 2006, *Keeping them safe – in our care: draft for consultation*, p. 9.

⁴⁰ DFC, *Keeping them safe – in our care*, executive summary.

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At the same time, the government also released *Keeping them safe – in our care: implementation*, which set out immediate and medium-term actions. This document stated that the government would publish a yearly report outlining the previous year's achievements and identifying priorities for the following year. It stated that 'there is still more to be done if we are to make inroads on the longstanding and complex challenges associated with our care system', noting that there had been a 50 per cent increase in the number of children in care during the previous 10 years and that in each of the previous three years growth had been more than 11 per cent (double that rate for Aboriginal children).

Guardian for Children and Young People

The establishment of the Guardian for Children and Young People (GCYP) was an important response to the Layton report. The GCYP, like this Inquiry, is focused on children and young people in State care, rather than children generally.

Layton recommended the establishment of the GCYP to ensure that those children who are most vulnerable and who are under the statutory guardianship of the Minister or otherwise in care away from their parents have their rights articulated and safeguarded. It was envisaged that the GCYP would be part of a larger office of a commissioner for all children and young people⁴¹, however the government did not implement this recommendation.

Pam Simmons was appointed GCYP in June 2004 and started her role two months later. The Inquiry had discussions with Ms Simmons in January 2005, when both organisations were in their early stages. Ms Simmons provided the Inquiry with a submission in August 2005. The following February, legislation to establish the GCYP was passed⁴², giving the office six statutory functions.

They are to:

- promote the best interests of children under the guardianship or in the custody of the Minister, and in particular those in alternative care

- act as an advocate for the interests of children under the guardianship or in the custody of the Minister
- monitor the circumstances of children under the guardianship or in the custody of the Minister
- provide advice to the Minister on the quality of the provision of care for children under the guardianship or in the custody of the Minister and on whether the children's needs are being met
- inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care
- investigate and report to the Minister on matters referred to the GCYP by the Minister.

The Inquiry took evidence from Ms Simmons in December 2007. At that time, the GCYP office employed the full-time equivalent of 3.4 paid positions, made up of the full-time guardian and three part-time staff: a senior advocate, project officer and office administrator. The office also had five unpaid youth advisers. The office is funded by the child protection reform program and administered through the Department for Families and Communities. Revenue for the 2006–07 financial year was \$435,200.⁴³

The Inquiry endorses the establishment of the GCYP. In a short time, Ms Simmons and her staff have put into place some important, practical methods of communicating with children in State care, including staff visits to residential units and secure care facilities; booklets and contact cards; backpacks; 'rights' wristbands; the Oog (a safety symbol for children in care); a charter of rights; and working with volunteer youth advisers, the advisory groups of young people in care and the CREATE Foundation. The CREATE Foundation⁴⁴ was established in 1993 to provide a 'consumer voice' for children and young people in care in Australia. It encourages direct participation by children and young people in care in informing governments and agencies with a view to addressing systemic problems. The GCYP also has monitored the circumstances of children in State care by auditing some of the annual reviews of

⁴¹ Layton, recommendation 1.

⁴² *Children's Protection (Keeping them safe) Amendment Bill 2005* inserting Part 7A *Children's Protection Act 1993*.

⁴³ Office of the Guardian for Children and Young People (GCYP) annual report 2006–07. Copy available at <www.gcyp.sa.gov.au>

⁴⁴ Formerly known as the Australian Association of Young People in Care, AAYPIC; see <<http://www.create.org.au>>

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particular children and young people, and provided advice to the Minister on secure care facilities, individual education plans, accommodation for children with disabilities, the Aboriginal child placement principle (ACPP) policy, refugee children, the review of domestic violence laws, the accommodation of children in motels and legislation for rights of children in care.

Commitment to reform

In order to achieve long-overdue reform to the protection of children in State care, there must be commitment from the whole of government, as well as non-government organisations and the community.

The adults who were sexually abused while children in State care have demonstrated their commitment to reform by giving evidence to the Inquiry about their own individual trauma; a process they hope will help to ensure that children are better protected.

The Inquiry has received support from the Minister for Families and Communities, Jay Weatherill, and the Shadow Attorney-General and Shadow Minister for Justice, Ageing and Disability, Isobel Redmond, both of whom have had several meetings with the Commissioner.

The Department for Families and Communities (DFC) has provided ongoing assistance to the Inquiry during the past three years. The department quickly developed an efficient process to meet the Inquiry's many requests for records. DFC chief executive Sue Vardon and Families SA executive director Beth Dunning met periodically with the Commissioner and were willing to consider and address issues raised by the Inquiry without waiting for its completion. Ms Dunning and executive members of the department also met with the Commissioner in November 2007 to answer specific issues. The Inquiry heard evidence from 137 departmental managers and staff and received 86 presentations.⁴⁵ The department also provided an extensive written submission in response to the Inquiry's Issues paper and responded to ongoing requests for specific information.

⁴⁵ This was coordinated by Marilyn Spence, manager, projects and customer relations, Families SA.

⁴⁶ GCYP annual report 2006–07.

⁴⁷ *ibid.*, p. 4.

⁴⁸ *ibid.*, p. 3.

⁴⁹ Professor Dorothy Scott, director, Australian Centre for Child Protection, University of South Australia, *The child protection crisis in Australia – a way forward*, Address to Parliamentarians Against Child Abuse, Parliament House, Canberra, 5 Sep. 2006, p. 1.

The Inquiry has also taken evidence from various non-government organisations working in the area of child protection, as well as from carers, including foster carers, who have indicated their concern for, and willingness to participate in, an improvement of the care and protection system for children.

In the *Guardian for Children and Young People 2006–07 Annual report*⁴⁶, the guardian said progress during the year had been 'driven by the government's commitment to give priority access to this group of children for whom we have a special responsibility'.⁴⁷ She said: 'In my view there is no doubt of the intention and goodwill across government and non-government agencies to support families and protect children, including the provision of high-quality care when children are removed from their immediate families. I am deeply impressed by the passion and commitment of people who work for and care for children who are at risk.'⁴⁸

Crisis and resources

Commitment alone will not achieve the necessary reform of the child protection system. In 2005, the director of the Australian Centre for Child Protection, Professor Dorothy Scott, said of the problems facing the nation's child protection systems:

*Most of the statutory child protection services in Australia are in crisis. They are potentially harmful to the children and families they are designed to serve. The dedicated people doing this excruciatingly difficult work operate under hazardous conditions. Media moral outrage which erupts when children die or are hurt, and which politicises that which should be above politics, further weakens fragile services and exacerbates staff vacancies. In some States child protection systems are imploding. They have become like huge Casualty departments unable to cope with a flood of referrals.*⁴⁹

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The Inquiry has heard evidence to suggest that the system in South Australia is in crisis. The present continues to suffer from the consequences of poor past practices. The number of children being placed in care has increased⁵⁰; there is a shortage of foster carers and social workers; there is an inability to place children according to suitability rather than availability; and children are being placed in serviced apartments/bed and breakfast accommodation/motels because there is no other accommodation.⁵¹ Such a state of affairs cannot properly care for an already vulnerable group of children, let alone protect them from perpetrators of sexual abuse.

In her 2006–07 annual report, the GCYP stated that ‘goodwill alone will not be enough’ and that there are ‘signs of system failure and evidence of under-investment’.⁵² The observations made by the GCYP are timely and confirm the evidence to the Inquiry. They are of such importance that the Inquiry reports them in full:

From my perspective as a monitor we are witnessing too few improvements in the quality of care overall [note 1] and an alarming growth in the numbers of children coming into care, 15 per cent in the last year alone. I have serious doubts about the state’s capacity to offer most children in care the basis for a life that other South Australian children enjoy.

It is a commonly held view that most children in care are adequately cared for and I have no reason to challenge this. However, we should do more in overcoming obstacles to educational attainment, providing emotional and cultural security and treatment for trauma. This is especially so for children who have been seriously damaged by abuse and who experience many home changes and no secure relationships.

The growth in numbers in care tells us that the safety net for children is there. Sadly and simply, it

also tells us that intensive family supports are lacking for families in crisis, whether from drug and alcohol abuse, mental illness, disability or other causes. The choice for safeguarding a child who is at unacceptable risk of further harm seems weighted towards removal.

In the past five years the state government has made a significant additional recurrent expenditure of \$69.7 million specific to child protection and out of home care [note 2]. The problem is that much of the additional expenditure is meeting demand from the previous year [note 3].

Other states and territories, Victoria, New South Wales, Queensland, ACT, Northern Territory and now Western Australia, have taken decisive action to invest more substantially and sensibly in both child protection and intensive family support in the expectation that this will curb the growth in numbers of children in care and provide better care to those who need it [note 4]. The benefits are becoming evident in a slowing of growth in the numbers of children on care and protection orders in Victoria and New South Wales [note 5].

I believe, in the foreseeable future, that we can expect growth in the numbers of children in care in the order of 8–10 per cent per year, but not the 15 per cent and above we have now. Unless we build the capacity now to reduce the rate of growth and prepare for what we can normally expect in growth we will continue to see children barely cared for while in state care.

South Australia is working from a very low base of expenditure compared with other states and territories. Our expenditure on child protection and out of home care per child (all children) in this state was \$185.50 in 2005–06, 35.4 per cent less than the national average at \$287.11. No other state or

⁵⁰ The department advised the Inquiry that the number of children in alternative care placements has increased by 39 per cent from June 2003 to June 2007.

⁵¹ See ‘Promoting disclosure: the importance of suitable and stable placements’ in this chapter.

⁵² GCYP annual report 2006–07, p. 3.

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territory spends less per child. The picture in intensive family support is starker. In 2005–06, South Australia spent the least per child at \$4.42, or 82.4 per cent less than the national average of \$25.14. Our expenditure in this area has fallen at a yearly average of 4 per cent since 2001–02 (in 2005–06 dollars) while the national trend is a rise of 21.7 per cent per annum over that same period [note 6].

As I write I am hearing of the impact of these serious financial constraints. Its effect is felt in the impending closure of programs that provided educational support, community services for adolescents and self-development for children in residential care. There may be other reasons for these decisions but the strong impression I have is that there is not the money to continue. Financial under-investment is also evident in the long delays in services to families and escalating problems. Despite the best efforts of staff, the focus in child protection and family services is sadly narrowed to short-term intervention in crises.

Doing right by our children is a priority for the government and the commitment to early childhood services in universal programs will have benefits for all children. However, the intention to do right by our most vulnerable children will not be realised without significant increased financial investment.

Notes

1. This observation is supported by a July 2007 report from the Special Investigations Unit (Department for Families and Communities) which shows a 24 per cent increase in notifications to the unit due to a rise in the number of concerns about quality of care.
2. This includes an additional \$25 million per annum allocated in the 2007–08 budget. Excluded from this figure is \$7m for the universal home visiting program, \$1.5m for sex offender treatment, \$2.5m for school counsellor training, \$0.4m and \$0.23m for this Office and the Child Death and Serious Injury Review Committee respectively. The figure does include \$1.68 million provided to the Department of Health for therapeutic services. These were all funded under the Keeping them safe initiatives. This is an approximate increase of 140 per cent since 2003–04.
3. \$48.7 million of the additional money allocated was for meeting budget shortfalls and staffing to meet the demand of increased numbers of children coming into care.
4. Since 2003–04, Queensland has provided a 203 per cent increase, or \$369.3 million, in child protection, New South Wales a \$1.2 billion increase or an extra \$240 million per annum, and Victoria has invested heavily in family support services with a 164 per cent increase since 2000.
5. AIHW (2007) *Child Protection Australia 2005–06*, Table 3.5 Trends in the number of children on care and protection orders, states and territories, at 30 June 1997 to 30 June 2006.
6. Productivity Commission (2007) *Report on Government Services*, table 15A.1 State and Territory real recurrent expenditure on child protection and out of home care services.

It is not this Inquiry's role to analyse the resources to be made available to the child protection system or to estimate the future growth in the numbers of children placed in State care. However, the evidence to the Inquiry demonstrates that more resources must be made available to deal with the crisis created by the past as well as implement necessary reforms for the present and future.

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Prevention of sexual abuse of children in State care

Evidence given to the Inquiry establishes that before being placed in State care, many children and young people had already suffered some sort of abuse (sexual, physical or emotional) in families made dysfunctional by drugs, alcoholism, violence, transience, mental illness or poverty. Their vulnerability arising from the effects of such abuse made them prime targets for perpetrators of sexual abuse when placed in a care and protection system that was deficient in its knowledge, understanding and recognition of child sexual abuse.

For some children and young people, their susceptibility was increased because of their sense of dislocation and loneliness. As one PIC who was separated for many years from his family said:

To put a child in State welfare, in a home—make sure that they have more contact with other siblings as much as possible because the heartache, the heartbreak and to wait so long [to be reunited with siblings] is devastating.

One woman told the Inquiry she absconded constantly from care placements because she wanted to be reunited with her mother. She said: 'I just wanted my mum. I wanted mum. I didn't want to live with somebody else. I didn't want to be with somebody else.' An Aboriginal woman who was removed from her family recalled: 'I would have just liked to have a family. I'd have just liked to have been with my mum.'

This isolation was compounded for some PICs who did not understand why they were removed from home in the first place. A PIC removed from home as a young boy said: 'All I know is I just ended up in a home. I just had no say, and it was a pretty traumatic experience for me because I missed my mother.' Another recalled that he was removed from home when his parents were out one evening. His State ward index card (SWIC) records that he was under unfit guardianship but to the PIC it appeared that:

I was at home with my parents. The next thing I knew, I was in Glandore Boys Home. It took me a

week—you know, quite a while for it to sink in where I was and why I was there and what happened and what I was supposed to have done ... It's my family that I missed.

Another PIC who lived in institutional care reflected:

The worst thing was probably for a lot of the young kids who have been to [institutions], on reflection, is the fact that they missed their parents. They couldn't understand why they were there. They couldn't understand what they had done to be there.

The PICs also expressed concern that a lack of screening of carers during their period in care left them completely exposed. One man said:

If you are declared a ward of the State or anything, I'd like to see them check [placements] out properly. I mean, as it was, they were putting you out of the frying pan into the fire as far as I'm concerned.

This sentiment was shared by a man who experienced a violent, unstable home life as a boy and was then sexually abused in care: 'I can understand the State stepping in, but in that sense I was basically taken out of the frying pan and thrown into the fire'.

Another man who was sexually abused as a boy in State care said:

Whoever they get to look after kids, because it's screened better, the whole lot, and then they've got to follow them up with social workers to make sure none of this goes on because this actually blows a kid's mind apart and it's got to stop.

Prevention through early intervention

... it has been really researched in a number of the investigations in child abuse inquiries in this country, that the sudden removal of a child from a suspected abusive situation can be as damaging to the child as leaving them there.

Evidence from Dr Jenny Pearce, Professor of Young People and Public Policy, University of Bedfordshire, UK.

4.1 State response to sexual abuse of children in State care

Witnesses gave evidence to the Inquiry in favour of shifting the focus of the child protection system to early family intervention aimed at preventing child abuse, recognising warning signs and keeping families together if possible. Support for such a focus came from people in the government and non-government sectors who work with children and young people, including Aboriginals and those with disabilities. For example, representatives of Disability SA told the Inquiry that

... particularly down the early intervention and prevention end of the spectrum; to be able to put more intensive supports into a family situation in a preventative model would be a good investment.

Similarly, one Families SA employee working with relative and kinship carers said 'it is really about early intervention' and children 'becoming resilient adults into our communities, which of course is what we're wanting for these kids'. She said, however, that while in the long term it can save money, in the short term it is 'a huge challenge because it's a huge resource area'.

In *Keeping them safe* in 2004, the government stated that 'the reform agenda is about intervening earlier, before the abuse occurs or becomes habitual'.⁵³ Later, in *Keeping them safe – in our care: draft for consultation*, the government's first stated action is 'Stronger families':

*There is an international body of evidence to support early intervention strategies with children and their families as the most effective way of keeping children out of the statutory care and protection system by tackling the risk factors of abuse and neglect before they occur.*⁵⁴

In *Keeping them safe – in our care: consultation responses*, it was reported that there was

... widespread support for a shift of focus ... towards an increasing emphasis on prevention and

*supporting children and young people in their families, where this can be done safely.*⁵⁵

The department informed the Inquiry⁵⁶ about the implementation of some recent initiatives focused on prevention through early intervention, including:

- children's centres, a program also involving DECS and the Department of Health (discussed below)
- the High Risk Infants' Program, overseeing the management, development and training of the Infant at Risk policy, procedures and practice standards
- Strong Families Safe Babies, providing practical support for families with infants in vulnerable or high-risk situations through two teams: in the south at Noarlunga and north at Parks
- the Vulnerable Infant Service plan, with the Department of Health, aimed at providing a 'service framework for a cross sector system response for families with infants (conception to three years) whose situations range from little or no risk through to very high risk'⁵⁷
- the development of a Strengthening Vulnerable Families policy, to be completed in 2007–08.

There are currently five children's centres—Enfield, Elizabeth Grove, Hackham West, Wynn Vale and Angle Park—and the intention is to build a total of 20.⁵⁸ The centres focus on 'improving access for vulnerable children and their families, and provide a range of services such as counselling, parenting programs, family support and service coordination'.⁵⁹ Family services coordinators were to be employed in January 2008 to identify children and families at risk and intervene earlier to avoid out-of-home care. A further 10 centres are at various stages of development—Campbelltown, Cowandilla, Gawler, Marion, Murray Bridge, Port Augusta, Renmark, Salisbury, Taperoo and Woodcroft.

⁵³ DFC, *Keeping them safe*.

⁵⁴ DFC, *Keeping them safe – in our care: draft for consultation*, p. 15.

⁵⁵ DFC, *Keeping them safe – in our care: consultation responses*, May 2007, p. 1.

⁵⁶ B Dunning, Families SA executive director, letter, 23 Nov. 2007, p. 11.

⁵⁷ *ibid.*, p. 13.

⁵⁸ On 14 Mar. 2007, the SA Government announced a \$23m investment over four years to develop 20 children's centres, <www.ministers.sa.gov.au>

⁵⁹ Families SA executive director letter, 23 Nov. 2007, p. 11.

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The Commissioner visited the children's centre known as CaFE (children and families everywhere) Enfield, which is adjacent to the Enfield Primary School grounds. CaFE Enfield's manager and the school principal both gave evidence to the Inquiry. The manager described CaFE Enfield as a community-driven, family-friendly children's centre that aims to provide education, health and family wellbeing services for families with young children, plus additional services such as speech pathology and family counselling.

The manager responds to families' needs by seeking additional community services and partners to bring into the centre. As a result of shared arrangements and services, a wide range of programs is available for children aged up to 12 and their parents. Examples include a weekly healthy ways program (which has a focus on indigenous culture, health promotion and involves an Aboriginal support worker); a weekly program, Learning Together, focusing on families experiencing disadvantage including isolation, such as those who have recently arrived in Australia and young parents; training for volunteers in its community program, including information about mandatory notification; and hosting a Good Beginnings program, where children who are removed from their families return to the playgroup creche room to have supervised access visits. The manager also told the Inquiry about the value of informal activities such as a craft group, when parents can

... blow off steam, release certain feelings, and it's an entry point for them to access other services with the parent support worker being there, with a parent volunteer being there and the creche being there, which is often the first respite that parent might have had for many weeks, months ...

The free creche was initially funded under the Local Answers initiative but was not successful in gaining a second grant. The manager gave the Inquiry an example of how the extent of outreach has been affected by time-limited funding:

The creche is such an important entry point for families to develop a trusting relationship with an outsider for their child. Often a good experience in the creche was the reason why people would continue to be engaged in the site, and that can't always be facilitated by volunteers.

The grant had enabled the part-time engagement of a psychologist to contribute to parenting programs, a parent support worker, a worker to assist parents find meaningful volunteer opportunities and a maintenance worker.

Describing the children's centres model, Professor Scott of the Australian Centre for Child Protection told the Inquiry:

That's about best practice for the country, is the community development [of] multi-agency strong collaborative links and doing it in a non-stigmatised setting, which makes it accessible to vulnerable families. And they can actually be providing a little bit of support to quite well-functioning families and they can be providing an enormous amount of support to very dysfunctional families, more or less in the same site and using it as the base.

That's wonderful ... So it's trying to build on the platform of the universal services, a capacity to respond to more vulnerable families ... but I think you'd go a long way to find a better example of that in this country.

The Inquiry supports ongoing funding for children's centres based on its observations and evidence provided, particularly on CaFE Enfield.

Prevention through early intervention: Aboriginal children and young people

I've never lost the feeling of being institutionalised. It stays with you forever and then you've got to force other institutions to put our cases. What a bloody joke in the 21st century. This country doesn't protect us. Until they acknowledge what they did ...

Aboriginal man placed in institutional care in the 1960s speaking at the Inquiry's Aboriginal Information Day, December 2006

4.1 State response to sexual abuse of children in State care

The need for early intervention strategies to protect children in their families rather than a general policy of removing children is most critical for the protection of Aboriginal children and young people. Past government policy of forcible removal of Aboriginal children to achieve assimilation, resulting in the stolen generations, has caused widespread damage and mistrust of government.⁶⁰ For example, the Inquiry heard evidence from Aboriginal men and women who, as children in the 1950s–60s, were taken away from their communities, placed in care and sexually abused. The present challenge is how to protect Aboriginal children and young people from sexual abuse given the legacy of the stolen generations and indications of widespread sexual abuse of children in some Aboriginal communities.

The terms of reference for the Inquiry related to the sexual abuse of children in State care. While the Inquiry's initial investigations of regional Aboriginal communities revealed evidence of child sexual abuse, there was no evidence those children were in State care. Hence the Inquiry's recommendations to the government for broader terms of reference⁶¹, which were later extended only in relation to the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. The problem of child sexual abuse in Aboriginal communities, however, is not restricted to the APY Lands. For example, a health care worker told the Inquiry that about 50 per cent of Aboriginal girls in Coober Pedy had been sexually abused on one or more occasions. The worker said that the perpetrators included young males who first get the girls intoxicated. The Inquiry also received information about young Aboriginal girls in Coober Pedy being used by older men as prostitutes in order to get money or alcohol. Another health worker told the Inquiry she had seen evidence in Oodnadatta suggesting sexual abuse of very young Aboriginal children and behaviour by older children indicating they had been sexually abused. The Inquiry also received information that at Point Pearce some members of the Aboriginal community were using drugs as a way of

dealing with the pain of sexual abuse; suicide of Aboriginal persons who were sexually abused as children was also disclosed. This is important information that requires extensive investigation, but was outside the mandate of this Inquiry.

The need for a focus on early intervention aimed at keeping Aboriginal families together is apparent from the number of Aboriginal children in care. In *Keeping them safe – in our care: draft for consultation*, the government reported that Aboriginal children made up 23.9 per cent of children in care but only 3.2 per cent of the general population.⁶² While notification rates in general increased by 43 per cent between 2001 and 2005, they increased for Aboriginal children by 53 per cent. There was an almost 30 per cent increase in the number of children receiving an alternative care placement between 2001 and 2006, however the rate of increase for Aboriginal children and children living in regional South Australia was 'significantly higher'. The *Draft for consultation* stated that there is to be 'a renewed priority and commitment to developing effective and culturally appropriate responses to the high numbers of Aboriginal children in our care'.⁶³

Under action one, Stronger families, the *Draft for consultation* stated that 'Aboriginal parents and their families need to be supported in ways that are culturally sensitive and build capacity so they can work out their solutions for themselves'.⁶⁴ The government said it would work with Aboriginal organisations to identify gaps in family support services and the needs of Aboriginal family support workers, and to develop joint programs across government agencies.⁶⁵ Under action four, Getting it right for Aboriginal children, focus is placed on the over-representation of Aboriginal children and young people in the child protection system, which is said to be the result of the 'legacy of the intergenerational trauma and disadvantage experienced by Indigenous Australians'.⁶⁶ The government stated that it 'knows' that Aboriginal families must be supported to find their own way forward.⁶⁷ The government said it would

⁶⁰ Human Rights and Equal Opportunity Commission, *Bringing them home: report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, Reconciliation and Social Justice Library, 1997.

⁶¹ See chapter 1, 'Approach and conduct of the Inquiry – Aboriginal people.'

⁶² DFC, *Keeping them safe – in our care: draft for consultation*, p. 23.

⁶³ *ibid.*, p. 13.

⁶⁴ *ibid.*, p. 15.

⁶⁵ *ibid.*, p. 16.

⁶⁶ *ibid.*, p. 23.

⁶⁷ *ibid.*

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continue to support work at a national level; to contribute to work by the Secretariat of National Aboriginal and Islander Child Care (SNAICC) on minimum standards for the care, protection and support of Aboriginal children; to work with Aboriginal families, communities and organisations for guidance on culturally appropriate responses; and expand culturally appropriate early intervention, parenting and family support programs.⁶⁸

In *Keeping them safe – in our care: consultation responses*, it was reported that most responses supported proposals to ‘tackle the high numbers of Aboriginal children and young people in care as a priority, in collaboration with Aboriginal families and communities’.⁶⁹ Responses ‘overwhelmingly showed that people felt we cannot “get it right” for Aboriginal children and young people without considering the historical context of the stolen generations’. Responses included specific suggestions, including early intervention services to support families, prevent family breakdown and prevent children and young people entering care, and the expansion of Aboriginal family preservation programs.⁷⁰

However, in *Keeping them safe – in our care: implementation* the section ‘What we’ve done so far’ made no reference to initiatives for Aboriginal children. The ‘Immediate actions’ section stated that ‘each action area gives priority to developing effective and culturally appropriate responses for the high numbers of Aboriginal children and young people in care’⁷¹ but made no specific reference other than finalising a new policy to promote stability and continuity for children and young people in care, which would include recognising the significance of the Aboriginal child placement principle.⁷² The section, ‘Medium term actions to be put in place over the coming years’, made no specific reference to Aboriginal children.

The Inquiry heard evidence about recent early intervention strategies. For example, the Metropolitan Aboriginal Youth and Family Services (MAYFS) runs the Taikurtinna maltorendi (Families to remain together) program, which

has been operating since June 2004. The coordinator, Sharon Letton, told the Inquiry that the program is responsive to child protection reports received through the child abuse report line (CARL). Two Aboriginal family practitioners work with the families. Ms Letton said:

We provide a holistic response to Aboriginal children and their families, whole-of-family case management service, so we don’t just deal with the children of concern, or in regards to that intake; we deal with the whole family within the home there ... it’s a culturally appropriate accountable service ... we aim to improve the level of functioning with the family, so we work quite intensively with them in the service.

Ms Letton told the Inquiry that from June 2004 to November 2006, the program had received 134 referrals. At November 2006, the workers had a full case load, with 11 more people on a waiting list. At that time, it only received referrals of notifications from the department’s Woodville and Enfield district offices and ‘a barrier’ is that people cannot self-refer. She said that the ‘good thing’ is that ‘we’ve been able to engage with families, and their willingness to work with us’.

Training of educators

I only ever had one schoolteacher that took any care at all with who I was and my situation, and that was at [school] many years later. I’d been in and out of homes by this time and she took me under her shoulder, or whatever, and she knew what was going on, but she never intervened or anything like that ...

Evidence from PIC placed in State care in early 1960s, aged about 10

Evidence to the Inquiry reinforces the important role of the education sector in regard to child protection. As stated in the Layton report, education plays ‘a critical role in early detection, early intervention and in the prevention of child

⁶⁸ *ibid.*, p. 24.

⁶⁹ DFC, *Keeping them safe – in our care: consultation responses*, executive summary.

⁷⁰ *ibid.*, p. 9.

⁷¹ DFC 2007, *Keeping them safe – in our care: implementation*, p. 7.

⁷² *ibid.*, p. 9.

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abuse and neglect ... [and] in supporting children and young people who have been victims of abuse and neglect'.⁷³

Following recommendations made in the Layton report⁷⁴, the Inquiry received evidence that DECS⁷⁵ arranged for universal training of its employees and volunteers, and targeted training for specific employees.

The universal training was a one-day course in mandatory notification. DECS modified the generic training provided by Families SA in order to 'deliver an education specific training package to its employees and volunteers'.⁷⁶ The main modifications were the inclusion of a session on workplace awareness; scenarios that explored staff duty of care in responding to sexually abusive/inappropriate behaviours between children and young people; scenarios that explored the needs of children in care, Aboriginal children, children as carers and children with disabilities; and examples of open-ended questions to help notifiers feel more confident about giving children support to disclose, without undertaking an 'investigation'.⁷⁷ In 2006, 25,000 employees and invited volunteers from all DECS preschools and schools attended the one-day program. In 2007, similar training was provided for out of school hours care, child care and family day care personnel. A DECS employee working in the area of child protection policy told the Inquiry, 'I think I speak on behalf of the majority of people in the education system in saying that the process of mandatory reporting for us is absolutely critical'. Updated training is required every three years and is a requirement for teacher registration with the Teachers Registration Board of South Australia. Participation in the training is recorded on the DECS human resources database.

The targeted training program arising from the Layton recommendations is called SMART (strategies for managing abuse-related trauma) and was developed in collaboration with child protection experts from the

Australian Childhood Foundation⁷⁸, the National Research Centre for the Prevention of Child Abuse and the Indigenous Health Unit at Monash University to ensure that school welfare personnel have the skills to support children at risk of abuse and neglect, and to promote and implement school policies and programs that have a focus on child abuse prevention and child protection.⁷⁹ SMART aims to:⁸⁰

- effectively communicate with children and young people about their experiences of abuse, family violence and neglect
- build integrated and collaborative interventions that engage schools in a team approach to address the support and protective needs of children and young people who have experienced abuse, family violence and neglect
- contextualise exchanges with children and young people within an up-to-date understanding of developmental theory, trauma psychology and family system models
- promote individual recovery for children and young people, as well as changes to abusive family dynamics
- consider strategies to build commitment to whole of school approaches to child abuse prevention and child protection.

The project included 20 two-day professional education seminars (attended by 750 teachers, school services officers and other professionals involved in the education of students in DECS schools), 18 one-day collaborative practice forums (attended by 632 professionals across sectors), an abuse-related trauma intervention resource package, an online self-paced learning package and evaluation⁸¹. By the end of 2006, 350 professionals had registered for the online training package.⁸²

⁷³ Layton, ch. 19.2.

⁷⁴ *ibid.*, recommendations 61, 147.

⁷⁵ Submission from the Department of Education and Children's Services (DECS), 18 May 2007, p. 2.

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ Final evaluation report, SMART Project Tear 1, Australian Childhood Foundation, Feb. 2007, p. 5.

⁸⁰ *ibid.*, p. 6.

⁸¹ *ibid.*, p. 7.

⁸² *ibid.*, p. 8.

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A DECS employee who works in the area of child protection curriculum told the Inquiry:

I think that, over the last 18 months or two years, I've actually seen a real shift in educators and I think it is because they have had the mandated notification updated training. Many of them have accessed the SMART program and they've also had the curriculum and I think that the shift has been around, 'Oh, we just report it to the report line and that's all we need to do or should do,' to really looking at individual scenarios and saying, 'How can we support the family or the child in this situation?'.

Chief executive of the Australian Childhood Foundation, Joe Tucci, told the Inquiry that South Australia has 'led the way on this around the country':

If you look at the feedback from people who have attended the training ... it makes them almost, for the first time, reinterpret children's behaviour in a way that they've never done before because they're understanding what the impact of trauma does on the brain and therefore what they can expect the behaviour to follow. I think it has been quite a surprise to many.

... I think to see it as a one-off training initiative only partly addresses the problem ... it really only starts to expose people to the ideas, but it needs to be integrated into school culture, school practice and it needs to be followed up. There need to be changes to the disciplinary protocols and approaches to understanding why children are misbehaving ... I would think that it needs to continue.

The Inquiry received one negative submission about SMART concerning a person who had received 'very negative feedback ... because it was not delivered by people with teaching experience'.

Relationships Australia (SA) submitted that the government should be commended for introducing it into schools.

The Association of Independent Schools of South Australia (AISSA) informed the Inquiry that the revised mandatory notification training 'is a significant improvement on the previous mandatory notification training'.⁸³ It stated that:

*The challenge for those responsible for the course's contents is to develop refresher courses and further versions of the training that are not repetitive but informative, address current developments on child sexual abuse and other child protection matters, and build on the knowledge of participants.*⁸⁴

AISSA submitted that it provides professional development on child protection issues and that many independent schools provide additional professional development in areas related to child sexual abuse. It stated that aspects of the SMART program have been used in independent schools.

The Inquiry supports the universal mandatory notification training program. It also supports the SMART program and believes it should be ongoing, with updated refresher courses.

1 RECOMMENDATION 1

The SMART (strategies for managing abuse-related trauma) program should be ongoing, with the development of updated, refresher professional development seminars and collaborative practice forums.

Educating children and young people

... education for the children, sit them down, educate them, show them that it's all right to speak up, and you're not alone. ...

Evidence from PIC placed in State care in early 1970s, when aged seven

As recognised in the Layton report, 'research and practice internationally indicates that the education and children's

⁸³ Association of Independent Schools of South Australia submission, 28 Mar. 2007, p. 2.

⁸⁴ *ibid.*

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services system is an essential part of the child protection system. These services play a critical role in early detection, early intervention and in the prevention of child abuse and neglect'.⁸⁵ In its submission to this Inquiry, DECS stated that 'educating children and young people about their rights to physical and emotional safety and their responsibilities towards others' is one of three main ways in which it contributes to the identification, intervention and prevention of child abuse and neglect.⁸⁶

The Layton report stated that while personal safety and protective behaviours programs had existed since the 1980s, the provision of such education in schools had 'fallen away over recent years', and submissions to Layton criticised the program as being ineffective. The Layton report recommended⁸⁷ that DECS update its personal safety/protective behaviour programs delivered in schools.

In its submission to this Inquiry, DECS stated that as part of its response to the Layton report, it had developed new materials, *Keeping safe: child protection curriculum*, to replace the protective behaviours program that had been taught in DECS preschools since 1985. It said the new curriculum was developed in consultation with practitioners and academics across primary, secondary and tertiary education as well as representatives from government and non-government agencies. It has four areas of focus:

- The right to be safe
- Relationships
- Recognising and reporting abuse
- Protective strategies.

Keeping safe has texts and resources appropriate for levels of learning from preschool to year 12, and includes the issues of internet safety and intrafamilial abuse. There is also a seven-hour program for preschool educators, teachers and school support officers, which a witness told the Inquiry was about updating their own skills and capacities in delivering the curriculum. DECS submitted that the curriculum would be fully implemented in 2008.

DECS told the Inquiry it had closely consulted with the Catholic and independent school sectors in the development of *Keeping safe*. A DECS employee said:

About two years ago we formed an agreement with the non-government school sectors that we would collaborate on all child protection initiatives; that we wouldn't undertake any of that work separately. We agreed that if we were talking about a child protection standard, it ought to apply equally to any school, whether it was government or non-government.

This was confirmed in the submission from the Association of Independent Schools of SA (AISSA). It indicated the benefits resulting from the collaboration on child protection between DECS, Catholic Education SA and AISSA, which started after the Layton report. In regard to the specific topic of educating children, however, AISSA stated:

Education about these matters already occurs in the education of students at many Independent schools. A new child protection curriculum is expected to be available soon, which schools may choose to use to enhance the knowledge of students regarding issues related to child abuse. Any training needs to be age specific and have regard to the school ethos and the wishes of parents. The AISSA does not support particular school student curriculum content being imposed by governments.

The Inquiry commends the recent work undertaken by the government and non-government education sectors to update the curriculum on self-protective behaviours and the commitment to deliver that curriculum in all schools to all children and young people.

Educating children and young people in State care

... something that would have been extremely beneficial to children living in care. That is, someone to nurture, someone to teach, someone to provide

⁸⁵ Layton, ch. 19.2.

⁸⁶ DECS submission, p. 1.

⁸⁷ Layton, recommendation 137.

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decent parenting, to instruct in what was right and what was wrong, to teach some stuff around protective behaviour ... I think to have been able to hear from someone else who could have reinforced the message that there are things that you can say no to, and you can tell people, that you don't have to live in a life of secrecy.

Evidence from PIC placed in State care in the 1960s, when aged 6

In focusing on educating children and young people in State care on self-protective behaviours, the Inquiry recognises the important point made by the Guardian of Children and Young People (GCYP) in her submission: 'Self-protective behaviours have been taught in schools for some time. Due to disrupted schooling, children in care have often missed out on learning these skills.'⁸⁸

The need for special attention to the education of children in State care was the subject of discussion in the Layton report⁸⁹, resulting in a recommendation that all children under the guardianship of the Minister have a negotiated curriculum plan throughout their schooling. Individual education plans for children under the guardianship of the Minister are now being introduced as part of the *Rapid response* reform agenda.

This sentiment is reinforced in *Report card on education 2006*, published by the CREATE Foundation after interviews with 297 children and young people in care about their education. CREATE stated that,

*A large portion of the more than 30,000 children who spend time in care each year in Australia perform poorly in school. On average, they lag behind their peers academically and are also more likely to have experienced disruption through relocation or exclusion.*⁹⁰

CREATE's report cited research in 2002⁹¹ indicating that those who experienced abuse or neglect in childhood were more frequently absent from school, and had lower levels of academic performance and more behavioural

disturbances than their peers, even after the abuse had ceased. From its own survey, it reported:

The majority of participants indicated that they missed periods of school during 2005. Disturbingly, almost one in three participants missed more than 20 days of school during 2005, which based on a school year of 40 weeks equates to over 10 per cent of total attendance days.

In 2005, 174 of the 297 students interviewed missed school due to illness, 33 (13.4 per cent) due to being suspended and 26 (10.5 per cent) due to placement or school change. When extended across their school life, 146 (49.2 per cent) said they had been previously excluded from a school.

In her submission to the Inquiry, the GCYP stated:

The imperative for teaching self-protection to this particular group of children and young people is arguably stronger than the general school population because they are in high-risk circumstances. These circumstances include disrupted formal and informal networks, low self-esteem, some with difficult and sexualised behaviours, and close contact with a wider range of people.

The GCYP told the Inquiry that in the past 12 months in 2006–07, the department had engaged youth health service Second Story to teach protective behaviours to children and young people in three of the residential care units. However, with six residential care units and 10 transitional accommodation houses and secure care facilities, 'it's still a fairly minimal program'. She was unable to comment on the content or the quality of the program. She went on to state that 'certainly every residential care and secure care service unit should have such a program available for the residents'. She also indicated that it is necessary to consider how such a program is to be tailored to children and young people in foster care.

⁸⁸ GCYP submission, Aug. 2005, p. 17.

⁸⁹ Layton, ch. 19.31–3, recommendation 146.

⁹⁰ CREATE Foundation, *Report card on education 2006*, p. 10.

⁹¹ *Report card on education 2006*, p. 15, citing JE Landsford, KA Dodge, GS Pettit, JE Bates, J Crozier and J Kaplow, 'A 12 year prospective study of the long term effects of early child physical maltreatment on psychological, behavioral, and academic problems in adolescence', *Archives of Pediatrics and Adolescent Medicine*, 2002, vol. 156, no. 8, pp. 824–30.

4.1 State response to sexual abuse of children in State care

The immediate introduction of group training programs for children and young people in residential and secure care was 'strongly encouraged' by the Careworkers Coalition in its submission to the Inquiry.

The Inquiry considers that any such teaching should include providing information to children and young people about how to respond to disclosures by their peers or younger children, as well as protective responses specific to Aboriginal children in care.

The Inquiry received evidence about the education of children and young people in care with disabilities. Factors that increase the vulnerability of these children include a lack of sexual knowledge, limited ability to communicate, behavioural difficulties and a focus on compliance teaching. Head of the Centre for Behavioural Sciences at the University of Sydney, Associate Professor Susan Hayes, told the Inquiry that a disabled person's own ignorance about sexual abuse may inhibit disclosure. Often, an individual is 'not going to tell anybody because he doesn't even realise that there's anything to tell'. She said, 'I think the provision of sex education to every person with a disability from a very young age is probably a really important key to the prevention' of abuse. The GCYP also stated that the likelihood of disclosure may be lessened when children with disabilities are not given sexual education.

2 RECOMMENDATION 2

That the self-protective training being taught by *Second Story* be reviewed to ensure that it covers the *Keeping safe: child protection curriculum* developed for teaching all children in schools and is adapted to target the specific needs and circumstances of:

- children and young people in care generally
- Aboriginal children and young people in care
- children and young people in care with disabilities.

That such self-protective training is then delivered to children and young people in State care living at their residential or secure care facility.

Child safe environments

National screening

... maybe if back then they had some sort of screening process for, you know, people that were taking out kids on weekends or what have you, maybe some things wouldn't have happened, you know.

Evidence from PIC placed in State care in the mid 1960s, when aged six months

For the purpose of creating child safe environments, the Layton report⁹² recommended that a coordinated and comprehensive screening and monitoring system be put in place⁹³, a working group be formed to consider a legislative and policy response in light of the National Paedophile Register⁹⁴ and that agencies working with children develop child protection policies and guidelines.⁹⁵

In 2004, the Commonwealth Government announced the Australian National Child Offender Register (ANCOR). States and territories then enacted legislation to be part of the register. In 2006, the South Australian Government introduced a Bill that was passed as *The Child Sex Offenders Registration Act 2006*. It came into operation on 18 October 2007.

The Act aims to protect children from sexual predators by preventing such people from engaging in child-related work.⁹⁶ Registrable offenders are prohibited from engaging in or applying for child-related work, with a penalty of up to five years in prison.⁹⁷ This includes work involving contact with a child in juvenile detention centres, residential facilities and foster care.⁹⁸ It is an offence punishable by fine for any person who is engaged in, or applies for, child-related work to fail to disclose that certain charges against him/her have been filed or that charges are pending.

⁹² Layton, ch. 17.

⁹³ *ibid.*, recommendation 130.

⁹⁴ *ibid.*, recommendation 131.

⁹⁵ *ibid.*, recommendation 132.

⁹⁶ *The Child Sex Offenders Registration Act 2006*, s.3.

⁹⁷ *ibid.*, Part V, ss. 64–8.

⁹⁸ *ibid.*, s. 64(1).

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A registrable offender⁹⁹ is a person who has been sentenced (either a term of imprisonment or supervised sentence) by a court for certain defined offences against children (including sexual offences¹⁰⁰) or who is, or has been, subject to a child sex offender registration order (a new sentencing option for the court if satisfied that the person poses a risk to the sexual safety of any child or children¹⁰¹). Registrable offenders do not include a person sentenced more than eight years ago for a 'class two offence'¹⁰² or more than 15 years ago for a 'class one offence'.¹⁰³

Registrable offenders must annually report their personal details¹⁰⁴ (including address, vehicle registration, employment, names of children living at the address or with whom the person has unsupervised contact, affiliation with any clubs or organisations that have child membership or participation in their activities) to the Commissioner of Police¹⁰⁵ and must report any changes to those personal details within 14 days.¹⁰⁶ The registrable offender must also report travel interstate with an absence of 14 days or more and any overseas trips.¹⁰⁷ When making a report, the registrable offender may have their fingerprints or photograph taken.¹⁰⁸ Depending on the length of the child sex offender sex registration order, the type of offence for which the person was sentenced or the number of offences for which the person has been sentenced, the reporting obligations may last up to a lifetime.¹⁰⁹ The

registrable offender is able to apply to the Supreme Court after 15 years to suspend a lifetime reporting obligation.¹¹⁰ It is an offence punishable by fine or two years imprisonment to fail to comply with the reporting obligations¹¹¹ or to provide false or misleading information.¹¹² By the end of 2007, six males had been arrested in South Australia for failing to comply with the reporting obligations.¹¹³

The Commissioner of Police is to maintain a register of the registrable offenders in South Australia.¹¹⁴ The register must include any information on the national ANCOR¹¹⁵, which is managed by the CrimTrac Agency. At 7 November 2007, there were 6188 registered offenders nationally.¹¹⁶ Access to the South Australian register is to be in accordance with guidelines developed by the Commissioner of Police and approved by the Minister.¹¹⁷

South Australian organisations

Organisations which place a high priority on child safety should promote their commitment to it as part of their public accountability.

Guardian of Children and Young People submission to the Inquiry

Another response by the South Australian Government was to introduce amendments to the *Children's Protection Act 1993*, entitled 'Child safe environments', in parliament in 2005.¹¹⁸ These came into operation on 31 December 2006.¹¹⁹

⁹⁹ *ibid.*, s. 6.

¹⁰⁰ Defined in Schedule 1, Parts 2 and 3.

¹⁰¹ *The Child Sex Offenders Registration Act 2006*, s. 9.

¹⁰² Defined in Schedule 1, Part 3.

¹⁰³ Defined in Schedule 1, Part 2.

¹⁰⁴ *The Child Sex Offenders Registration Act 2006*, s. 13.

¹⁰⁵ *ibid.*, ss. 11, 15.

¹⁰⁶ *ibid.*, s. 16.

¹⁰⁷ *ibid.*, s. 17.

¹⁰⁸ *ibid.*, ss. 26–7.

¹⁰⁹ *ibid.*, s. 34.

¹¹⁰ *ibid.*, s. 37.

¹¹¹ *ibid.*, s. 44.

¹¹² *ibid.*, s. 45.

¹¹³ SA Police media release, 'Further child sex offenders arrested – Operation Denial', 27 Dec. 2007.

¹¹⁴ *The Child Sex Offenders Registration Act 2006*, s. 60.

¹¹⁵ *ibid.*, s. 61(4).

¹¹⁶ CrimTrac is the CrimTrac Agency established under the *Public Service Act 1999* (Cwlth), <<http://www.crimtrac.gov.au>>

¹¹⁷ *The Child Sex Offenders Registration Act 2006*, s. 61.

¹¹⁸ *Children's Protection (Keeping them safe) Amendment Bill 2005*.

¹¹⁹ *ibid.*, Part II, Division 3, ss. 8B and 8C.

4.1 State response to sexual abuse of children in State care

Section 8B of the Act requires certain organisations to obtain a criminal history, or police report from the Commissioner of Police or CrimTrac for people holding, or to be appointed to, positions that involve regular contact with children or close proximity to children (or supervising/managing people in such positions) or access to records relating to children. They include an employee, volunteer, agent, contractor or subcontractor. The section applies to all government organisations and only to those non-government organisations named in regulations. Current regulations¹²⁰ only extend the operation to non-government schools within the meaning of the *Education Act 1972*. Also, it is not clear whether or not the criminal history report would include information that the person is on ANCOR.

Section 8C requires certain organisations to establish (as soon as practicable after 1 January 2008) appropriate policies and procedures for ensuring (a) that mandated reports of abuse or neglect are made under the Act; and (b) that child safe environments are established and maintained within the organisation. There is a penalty of up to \$10,000 for non-compliance. This has much wider application than the previous section, applying to an organisation that

- a) provides health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children; and
- b) is a government department, agency or instrumentality or a local government or non-government organisation.

The policies and procedures must include any provisions prescribed by regulation and address any matters prescribed by regulation. Current regulations¹²¹ require the policies and procedures to:

- take into account the guidance provided by the chief executive of the department on appropriate standards of conduct for adults in dealing with children; and

- reflect the appropriate standards of care for ensuring the safety of children as defined by the chief executive; and
- reflect the standards developed and issued by the chief executive to be observed in dealing with information obtained about the criminal history of employees and volunteers.

The chief executive has published two documents arising from this legislation:

- *Child safe environments: dealing with information obtained about the criminal history of employees and volunteers who work with children* (relevant to section 8B(3), which requires that organisations deal with the information in accordance with the relevant standards; and the regulations made pursuant to section 8C(2)(b), which requires an organisation's policies and procedures to reflect these standards)
- *Child safe environments: principles of good practice—standards of conduct and care for adults in dealing with children and ensuring the safety of children* (relevant to section 8C(2)(b), which requires an organisation's policies and procedures to take into account and reflect these standards).

It is evident that section 8B does not require all the organisations referred to in section 8C to obtain a criminal history report. The obtaining of such a report is discretionary for non-government organisations other than non-government schools as defined in the *Education Act 1972*. This discretionary approach is reflected in the chief executive's document *Child safe environments: principles of good practice*, which states:¹²²

In some cases, obtaining a criminal history report is neither practicable nor proportionate to the resources of an organisation. In these cases, it is recommended that the organisation requires the applicant/employee/volunteer to sign a statutory declaration stating that the individual has no relevant criminal history. While a statutory

¹²⁰ Children Protection Regulations 2006, r. 6.

¹²¹ *ibid.*, r. 7.

¹²² DFC chief executive, *Child safe environments: principles of good practice*, Nov. 2007, p. 25.

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declaration cannot replace an official criminal history report, it can go some way towards mitigating risk and may assist in screening as a useful measure of an individual's integrity.

The Inquiry believes this is not sufficient to create child safe environments involving non-government organisations that have contact with children. Statutory declarations depend on the truthfulness of the applicant/employee/volunteer. It is trite to say that some people are more honest than others. Unfortunately people who have a predilection for child sexual abuse may have a reason for not being truthful. In his second reading speech¹²³, the Minister stated:

Ensuring children are protected in all settings is crucial and building child safe environments is fundamental to the Government's commitment to protecting children. The best way forward is to promote and facilitate common commitment and approaches across all government and community organisations, including church agencies.

The Inquiry considers that in order to reach such a common commitment and approach, section 8B ought to apply to organisations as defined in section 8C. If the issue is cost, consideration should be given to reducing or waiving the fee for those organisations seeking an official criminal history report in order to comply with section 8B.

3 RECOMMENDATION 3

That the application of section 8B of the *Children's Protection Act 1993* be broadened to include organisations as defined in section 8C.

That consideration is given to reducing or waiving the fee for an organisation applying for a criminal history report in order to comply with section 8B.

That a criminal history report be defined as a report that includes information as to whether a person is on the Australian National Child Offender Register (ANCOR).

The chief executive is required by section 8A(i) of the *Children's Protection Act 1993* to monitor progress towards child safe environments in the government and non-government sectors and to report regularly to the Minister. The legislation does not, however, require the various organisations as defined in section 8C to provide the chief executive with a copy of their policies and procedures or for the chief executive to maintain a register of them. It is considered that such a process is essential in order to adequately monitor the progress of the organisations and ensure compliance with the legislation. A register would also be of benefit if there was a relevant complaint made to the South Australian Ombudsman or the Health and Community Services Complaints Commissioner.

4 RECOMMENDATION 4

That the *Children's Protection Act 1993* be amended to require organisations to lodge a copy of their policies and procedures established pursuant to section 8C(1) with the chief executive and that the chief executive be required to keep a register of those policies and procedures.

Screening by Families SA

... we must be screening and assume that paedophilia is part of what our kids are very, very vulnerable to; screen every person that comes in. Rather than assuming they're the good guys, you have to actually assume our kids will be a magnet because of their victimology, because of their easy vulnerability and because the system is not always a good carer.

Evidence of departmental manager

The department advised the Inquiry that its screening of carers, employees and volunteers is undertaken by the Screening and Licensing Unit Branch, which is now an accredited agency with CrimTrac. This means that the

¹²³ South Australian Parliament, House of Assembly, 24 May 2005.

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department is able to obtain information directly from CrimTrac.

There is a memorandum of understanding between the department and the South Australia Police under which the police must disclose to the department whether an applicant to undertake child-related work has been charged with a serious offence even if not convicted. The department is also able to obtain information about the particular offences from the police. Once that information is obtained, the screening of carers is to be guided by the recent standards set out in *Child safe environments: dealing with information obtained about the criminal history of employees and volunteers who work with children*. This sets out a process for assessing the suitability of employees and volunteers. The department also advised that a policy titled Screening and Licensing Branch – carers assessment policy is in progress.

The Inquiry considers it critical that Families SA is informed whether a proposed carer, employee or volunteer worker is on ANCOR.

5 RECOMMENDATION 5

That Families SA, as part of the screening process of employees, carers and volunteers, obtains information as to whether or not that person is on the Australian National Child Offender Register (ANCOR).

In relation to children and young people with disabilities, Families SA submitted that it uses several processes to screen proposed carers, including a police check, a ‘factual review’ of department records and checks on the electronic client information system (CIS) for any previous contact and allegations.¹²⁴ However, the Centre for Behavioural Sciences’ Associate Professor Hayes told the Inquiry that research has indicated that a large percentage of perpetrators of sexual abuse against children and young people with disabilities are people with incidental contact,

such as taxi and bus drivers who provide transport on a regular basis. Those people who have incidental contact come to know the disabled person and their carers, who in turn develop a trust in those people.

6 RECOMMENDATION 6

That Families SA extends its screening processes to cover known regular service providers to children and young people in care with disabilities, such as regular bus or taxi drivers.

Empowering children and young people in care

I didn't have an opportunity to have my voice heard. You know, I understand that some people do speak up but I didn't speak up. That's something I regret. I regret that I didn't give a voice to it, that I allowed all this silence, that I didn't speak up about how I felt and what it was that I needed and what I wanted.

Evidence from PIC placed in State care in the mid 1960s, aged two months

One of the most important aspects to the prevention of sexual abuse is the empowerment of children and young people in all parts of their lives. This recognition has recently begun to appear in policies throughout Australia and is being implemented to varying degrees.

The NSW Commission for Children and Young People undertook a comprehensive literature review of 1998–2002¹²⁵ on the benefits of the participation of children and young people in their own lives. Two key points were that participation empowers children and young people, and it can help protect them.

The failure to listen to children and young people is a recurring theme in many inquiries into abuse.

In 2001, the NSW Commission published *Participation: sharing the stage*¹²⁶, a practical guide to involve children and young people in decision-making, which set out five

¹²⁴ ‘Assessment tools’ and ‘Carers assessment manual’ provided to the Inquiry in Families SA submission, 25 May 2007, p. 52.

¹²⁵ Available at <<http://www.acyp.nsw.gov.au/participation-resources/taking-participation-seriously>>

¹²⁶ NSW Commission for Children and Young People (CCYP), *Participation: Sharing the stage*, 2001, CCYP, Sydney.

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key elements of effective participation. It stated that 'Participation is more than just giving the younger members of our community a say—it is about listening to their views, taking them seriously and wherever possible giving practical effect to their ideas and suggestions'.

The South Australian Office for Youth is part of the Department of Further Education, Employment, Science and Technology (DFEEST).¹²⁷ It employs up to 28 staff, about one-third of whom are aged 25 years or younger. The office is responsible for:

- a youth participation register (a contact database listing young people who want to become involved in decision-making)
- the Minister's Youth Council (consisting of young people aged 12–25 who directly consult with and advise the Minister for Youth at monthly meetings)
- the youth consultation toolkit (which contains practical advice on planning and running consultations with young people)
- youth participation training (free for all agencies who are interested in how to involve young people in decision-making)
- youth participation grants (provided to agencies to support consultation with young people).

In August 2006, the South Australian Government released the *Premier's memorandum on youth participation*, which aimed to increase the numbers of young people involved in government and community decision-making processes. It set out four principles underpinning meaningful and effective participation—participation as a fundamental right, youth empowerment, valuing diversity and inclusiveness—and encouraged organisations to become signatories.¹²⁸

This important theme of empowering children and young people was recently echoed in the *Council for the Care of Children annual report 2006–07*, which indicated an eight-point plan for the next year—the first point being 'listening and responding to the concerns of children and young people'.¹²⁹ It stated:

The rights of children and young people to express their views and opinions in a range of different ways is central to the United Nations Convention on the Rights of the Child's underpinning principle—that children are citizens. The Council will explore ways to hear the voice of young South Australians, including the potential of existing mechanisms in other organisations. In particular the Council will promote the importance of hearing the voice of children and young people across major service sectors, but with a particular focus on children who are more vulnerable to violation of many of their rights, including for example Aboriginal children, children with disabilities, children in the care and protection system, children at risk of suspension and expulsion from school, and children in conflict with the law. The Council will continue to monitor trends and patterns about the concerns expressed by children and young people in key reports and research studies.

The same comments and initiatives also apply specifically to children in care. In her submission to the Inquiry in 2005, the Guardian for Children and Young People (GCYP) stated that:

arguably the most fundamental and significant change we can make is to listen to and act on what children and young people have to say about their lives in care.

She also said that while there is a need for a structural response to abuse in care that focuses on regulation, monitoring and scrutiny, the important issue of power imbalance needs to be addressed:

Unless the organisational culture supports the power of children and young people, emphasises their rights and has a positive child-focused orientation, any obligatory procedures such as complaints mechanisms are tokenistic and ineffective.

¹²⁷ The predecessors to the Office for Youth were the Youth Bureau (1979–89); DETAFE Youth Affairs Division (1989–93); DETE Office of Employment and Youth (1989–2002); DHS /DFC Office for Youth (2002–06).

¹²⁸ A copy of the memorandum and a list of signatories is available on the Office for Youth website <www.officeforyouth.sa.gov.au>

¹²⁹ Council for the Care of Children annual report 2006–07, p. 21.

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Importantly, in its *Keeping them safe – in our care: draft for consultation* (September 2006), the State Government stated:¹³⁰

We must build a care system ... that acknowledges the entitlements of children and which has a culture that encourages the genuine participation of children in decisions about their care. This is more than giving children a say. It is about listening to their views, taking them seriously and wherever possible giving practical effect to their ideas and suggestions. We know that listening to children is crucial in relation to the prevention and detection of abuse and fundamental to promoting a child safe environment.

In December 2007, the GCYP, Ms Simmons, reinforced this point to the Inquiry, stating that a child-safe environment 'involves a lot more than police background checking of any volunteers or paid staff working with children or having access to records of children' and that such checks are only 'one part' of creating a child-safe environment. She said:

It's very easy for all of us to slip straight into the regulation structure, regulation rules, policies, procedures. The greater protection always will come from the less tangible things about the environment, and that is the perspective that people take, the notice they take of children, the involvement of children in regular activities, not just child activities. Those are the things that actually make the bigger difference for a child's safe environment rather than the regulation. I'm not saying do away with the regulations about safety and screening, but I am saying that the bigger challenge is actually an attitude and environmental—social environment—change in organisations, and we still have a long way to go.

By way of illustration, Ms Simmons said that in two secure care facilities (Magill and Cavan), advisory committees for

young residents had recently been introduced with 'complaints mechanisms which are very clear and very private'. She said those advisory committees were 'very much about, "What do you think about the environment that you're in and what would you like to see changed?"' She said:

It is about perspective. It is making sure that signs and words and so on are actually inclusive of children—all of those things, which we're much more used to doing for adults in different ways; adults with disabilities perhaps or adults from different cultural backgrounds. I'm not so sure that we are terribly good at doing that yet with children for making environments—for them to feel that they are part of the environment and not just a kind of add-on to that.

Ms Simmons has undertaken several initiatives to empower children and young people in care. Section 52C(2)(a) *Children's Protection Act 1993* states that in carrying out her functions, the GCYP must 'encourage children who are affected by issues that the Guardian has under consideration to express their own views and give proper weight to those views'.

Ms Simmons told the Inquiry that she now has five voluntary youth advisors to assist her. They are aged from 15 to 24 and are either in care or have been in care. Their roles have involved leading on public image projects; developing the *Being in care* material and Oog, the safety symbol for children in care; and mentoring young people. They involve other young people in projects and work closely with the CREATE Foundation, which also brings in some of their young people to assist.

For example, the GCYP youth advisors and CREATE developed the *Charter of rights for children and young people in care* in consultation with other children and young people, carers, social workers and people from government and non-government organisations. The design of the resulting printed materials relied significantly

¹³⁰ DFC, *Keeping them safe – in our care: draft for consultation*, p. 10.

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on the input of young people in care or who had been in care. The Minister launched the charter in April 2006 and by the end of 2007 it had been endorsed by 42 organisations.

The young people wanted the charter of rights in legislation. The GCYP and CREATE supported the youth advisors in mentoring a team of young people in care through Youth Parliament in 2006. Ms Simmons told the Inquiry that they drafted a bill for a charter of rights that passed both houses of Youth Parliament. She said that the young people did it themselves: 'It was led by them'. Ms Simmons said the Minister had supported it being passed in parliament and she understood it had gone to parliamentary counsel. The Inquiry supports a legislative endorsement of the charter of rights in the same way that the parliament passed Schedule 1 South Australian carers' charter in the *Carers Recognition Act 2005*.

7 RECOMMENDATION 7

That the *Charter of rights for children and young people in care* be the subject of legislation in South Australia.

The Inquiry also considers the role of the youth advisers to the Guardian of Children and Young People to be so important to the empowerment of children and young people in care that it should be formalised in legislation as the Youth Advisory Committee. The GCYP may consult with the committee as she considers necessary.

8 RECOMMENDATION 8

That the *Children's Protection Act 1993* be amended to provide for a Youth Advisory Committee, established and appointed by the Guardian for Children and Young People. The committee would consist of children and young people currently or formerly under the guardianship or in the custody of the Minister. Membership should include an Aboriginal person/s and a person/s with a disability.

The Inquiry has direct knowledge of the mutual benefits of such participation. In mid 2006 it established a Young People Advisory Group with the objectives set out in Appendix A.

The committee initially had 13 members aged 16–26 and 10 when it wound up. The committee met the Commissioner nine times. It received important support from Sean Lappin, community residential care manager with the Department for Families and Communities, Margaret Bonnar, social worker with the Port Youth Accommodation Program, and Lina Varano, social worker with Street Link. Three invited guests were Career Start recruitment consultant Belinda Cook, who spoke about education and training for youth; a former child in State care who lived on the streets; and ABC-TV's *Stateline* presenter, Ian Henschke, who worked with the committee to televise a meeting where members had the opportunity to express their views. Responses to the television program from teenagers, parents and other adults were all favourable and emphasised the importance of hearing youth through the media.

The committee's experiences, views and ideas appear throughout this report. Members told the Inquiry that no-one asks children in State care what is best for them. Of their participation in the Inquiry, members said 'it feels that something happens', 'it was a change to be believed' and it was good to have their views heard and to meet together 'because we have a mutual understanding'.

The CREATE Foundation and GCYP have already established a close working relationship. CREATE is about the participation of children and young people in the making of policy and decisions that relate to them: 'CREATE believes in the spirit of youth participation and as such is run by, with and for children and young people in care'. It began as a small volunteer organisation but has grown to a 'national, professionally staffed organisation with 27 staff and over 150 trained Young Consultants (young people in/ex care) who actively participate in national and state-based project work'.¹³¹

As part of the *Keeping them safe – in our care: draft for*

¹³¹ CREATE Foundation, <<http://www.create.org.au>>

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consultation (September 2006), the South Australian Government commissioned CREATE SA to report on the views of children and young people in care or previously in care. CREATE's report, *Keeping them safe – in our care: feedback from group consultations with children and young people about the new directions document*, was finalised in November 2006. CREATE held five group consultations with 18 participants aged from 13 to 21 (eight male and 10 female, including three Aboriginals). It also sent out a questionnaire to a random sample of children and young people, which elicited 15 responses from people aged eight to 17, five of whom were Aboriginal (gender was not recorded). Respondents said they wanted to participate in making decisions about their care.

The Inquiry endorses the commissioning of the CREATE report as part of the *Keeping them safe* consultation process. The report contains important information and recommendations from the participants. At its conclusion, CREATE recommended that

... children and young people are given every opportunity to participate in the implementation of the New directions action plan. Young people should be supported to make a contribution in working groups, forums, reference groups and any other mechanisms put in place in a meaningful and purposeful manner ... All children should be given the opportunity to participate to a level that matches their skills and abilities. It becomes the responsibility of adults to find suitable strategies to engage children and young people.

The Inquiry considers it imperative that children and young people in care participate directly in the continuing formulation and implementation of the government's *Rapid response* initiatives.

One of the five key elements of effective participation identified in the NSW Commission for Children and Young People publication *Participation: sharing the stage*¹³², was 'Participation is part of the organisation's culture':

Participation of children and young people should not be viewed as a one-off exercise (or a series of one-off projects). It needs to be integrated as a core activity and considered in every project affecting children undertaken by the organisation.

The Inquiry considers that the Department for Families and Communities should establish a Minister's Youth Council—similar to that run by the Office of Youth—consisting of young people in care or previously in care aged 12–25, who directly consult with and advise the Minister for Families and Communities. It is considered that a youth advisor to the Guardian for Children and Young People should be a member of the council.

RECOMMENDATION 9

That a Minister's Youth Council be established to directly advise the Minister for Families and Communities. Council members must be children or young people aged 12–25 years currently or previously under the guardianship or in the custody of the Minister. The membership must include an Aboriginal child or young person; a child or young person/s with a disability; and a youth adviser to the Guardian for Children and Young People.

Another of the five key elements of effective participation identified in the NSW publication *Participation: sharing the stage*¹³³, was 'Adults adapt to kids' way of working'. Under this heading it was stated that it is necessary to 'remove financial barriers'.

Make sure that the ability of children and young people to participate is not limited by financial barriers. Reimburse participants for out of pocket expenses and look at the possibility of arranging sponsorship or subsidies for conferences and forums arranged by other organisations. Some young people may need cash up front, just to make it to the group or meeting.

¹³² NSW CCYP, *Participation: Sharing the stage*, <<http://www.kids.nsw.gov.au>>

¹³³ *ibid.*

10 RECOMMENDATION 10

That resources be allocated to ensure that the participation of children and young people on the Youth Advisory Committee appointed by the Guardian of Children and Young People (see recommendation 8) and on the Minister's Youth Council (see recommendation 9) is not limited by financial barriers.

Empowering children and young people in care with disabilities

... if they know that something is wrong, how do they manage to be able to get that information to somebody who could protect them?

Evidence from representative of Independent Advocacy SA Inc

Evidence to the Inquiry demonstrates that the empowerment of children and young people in care with disabilities requires special consideration. In particular, the provision of specialist advocacy was considered to be important to such empowerment and to the protection of children with disabilities from abuse. Also, it is noted that submissions to the *Keeping them safe – in our care: consultation responses* highlights the need to identify ways in which children and young people with disabilities 'are able to tell us what they think and wish'.¹³⁴

The Inquiry received evidence from members of three advocacy agencies—Independent Advocacy SA Inc, Citizen Advocacy South Australia and the Disability Advocacy Complaints Service of SA—operating in the disability sector in South Australia. They receive funding from the Commonwealth Government under the National Disability Advocacy Program. It is evident that advocacy takes different forms and the advocate's role varies, depending on the need of the child.

Independent Advocacy provides advocacy services for people with intellectual disabilities based on individual, not systems, advocacy. Its priority is the development of

relationships, protection and healing. Key roles for the agency include advocacy for children with disabilities in foster care, parents with intellectual disabilities and people with intellectual disabilities in congregate care; advocacy and support for people with intellectual disabilities who are sexually abused; and support with transition issues for people with intellectual disabilities in late adolescence and reaching adulthood.

Citizen Advocacy works predominantly with people with intellectual disabilities who have high dependency, including people who are homeless, in boarding houses or in prison, and children with special needs. Advocates are unpaid and they are matched to the person with a disability, called a protege. The relationship is generally a sustained, long-term engagement for the provision of advocacy and support on a range of issues.

Disability Advocacy Complaints Service of SA initially provided advocacy primarily to people with physical disabilities. Its work has expanded and includes advocacy on behalf of people with mental illness, advocacy on disability issues, and representation in cases in the Guardianship Board and the Human Rights and Equal Opportunity Commission. Its focus is on advocacy on short-term specific issues, rather than ongoing advocacy for clients.

Representatives from the advocacy agencies gave evidence to the Inquiry about abuse of children with disabilities, including sexual abuse, physical abuse, bullying, verbal abuse and harassment, emotional abuse, detention and isolation, and theft of money and property. They agreed there is a need for specialist advocates for children with disabilities:

Specialisation is very, very important because it takes time to build up your knowledge, your networks, which will mean that the support that you can provide advocates is relevant and it's knowledgeable.

¹³⁴ DFC, *Keeping them safe – in our care: consultation responses*, p. 13.

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There is a need for experienced advocates who are trained in techniques for communicating with children with disabilities. For example, children with intellectual disabilities may encounter exceptional difficulties in having their need for advocacy acknowledged and implemented. The child might be non-verbal or might have some verbal communication, but be difficult to understand.

Challenges of this kind reinforce the need for advocacy to address a fundamental problem that 'people with intellectual disabilities are not believed because they have got an intellectual disability'.

The difference between the role of the advocate for a child or young person in care with a disability and the role of departmental volunteers or caseworkers was emphasised in evidence to the Inquiry. Departmental program managers generally use volunteers to provide transport for children and assist with supervised access—93 per cent of volunteers' time is dedicated to these tasks and has often been ordered by the Youth Court.¹³⁵ Volunteers also provide assistance to children in alternative care with the development of skills such as literacy and numeracy, assistance with access to recreational activities and support to children in the development of relationships with family and friends. Witnesses made the point that the departmental volunteers were not advocates.

Also, witnesses expressed concern about a perception in the department that caseworkers were advocates for the child. One advocate gave evidence to the Inquiry about trying for two years to convince the department that a caseworker could not act both as advocate for the foster child and caseworker for the foster family:

The caseworker constantly kept telling me, 'it's nothing to do with you, we're the child's advocate'. I said, 'You can't be the child's advocate because it would be a conflict of interest if there was an issue

between you and the foster parent. Exactly that.' 'No, no, no, we're the advocates, we're the advocates.' I said, 'You can't possibly be because you can't stand aside; you're being paid by the organisation to present this case in this way, and you can't do that. It's impossible.'

Representatives from the three advocacy agencies agreed that they are not accepted as advocates by the department, because they are not regarded as 'legitimate stakeholders'. One of the advocacy agency representatives said this view was entrenched in the department:

... there is this kind of belief that if they're involved then they have got the person's best interest at heart ... a child in alternative care doesn't need an advocate because Families SA are their advocates.

The representatives from the advocacy agencies said they have appealed to the department, without success, to obtain standing and recognition as advocates in particular cases for children in State care. They said the office of the Guardian for Children and Young People is weakened by its actual and perceived lack of independence from the Minister and the department. This is one of the reasons for this Inquiry's recommendations concerning the GCYP's independence. (See recommendations 27–30.)

The Inquiry believes a special role to address the empowerment of children in care with disabilities should be created in the GCYP office. The *Children's Protection Act 1993* currently provides that the GCYP 'must pay particular attention to the needs of children under the guardianship or in the custody of the Minister who have a physical, psychological or intellectual disability'.¹³⁶ The role would be focused on ensuring that appropriate individual and systemic advocacy is provided for children with disabilities in care, which would include drawing on the expertise of existing advocacy agencies and giving that expertise the appropriate standing.

¹³⁵ Families SA presentation to this Inquiry, *Volunteering in Families SA*, 7 Dec. 2006.

¹³⁶ *Children's Protection Act 1993*, s. 52C(2)(b).

11 RECOMMENDATION 11

That there be a special position created in the office of the Guardian for Children and Young People to assist the GCYP in addressing section 52C(2)(b) of the *Children's Protection Act 1993* and ensuring that both individual and systemic advocacy is provided for children with disabilities in care.

A community responsibility

There is a need for wide community awareness of child sexual abuse and acceptance that it is a whole of community responsibility. Such a shift in understanding and sense of responsibility must necessarily be underpinned by comprehensive and extensive community education.

Submission from Relationships Australia (SA)

Children and young people can only be empowered if parents/carers (including the Minister as legal guardian or custodian of children and young people in care) and the community enable it to happen. Parents/carers and the community must be educated about the nature of child sexual abuse so they are aware of, and understand, what children and young people need to be protected from.

Research shows that misconceptions about child sexual abuse persist, including the incidence, what constitutes abuse and the likely perpetrators. Many in the community are unable to identify perpetrators' tactics, lack awareness of the cognitive and emotional impact of abuse on children, are unable to recognise the signs of abuse and are unsure of what action to take. Almost one-third of 720 adult respondents in a 2005 survey said they were not likely to believe a child's disclosure of abuse, based on a belief that children made up stories. Almost one half of the respondents in the same survey reported significant discomfort when viewing news reports related to abuse.¹³⁷ The survey found that the general public 'actively forgets

and emotionally distances' itself from the issue.¹³⁸ Child abuse was perceived as less concerning than the rising cost of petrol and problems associated with public transport and roads.

The Inquiry received eight submissions on the issue of publicity concerning child sexual abuse¹³⁹ in response to its Issues paper. All of the submissions supported an extensive media publicity campaign on child sexual abuse as a community education initiative. The South Australia Police and Families SA also emphasised the preventive role that such a campaign could play. The Premier's Council for Women, the Australian Childhood Foundation and Relationships Australia (SA) highlighted the need to deal with enduring misconceptions about child sexual abuse. For example, Relationships Australia emphasised that ideas about the sanctity of the family unit and reluctance to acknowledge that caregivers and other persons known to a child could be perpetrators contributes to enduring misconceptions.¹⁴⁰

The respondents listed several topics essential to any education or publicity initiative. The Premier's Council for Women advocated the inclusion of information about the myths and facts that surround child sexual abuse; and information on how to recognise perpetrator tactics such as the shifting of responsibility on to the victim or non-abusing adults in the child's life. The council also submitted that education should target perpetrators with the message that abuse would be detected and punished as a crime.¹⁴¹ Relationships Australia submitted that the community should be educated that the child is never to blame and about the importance of acknowledging disclosures of abuse.¹⁴² Families SA submitted that information should aim to assist the community to learn appropriate ways of responding to sexual abuse; the Guardian of Children and Young People submitted that publicity was needed on avenues for raising complaints, the range of available responses and protection for notifiers.¹⁴³

¹³⁷ Australian Childhood Foundation, submission, 4 Apr. 2006; J Tucci, J Mitchell and C Goddard, *Out of sight, out of mind: community attitudes about child abuse and child protection in Australia*, Australian Childhood Foundation/National Research Centre for the Prevention of Child Abuse, Apr. 2006, pp. 17–22.

¹³⁸ Tucci, Mitchell, Goddard, *Out of sight, out of mind*, p. 2.

¹³⁹ CISC Inquiry, *Issues upon which the Commission seeks submissions*, 2.4.

¹⁴⁰ Relationships Australia (SA) submission, p. 10.

¹⁴¹ Premier's Council for Women submission, pp. 3–4.

¹⁴² Relationships Australia (SA) submission, p. 14.

¹⁴³ GCYP submission, p. 22.

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Respondents emphasised that any publicity or education initiative should target the entire community. The Association of Independent Schools of SA submitted that this would highlight the fact that protecting children is the responsibility of the entire community. The Premier's Council for Women advocated that education highlight that all members of the community should know that sexual abuse is a crime.¹⁴⁴ Other evidence to the Inquiry referred to the need to inform people about recognising signs that someone might be offending or might be going to offend; and informing people that there are places, such as the Sexual Offenders Treatment and Assessment Program (SOTAP)¹⁴⁵, where treatment can be provided.¹⁴⁶ Relationships Australia echoed this point, submitting that 'while we must ensure that children are informed, the onus of responsibility cannot be placed on the child to ensure their own safety'.¹⁴⁷ The Careworkers Coalition argued that a whole of community focus ensures that no one single group, such as caregivers, is singled out.¹⁴⁸

Any effort to educate the community about child sexual abuse has implications. Families SA's response to the Inquiry's Issues paper highlighted the difficulty in defining 'suspicious circumstances' to assist the general community in reporting concerns, without giving the more complex task of risk assessment to non-experts.¹⁴⁹ Families SA submitted that efforts to increase community awareness may result in increased inquiries, reports and notifications. It is important that adequate resources exist to meet any increased demand for services arising out of increased notifications.¹⁵⁰

The need for a coordinated approach to a publicity campaign was emphasised by various respondents. For example, the Premier's Council for Women submitted that broad community education requires a systematic social marketing approach to ensure the message and campaign resources achieve the best results. Some respondents referred positively to the 'Listen and believe' gender

violence campaign coordinated by Women's Health Statewide in 2002.

As representatives from ASCA (Advocates for Survivors of Child Abuse)¹⁵¹ told the Inquiry:

You want to achieve the fact that there is a notoriety of abuse in our culture that needs to be cut out for a start by education, awareness.

12 RECOMMENDATION 12

That an extensive media campaign be implemented to educate the community about child sexual abuse—its prevalence, existing misconceptions, perpetrators' tactics, services for victims, and treatment for offenders—and highlight that child protection is a community responsibility.

Prevention programs

Stopping the offender

... the criminal justice system is one way of containing sexual offenders, but it doesn't address the problem, and our whole sort of recidivist experience is that people will come out of prison or out of containment and will continue to abuse.

Evidence from Dr Jenny Pearce, Professor of Young People and Public Policy, University of Bedfordshire, UK

Often the view is expressed that the best form of prevention is to lock up the offenders and 'throw away the key'. Indeed, a prisoner told the Inquiry that when he was locked up for sexual offences 'I was actually at peace. As weird as that sounds, being in that place I was at peace because there was nothing else that could happen ... I couldn't reoffend.' While indefinite sentences are occasionally imposed on convicted sexual offenders¹⁵², the key is not thrown away; they are released from custody to

¹⁴⁴ Premier's Council for Women submission, p. 6.

¹⁴⁵ See discussion in this chapter, 'Prevention programs'.

¹⁴⁶ Evidence of SOTAP director, Dr Andrea Louis.

¹⁴⁷ Relationships Australia (SA) submission, p. 16.

¹⁴⁸ Careworkers Coalition submission, p. 5.

¹⁴⁹ Families SA submission, p. 14.

¹⁵⁰ *ibid.*, p. 13.

¹⁵¹ Advocates for Survivors of Child Abuse, a national not-for-profit organisation of survivors supporting other survivors.

¹⁵² *Criminal Law (Sentencing Act) 1988*, s. 23.

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live in the community. Convicted offenders of child sexual abuse as well as professionals working with offenders and possible perpetrators all told the Inquiry about the importance of prevention programs.

Prisoners gave evidence to the Inquiry about the effect on them of such treatment programs. One prisoner referred to his experience of an overseas program:

How to explain? It was a mixture of confronting your crimes, admitting it, owning it; talking about it in groups; examining the reasons and feelings behind it; aversion therapy ... I was totally disgusted in what I'd done ... It gave me the ... ammunition to confront my feelings.

Another prisoner referred to the benefits of an interstate program:

... basically in the 12 months I did that program I grew up 25 years that I needed to grow up ... to fully understand myself and to get to know myself.

Other prisoners referred to their desire to receive help:

It sort of amazes me, even these days, there's more people that help you give up smoking, which you only do for yourself anyway, than there is to help with this [sexual offending], the big problems of life.

A significant number of prisoners who gave evidence to the Inquiry said that they were sexually abused as children. One prisoner who sexually abused two children said 'I became a perpetrator, not a victim' and said that before receiving any treatment what he did was

confuse lust and love ... it must be something you do to express your love. I know that's a real screw-up now, but at the time I think that's the way I thought. I don't think that way any longer.

Another prisoner said he was not given any therapeutic assistance when he was first arrested as a teenager for a child sexual offence. He said that his father sexually abused him and

I had a feeling that a lot of problems stemmed from the abuse ... I'll accept that. The abuse that I suffered sexualised me to an extreme degree at a

very young age. That may have led me toward seeking younger victims, I guess, in a lot of ways or whether it led me towards some more predatory behaviour, I don't know.

This prisoner wondered whether his 'offending against boys was my way of trying to heal myself'.

Another prisoner who was raped as a child said that he committed sexual offences against young people in his 30s because 'I have never got over what happened to me when I was 4½ ... I've been angry all my life about it'. He said:

If it didn't happen, I would have had a different outlook on life. I would have stuck to a job, been successful and that, but I couldn't trust anyone.

He told the Inquiry that 'I would like to see someone else who was sexually abused looked after, so that they don't turn out like I have'.

Another prisoner said that his father sexually abused him at a very young age. He said as a young boy he then started sexually abusing a young girl: 'I thought it was normal because dad was doing it to me'. He said that later he sexually abused another young girl. He would have liked to have been able to tell someone what his father did to him 'because it would have stopped and I wouldn't have probably gone on to offending myself'.

Professionals working in the area of treating offenders of child sexual abuse confirmed that there are a significant number of perpetrators who were sexually abused as children.

The manager of the adolescent sexual assault prevention program Mary Street and director of Nada Counselling, Consulting & Training, Alan Jenkins, told the Inquiry that its data showed that about 40 per cent of people who had perpetrated sexual abuse had been sexually abused. He said:

Generally the data around the world where people have collected this – and it depends on where you sample your people from, but if it's in a community setting, it's usually 30 to 40 per cent, somewhere in that mark. If it's in a criminal justice setting, like a

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prison or a custodial-type setting, it's generally much higher, and it ranges from 50 to 80, I think, some of the different studies that I've seen. But ours is a community setting. It's about the 40 per cent mark.

The manager of the Department for Correctional Services Rehabilitation Programs Branch, Dr Michael Burvill, told the Inquiry that

... particularly for men who have been abused when they're younger—they sort of get a bit trapped in a time warp in a sense of where their psychosexual development starts and there's a tendency to seek that experience again, even if it was traumatic.

Chapter 16 of the Layton report discussed the need to protect children through 'sex offender treatment' and recommended developing a specialised prison-based treatment program; extending the Mary Street program to ensure that all young people who offend sexually against others be appropriately treated and counselled; and extending SOTAP to include offenders who are deemed suitable by the court for treatment in the community.¹⁵³

In 2003–04, the government allocated \$6 million over four years to establish treatment programs for adult sexual offenders.¹⁵⁴

Offenders in custody

I would still like to know why it happened or if there's other people like me. My own concern—and this is just for myself—but I wonder why when we come to prison we don't get a course until just before we leave. ... Just from my perspective, I come into prison ... fully ready to admit as I did in court that I've done the wrong thing, but I expected to get some kind of help. I thought, well, at last—it was a bit of a relief actually when I got arrested. I thought, well, at last now I'll get some answers, you

know, and get some help, but all they've done is locked me in with a heap of really bad guys and I haven't learnt anything productive since I've been here.

Evidence from prisoner

In regard to the Layton recommendation for a specialised prison-based treatment program, the Inquiry heard evidence from the RPB's Dr Burvill, who has a masters degree in clinical and forensic psychology. The branch was established under the government's 2003–04 funding for adult sex offender treatment programs and has now secured permanent funding.¹⁵⁵ It is responsible for providing treatment for sex offenders and violent offenders and specific interventions for Aboriginal offenders. The branch's Sexual Behaviour Clinic (SBC) provides the treatment to sex offenders in custody and the community. The treatment is an intensive group-based intervention developed in Canada. Groups typically run for between six to nine months with three to four sessions per week. The key issues addressed in the program are self management; cognitive distortions; emotion management; empathy and victim awareness; deviant sexual fantasy and arousal; intimacy, relationships and social functioning; and maintenance/relapse prevention. Most of the staff are psychologists and social workers, including four senior Aboriginal programs officers who ensure that Aboriginal offender participants are provided with intervention in a culturally appropriate manner.

The custody-based program is run at Yatala (B-Top) and Port Augusta prisons, where about half the group is Aboriginal. Dr Burvill told the Inquiry that the service is not provided at Mount Gambier prison because of a lack of resources and offenders there must travel to Yatala for the treatment. He said that he hoped the program would be conducted at the new prison at Mobilong and offenders 'who need access will be rotated there when the time comes for their turn'.

¹⁵³ Layton, recommendation 129.

¹⁵⁴ DFC, *Keeping them safe – past achievements and future initiatives 2004–05*, p. 8.

¹⁵⁵ Department for Correctional Services annual report 2006–07, p. 24.

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The community-based program, which is run at Adelaide Community Corrections, is aimed at men who have sexually offended against adults, to avoid an overlap with SOTAP. For those who have completed the SBC program, an ongoing group-based and/or individual intervention program is provided at Mount Gambier and Port Lincoln prisons and in the community at Adelaide Community Corrections.

Dr Burvill told the Inquiry that one of the reasons for using the Canadian model was its data on recidivism rates. He said: 'The Canadians have got data covering about 40,000 offenders and have been able to genuinely establish that the approach they're using is reducing reoffending, so it's logical to not reinvent the wheel'.

SBC is able to treat 60 offenders a year and targets men who are assessed as either medium or high risk of reoffending. However, it is limited to men in the last two years of their sentence, which means that the offender who is sentenced to a long term has to 'wait a long time at the moment till he gets any treatment'. Dr Burvill hoped that within five years the program could be provided to offenders at the start of their sentence 'so you can target people as they come in and then before they leave again'.

Dr Burvill told the Inquiry that one of the challenges is that the treatment is not compulsory. He said 'it's only when men are in the community that you can actually require them to receive treatment. You can't force a person to receive treatment while they're in prison.' He referred to a few men in 2007 who had served their full term without treatment but were released into the community despite being considered 'very, very high-risk offenders'. He said that the recent amendments to section 23 of the *Criminal Law (Sentencing) Act 1988*¹⁵⁶ 'provide a bit more of an incentive' for offenders to engage in treatment as they will not be released until they have done so. The application of section 23 to an offender, however, is still an exception rather than the rule. Dr Burvill said that treatment could occur in the community if there were longer parole periods, however, he acknowledged that 'we have to raise the

confidence in people's perception of supervision in the community'. He also referred to a system in New Zealand that provides an opportunity to place people on extended supervision in the community after the expiration of their head sentence.

Dr Burvill said two RPB staff are evaluation officers, who follow up with every offender. He said there would always be offenders who didn't think it was worth 'a hill of beans', but that most offenders have found it of great benefit.

The proof will be in the pudding in terms of reoffending rates. I mean, we consider ourselves a child and adult protection agency. That's our main number that you're looking at—is reducing the reoffending rates for these chaps. If they also go on to have more fulfilling lives and are happier, well, that's a bonus. But the main aim is to reduce offending.

Finally, he told the Inquiry that 'the RPB is here to stay, so we'll be expanding and providing treatment as best we can within our budget'.

The Inquiry supports the ongoing funding of RPB and its expansion to provide treatment to more offenders in custody and at an earlier stage of their sentence.

13 RECOMMENDATION 13

That the Sexual Behaviour Clinic of the Rehabilitation Programs Branch, Department for Correctional Services, be expanded so that all child sex offenders may attend the program while in custody and at any stage of their sentence.

Young people in the community

We were working with him about trying to understand that what he did was something that needed to be addressed in some way, but no-one was having contact with him. No-one who was

¹⁵⁶ *Criminal Law (Sentencing) Act 1988*, s. 23 – 'Offenders incapable of controlling, or unwilling to control, sexual instincts'; the Supreme Court may order that a person be detained in custody until further order; that period of detention may be after completion of the sentence.

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caring for him was actually encouraging him to even understand or appreciate or even work out—why would he even bother to understand, because he was just thrown into chaos.

Evidence from Alan Jenkins, manager, Mary Street, about a young offender.

In relation to the recommendation in the Layton report for the expansion of the Mary Street program, the Inquiry heard evidence from manager Alan Jenkins. Mary Street aims to help young people aged 12 to 18 stop sexual abuse and sexual harassment of others by encouraging the young person to take responsibility for their actions, to respect others, build appropriate relationships and make restitution to help heal harm caused by their actions. Young people may be referred to Mary Street by parents, caregivers or themselves; police, the Youth Court or Family Conference Team; Families SA; health and welfare workers; or schools, churches and other community groups. It provides counselling without charge; assessments for the Youth Court or organisations such as Families SA; training and consultation for health/welfare/justice/education workers; and consultation for policy development. Nada, which is co-located with Mary Street, provides therapeutic services, training and consultative services to other workers and is run in partnership by five professionals.

Mary Street promotes restitution with the ultimate aim of stopping abusive behaviour. Mr Jenkins told the Inquiry that the program is about helping the young person understand

... the impact this has had upon [the victim] and to see also what it means for you and ... what it's doing to the kind of person that you aspire to be.

Many young offenders, while understanding that they have committed an offence, exhibit limited understanding of the effects of their abuse on others. Mr Jenkins said, 'Restitution requires a capacity to be able to understand something about what you've done and the effect on others'.

The program has an important role to play as part of the family conferences in the Youth Court.¹⁵⁷

Mr Jenkins told the Inquiry that following the Layton report, Mary Street received funding for another two positions: one focuses on Aboriginal young people and the other on residential care. 'We filled those last year, so we're sort of really developing, and it's effectively doubled our program.'

Adults in the community

I'd like to see a recognition ... that one of the best ways to stop future children being offended against sexually is to treat perpetrators and to treat them in the community

Evidence from Dr Andrea Louis, director, Sexual Offenders Treatment and Assessment Programme (SOTAP)

In relation to the Layton recommendation for the extension of SOTAP, the Inquiry heard evidence from the program's director Dr Andrea Louis. The service was established in 1990 and is now part of the statewide specialist Mental Health Services. It provides a treatment service for adult perpetrators (aged 18 onwards) of child sexual abuse and has about 150 clients. It receives mandated referrals of offenders made by courts, the Parole Board and under the direction of their corrections officer, as well as voluntary participants. In particular, Dr Louis referred to an existing group of voluntary participants who have not offended but 'recognise an inclination to sexually offend against a child'. She said that is one of the reasons why she has proposed a change of name to 'Owenia House', which does not say what the service is:

... That's all part of the process of trying to get as many people as you can into the service and making it as easily accessible as possible. To have that term 'offender' in the title is very stigmatising and ... you're sort of hammering somebody's self-esteem down their boots before you even get there,

¹⁵⁷ See further discussion in this chapter, 'Alternatives to proceeding to trial'.

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so that's work you've got to do to bring it up; to sort of get them to the level that they start to take responsibility and start to address their relapse prevention plan. You don't really want to start behind the eight ball if you don't have to, so the name change I think is quite important.

Dr Louis said it is also important for the treatment to be where it is—'under a health umbrella and treating them in the community'—because it helps to 'destigmatise and normalise the process'.

Most of SOTAP's program is delivered via group therapy, which is considered best practice, and clients also see a primary therapist as they go through the program. The program involves clients' attendance at least one to two hours per week, usually for 12–18 months.

Dr Louis said SOTAP recognised 'that one of the best ways to stop future children being offended against sexually is to treat perpetrators and to treat them in the community, where they are eventually going to become part of the process'. As part of that she said it is important that there be easy access for people who haven't perpetrated child sexual abuse to get treatment and 'I think we can do that'.

She said that SOTAP has begun receiving referrals of clients as a result of the court imposing it as a bail condition. She indicated that it is important for the judicial system to know more about SOTAP and can mandate referrals so that at least the offenders or alleged offenders find out about its existence. She indicated that SOTAP is not partisan and does not provide reports for the defence or prosecution, only court ordered reports.

Arising from Dr Louis' evidence, it is part of recommendation 12 that the community awareness program regarding child sexual abuse include the provision of information about treatment for offenders or possible offenders.

Promoting disclosure by children in State care of sexual abuse

You couldn't complain. Who do you complain to?

Evidence from PIC placed in State care in the 1970s, aged 13

The evidence to the Inquiry is that many PICs did not disclose the fact that they were being sexually abused when they were children in State care. They gave several common reasons for not telling.

Some PICs believed they would not be perceived as credible because of their age. 'They'd never believe you, you're only a kid.' Some were first abused at a young age and told the Inquiry they were unaware that what had occurred was in fact abuse. One man who alleged abuse at several government institutions remembered, 'I didn't realise until probably 15 or 16 or something that I was doing something that I was not supposed to be doing and then, you know ... the officers were getting away with it.'

Alleged perpetrators often depicted abuse as normal. One man told the Inquiry that when he complained to his holiday foster carers about alleged abuse, he remembers being told, 'this is the done thing. This is what happens between all adults and children.' Some witnesses recalled feeling confused as to whether the activity was abusive or consensual. One man who alleged abuse by a visitor during his placement at Brookway Park recalled:

I've never had [the alleged perpetrator] charged or brought it up because I'm still confused as to was he a paedophile ... I thought we were having a relationship. I thought he was my boyfriend.

Another man told the Inquiry that he did not report the abuse he said he experienced at Colebrook Home because the same thing 'had happened at home previously anyway'.

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Some PICs referred to the power imbalance. Many of the alleged perpetrators were persons in authority or an associate of an authority figure. A PIC who alleged an officer at the McNally Training Centre abused him on an outing told the Inquiry:

When we got near McNallys [the officer] said to me, 'You know the fucking rules, one word and you're dead', and that was it.

One witness who alleged abuse in an orphanage said:

I didn't tell anyone. I was too scared because she was a friend of the mother superior and I felt they're not going to believe me anyway, so no, I didn't tell anyone. I was too scared to tell anyone.

Another woman, who told the Inquiry she was sexually abused by a foster carer when she was a teenager, described how the carer formed a close bond with her, to the exclusion of other foster family members. She said she became 'infatuated' with the carer and believed '[the alleged perpetrator] was the boss, right? What he said went.'

Some PICs referred to their dependence on the perpetrator. A woman who alleged her father abused her from the age of three—not stopping when she was placed in State care—told the Inquiry that she

was terrified of him but, at the same time, [I] didn't have anyone else to rely upon, so it's the hand that feeds you and puts a roof over your head, so you have these conflicting thoughts even as a youngster.

Some PICs said they remained quiet because the perpetrator told them not to say anything. It was reported to the Inquiry many times that the perpetrator said 'it's our secret'. Another tactic was to say that disclosure would hurt another. A woman who alleged rape by a worker when she was a child at a residential unit told the Inquiry that after the alleged rape,

I remember him opening the door and saying—he said something to me, 'I don't want you to actually

do anything about this', you know. 'My girlfriend is pregnant.'

Another tactic was to use bribery and prey on vulnerabilities. Some witnesses informed the Inquiry that they were provided with money, clothing, food and gifts, either in exchange for sexual activity or to continue the relationship. A man who alleged a two-year period of abuse by a senior volunteer with the department said that the alleged perpetrator

... helped me out over the years when I've needed something; a house or food or clothes or whatever. ... if I needed \$20 or \$40 I'd just go to his house, you know, and there was no question or doubt about it. He gave it to me. It wasn't sex at that time. It was sex when he wanted it.

The use of threats was another reported tactic used to prevent disclosure. One type of threat was that the disclosure would not have any result. For example, some witnesses said that they were told they would not be believed if they disclosed. A female in State care said that the perpetrator used her fear of her stepfather to threaten her, 'If you scream out, [the stepfather's] not going to believe you. He's going to believe me.' One man said about the worker at Glandore Children's Home who he alleged sexually abused him, 'He told me that if I told anybody that he would beat me up'. The PIC alleged that after he disclosed the abuse, the worker broke his nose. Several witnesses told the Inquiry that alleged perpetrators threatened to kill them. One man recalled of his alleged rape in Glandore Boys Home, 'I'm five-and-a-half years old. I'm terrified—you know, scared shitless—and there's this bloke threatening to bloody kill me'.

A more subtle form of intimidation was the experience of living in State care itself. For many, institutional care was synonymous with violence. One man who lived at Glandore Boys Home remembered, 'apart from the sexual harassment was the physical violence [which] was unbelievable'. Not only did efforts to resist sexual abuse from staff or other residents in institutions often result in physical violence, but hours of forced rigorous exercise as

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a form of psychological intimidation and punishment were routine at institutions such as Glandore and McNally Training Centre. Many witnesses who gave evidence about their experiences at the St Vincent de Paul Orphanage, Goodwood, used the word ‘terrified’ to describe their fear of the nuns. Some witnesses described a culture in institutions that punished disclosures. One man who alleged sexual abuse at Glandore Boys Home remembered, ‘They had a thing in there if you were a telltale, you suffered for it. You’d really get bashed up and everything else to go with it.’

Frequent transfers among placements gave children few opportunities to build trusting relationships. One female who alleged abuse while on visits away from Vaughan House said that on her return she never disclosed because ‘I didn’t trust anybody in there enough to tell them’. A man who alleged abuse in several institutions remembered, ‘You didn’t know who you could trust one day to the next’. Most witnesses described feeling isolated, not having a person in whom they could confide. Many reported having brief contact with their allocated social workers; some could not recall any visits from their departmental worker. One witness said, ‘I had lots of them. They’d come and go ... You’d never be friends with one for long because they’d go; you know there’d be somebody else’.

The Inquiry’s Young People Advisory Group spoke about isolation and the importance of siblings being able to keep in contact once placed in care. They believed the current system splits families. One member said that she was stopped from seeing her brother and they are now estranged. She said, ‘It causes trouble’. She said she saw her sister against the department’s wishes and had maintained a relationship with her. It was said, ‘Sometimes foster parents do not like siblings getting together, or parents try and stop it, and the department discourages it’. The group suggested ways of ensuring that siblings kept in contact. These included camps or ‘get togethers’ for two nights or creating a place where children and young people could sit around and talk with each other with supportive

staff. They said that children and young people in care could get together to discuss their experiences and seek help, guidance and peer support.

The Inquiry received seven submissions in response to its Issues paper about how to ‘encourage’ disclosure of sexual abuse¹⁵⁸; five from organisations and two from individuals.

Professor Freda Briggs, Director, Centre for Child Protection, University of South Australia, submitted that children can be assisted to report abuse if they are given ‘an explicit, open, honest child protection program that tells them what is reportable behaviour’.

In its submission, the Careworkers Coalition was concerned about the way in which this issue was expressed submitting that ‘encouraged’ can be interpreted as being at odds with sound professional practice where disclosures should be made freely without a social worker soliciting for allegations.¹⁵⁹ This is an important point that emphasises the need for social workers and care workers to be properly trained in this area.

Other submissions referred to the need to empower children in their lives generally and the need for the child or young person to have a suitable person they could trust. The department said ‘children disclose abuse in supportive environments’.¹⁶⁰ The GCYP said:

Disclosure is more likely to occur in the context of a trusting relationship with an adult or a peer, emphasising the importance of consistency and proximity in the child’s relationship with carers and caseworkers ...

The importance of the caseworker

I would have liked to have had someone that I could’ve talked to; someone that I could’ve related to there, you know. I think it might have helped if I saw my welfare worker a bit more often than never. Yes, someone that I could have formed a bond with

¹⁵⁸ CISC Inquiry, Issues paper, issue 4.

¹⁵⁹ Careworkers Coalition submission, pp. 7–8.

¹⁶⁰ Families SA, written response to this Inquiry, May 2007, p. 19.

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because the other boys there were a lot older than myself, I remember, and there wasn't that type of bonding happening.

Evidence from PIC placed in State care in the mid 1970s, when aged three

An important adult in the life of children or young people in care is their social worker. Departmental social workers have the case management responsibilities for children and young people under guardianship.¹⁶¹ Some of the PICs who gave evidence to the Inquiry spoke about receiving minimal visits from social workers and constant changes of staff. The Inquiry's Young People Advisory Group also identified a lack of contact from social workers, stating there was a need for more one-to-one support.

In May 2004 in *Keeping them safe – in our care*, the government acknowledged that 'many guardianship children do not have an allocated social worker or a case plan'.

In *Keeping them safe – in our care: draft for consultation* (September 2006), the government set out Action 5¹⁶² as 'Connected care'. It referred to the 'development of new and enhanced models of connected care' that build a care team around the needs of the child. It stated that the government will 'develop and implement care team protocols' including:

- Identifying care team members who might include, in addition to the case manager, the child's teacher, birth family member/relative, a clinician, a youth worker, a cultural or community link
- Defining roles and responsibilities of members of the care team including the care team leader who is responsible for ensuring the team is, like a parent, attending to all of the needs of the child so that he or she flourishes
- Communication and decision making processes that recognise and value the participation of each member of the team, including developing appropriate ways for children to participate.

Keeping them safe – in our care: consultation responses (May 2007) stated that there was strong support for initiating a 'care team' approach but responses indicated a need to properly define the concept, the membership of the team and individual roles and responsibilities. There was also some concern expressed about harnessing the right people and establishing a coordinated team.

As part of that consultation process, the CREATE Foundation was commissioned to prepare a report on the draft policies. CREATE's report, *Keeping them safe – in our care: feedback from group consultations with children and young people about the new directions document*, was finalised in November 2006. The responses are important because they come directly from current and former children and young people in care. The responses relevant to social workers were:

- All of the participants said that having a good social worker was one of the most important things for young people in care
- Participants wanted to have a good relationship with their social worker
- The following were recognised by participants as the things that made a good social worker –
 - Someone who listens to you
 - Someone who visits or rings you regularly
 - Someone who spends time with you
 - Someone who takes the time to get to know you, what you like and what you do
 - Someone who calls you back when you call them
- All of the participants recognised the social worker as someone who gives them money
- The following were recognised by participants as the problems they had experienced with social workers –
 - Changed so often that they often did not know who their worker was

¹⁶¹ DFC, *Rapid response*, p. 47.

¹⁶² DFC, *Keeping them safe – in our care: draft for consultation*, pp. 26–8.

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- Changing workers so often made participants feel that there was no confidentiality
- The location of their worker made it difficult to communicate with them; five participants had workers working in country regional district centres and they were in placements in the metropolitan area
- Took too long to call them back or help them organise things
- Did not involve them in making decisions about their care
- Did not always tell them about decisions that had been made about their care, such as why they were moving from a placement or how long they would be in a placement
- Worked with too many young people at a time contributing to not having enough time to get to know them
- Did not take them to a new placement, had them transported in a taxi
- Did not help them get to know their carer
- They did not help them resolve problems.

The participants recommended that:

- Social workers need to spend more time with young people, getting to know them and doing things with them
- Children and young people have one social worker from the time they come into care until they leave
- Social workers have less children and young people that they look after
- Social workers visit them regularly
- Social workers listen to young people and talk to them more about decisions that are made about their care.

In its written submission to the Inquiry in May 2007, the department acknowledged that, in relation to social

workers, 'current best practice promotes one-to-one contact with children and young people in care'. It stated that its *Alternative care practice guidelines* do not specify the minimum amount of personal supervisions and contact with a child or young person in care, but that they will be reviewed. It advised that current informal practice is at least a monthly visit, noting that it is important to remember that each child's situation is unique so that frequency of visits should be dictated by the needs of the individual child or young person.

The Inquiry received several submissions in response to its Issues paper regarding the difficulty in recruiting and retaining social workers. One submission stated that 'social workers have a high burnout rate and they are often young and inexperienced and feel threatened by experienced carers' with a 'bullying culture'. Another submission stated that there has been 'a long history of high turnover of social workers due to large case loads, lack of community recognition, poor supervision, support and stress'. The submission from the Care and Protection Unit of the Youth Court stated that 'there is a high turnover of caseworkers and some departmental practices regarding transfer between teams contributed to discontinuity'. It submitted that family members comment on the negative impact on the child and family of frequent changes in social workers, which in turn has a negative impact on social workers and that it is difficult for children and young people to establish trusting relationships with a succession of workers, especially inexperienced ones.

The Australian Association of Social Workers, (AASW), submitted that there is a serious difficulty in recruiting and retaining social workers, referring to several factors:

- Stressful nature of the work: Child protection work is well recognised as a stressful and challenging field of practice. If social workers do not receive adequate supervision, support and ongoing professional development, they are likely to seek employment in other fields or suffer such things as burnout.

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- Inexperience: Base-grade graduates have the most direct contact with clients but many are young and inexperienced. The AASW stated that there is a lack of critical mass of experienced, competent, mature social workers in the department such that 'a worker of six months experience is seen as an old hand'.
- Supervision and mentoring: There needs to be professional supervision rather than procedural or administrative supervision, with mentoring by an experienced social worker, from an external agency if possible.
- Qualifications: Historically the department was not seen as an employer of choice for qualified social workers. This is not assisted by the employment of people as social workers who do not have any professional social work qualification. The AASW indicated that it strongly advocates that the basic minimum requirement for a social worker should be a social work degree.
- Continuing professional education: Another important factor in retention was considered to be training and ongoing professional development, however, the AASW stated that attendance at its own continuing professional education has declined in recent years reportedly due to an inability for social workers to gain approval to attend during working hours.
- Code of ethics and practice standards: The AASW also referred to the fact that the social workers are not required to be part of a professional registration system. It stated that it supports registration and was in discussion with the State and federal governments.

The AASW submitted that there were high workload demands due to inadequate resources and recommended the development and monitoring of standards for workload levels and working conditions.

Families SA's submission referred to recent research by the University of South Australia¹⁶³ and quoted its finding that:

The community services sector is one of the fastest growing in Australia ... this means that the whole sector faces a critical knowledge gap with insufficient trained workers available and an environment where sectors are competing for limited human resources.

Families SA submitted that in 2007, it had about 60 per cent of the resources needed to respond to statutory requirements in the area of care and protection. It also stated:

Turnover of social work staff within the care and protection system is an inevitable consequence of highly difficult and emotionally challenging work. Families SA seeks to address the needs of our staff by providing relevant and timely support to staff including induction training for new staff. Specifically, Families SA 2006–07 business plan highlights recruitment and retention strategies such as core competency training.

Families SA advised the Inquiry that there were 19 vacancies for social workers at 30 June 2007.

In November 2007, the Guardian for Children and Young People told the Inquiry that every child and young person in care did not yet have an allocated caseworker:

... There are some children that are unallocated ... they don't have a social worker specifically allocated to them or, in some cases, they might be nominally allocated where they're allocated to a supervisor or senior practitioner who is not meant to carry a case load but who can make the decisions essentially if something happens, but it does mean often that the relationship with the caseworker is seriously limited.

She said that while a good model involves the social worker making sure that the child or young person has a relationship with everybody in the social worker's team, to

¹⁶³ E Carson, C Maher and P King, *Careers at the coalface? Community services in South Australia: workforce development*, University of South Australia, Adelaide, 2006.

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cover for inevitable absences of the allocated social worker, nevertheless each child and young person in care

... should have a caseworker and should also have a face-to-face visit once a month by that caseworker, should have a caseworker who knows about the child and knows the history and knows their circumstances, knows their dreams of what they want to be and actively works towards that. That's the ideal.

The GCYP told the Inquiry that social workers carry heavier workloads than they should. She said that while there had been a 15 per cent growth of children placed in care in 2006–07, 'they haven't had an equivalent number of additional social workers by any means'.

In summary, the evidence to the Inquiry indicates that there is a problem with recruiting and retaining social workers, which has resulted in a lack of experience; inexperienced social workers having insufficient professional support and supervision; workloads being too high; and a staff shortage. This is not a recent phenomenon. The importance of allocating resources to this issue, concerns arising from a high turnover rate of social work staff and the problem of workload management have been raised consistently with the department from the 1960s to the Layton report in 2003.¹⁶⁴ The department has made some attempts to address the issues in terms of formal workforce planning, discussions with universities to review student placements to encourage students to consider employment with the department, establishing professional networks for staff in country areas to encourage staff to be willing to work in these areas, and undertaking four bulk recruitment processes a year.¹⁶⁵

However, since the Layton report, the Inquiry has heard important and consistent evidence from former and current children and young people in State care about the importance to their protection of having regular contact with a caseworker. It is acknowledged that the following recommendation has significant resource implications;

however, the lack of a trusted social worker to whom a child or young person could complain about sexual abuse was such a strong recurring theme in the evidence to the Inquiry that it is considered a priority.

14 RECOMMENDATION 14

That the following be formalised in, and implemented as part of, the *Keeping them safe* reform agenda:

- Every child and young person in care has an allocated social worker
- Every child and young person in care has regular face-to-face contact with their allocated social worker, the minimum being once a month, regardless of the stability or nature of the placement
- The primary guiding principle in determining the workload of each social worker is quality contact between each child and young person in care and their social worker, which includes face-to-face contact at least once a month and the ability to respond within 24 hours if contact is initiated by the child or young person.

As part of implementing the above, it is recommended that:

- Sufficient resources are allocated to recruit and retain qualified social workers
- Emphasis is placed on the professional development and support of social workers including –
 - The reduction of team sizes to a maximum of seven or eight, to increase the capacity for better supervision of social workers and their own professional development
 - Mandatory training in supervision for all social workers employed in supervisory roles
 - The introduction of a system of registration or accreditation for social workers, which requires ongoing professional development and training.

¹⁶⁴ See report to the Minister of Social Welfare on the maltreatment of children, 1968, pp. 17–9; Report of the Community Welfare Advisory Committee, *Enquiry into non-accidental physical injury to children in South Australia*, Jan. 1976; Report to the Minister of Community Welfare in South Australia on the sexual abuse of children, 1981, p. 3; Layton, ch. 9A.

¹⁶⁵ Families SA, written response to this Inquiry, May 2007, p. 87.

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Training of social workers

I only ever have a recollection of one visit of a worker and I had a chat with the worker. I can't remember much of it. It was really just, I think, 'How are you going? Are things okay?' Where I'd splutter out a few little stories about, you know, 'Everything's going okay'. I know that I was primed before any visit ...

Evidence from PIC placed in State care in the early to mid 1960s, aged six

PICs also told the Inquiry about bad practices when a social worker would visit, which inhibited the establishment of a trusting relationship. For example, one PIC said, 'When [my social worker] used to visit [my foster parents] ... they would talk about other stuff and I seemed to be left out'. The Inquiry's Young People Advisory Group raised a similar theme. Members said that they never saw their social worker without their foster parents. As one member said, 'When you are six or seven years old how could you stand up in front of your abuser and tell your social worker you are being abused?'

It is crucial that social workers are trained in the nature of sexual abuse of children and young people in care, including recognising the signs, promoting disclosure and responding to such disclosures.

The department told the Inquiry¹⁶⁶ that in 2005, it started the College for Learning and Development as its primary staff development program. The college has the status of an Enterprise Registered Training Organisation, which means that all learning programs and qualifications offered by the college are 'designed, delivered and assessed to support the jobs that DFC staff actually do'.¹⁶⁷

It advised that the Families SA faculty of the College had developed four qualifications:

- Certificate IV in community services – targeted at financial counsellors
- Certificate IV in youth work (juvenile justice) – targeted at youth workers

- Certificate IV in community services (protective care) – targeted at para-social work positions
- Diploma in statutory child protection – targeted at social workers who have a social work degree. This includes child safe environments (addresses the indicators of abuse and neglect in children and mandatory reporting requirements); the justice information system (JIS); introductory care and protection; work safely; Aboriginal cultural sensitivity and respect; multicultural diversity; foster and enhance children's development; and attachment and operate in a legal context.

The department stated that the college is required to review all learning programs annually and maintain active qualification advisory committees.

The department advised that several other specialist programs have been developed to support Families SA's work, including attachment theory; cultural awareness and sensitivity; the justice information system (JIS); child safe environments (previously mandated notification); high risk infants; and parenting capacity.

In November 2007, the department informed the Inquiry about its current training for social workers.¹⁶⁸ It advised that all social workers do not do all the listed programs and their learning plan is 'constructed around their job role, job requirements and knowledge gaps'.

New social work staff undertake an induction, do their learning plan with the facilitator and their line manager, and complete a five-day introductory care and protection program. They may do the JIS and child safe environments programs 'if required'. During the next 2–3 years they proceed through their learning plan, completing learning programs in a minimum of 15–20 training days.

Existing social work staff may do any learning program from the diploma that they and their line manager identify as appropriate in their performance development meetings and set out in their learning plan.

¹⁶⁶ *ibid.*, pp. 7–12.

¹⁶⁷ *ibid.*, p. 7.

¹⁶⁸ Families SA executive director letter, 23 Nov. 2007.

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The department stated that it has two key manuals of practice (*Families SA Child Protection Manual of Practice 1 and 2*) both of which 'support staff in understanding and responding to situations of childhood abuse'.¹⁶⁹

The Inquiry received nine submissions on the issue of training in response to its Issues paper. Five were from government (including the department) and non-government organisations; four were from individuals.

Professor Briggs told the Inquiry that the social work courses conducted at Flinders University and the University of South Australia simply did not prepare graduates to work effectively with children. She submitted that, as a result, Families SA had to introduce a postgraduate diploma course to make graduates employable. She was concerned that child development specialists had not had input into this course. One submission also expressed concern that the content of Australian university social work courses are 'conspicuous by the absence of the child abuse topic in general and the topic of sexual assault of children in particular'. It referred to the United Kingdom, where an additional year of study focused on childhood in order to ensure that there are specialist social workers graduating.

The Australian Association of Social Workers, South Australia (AASW), submitted that the social work degree courses 'include elements of child development and recognition of child abuse, including sexual abuse'.¹⁷⁰ It advised that there is a research project currently being conducted to 'map the child protection curriculum content in social work courses across Australia'. AASW said it offered a range of continuing professional education opportunities but attendance of departmental social workers has declined over the years. It understood that:

*Internal training provided by Families SA has a procedural or operational focus which, while organisationally essential, may be insufficient to support social workers in their long-term professional career development.*¹⁷¹

¹⁶⁹ Families SA, written response to this Inquiry, May 2007, p. 11.

¹⁷⁰ Australian Association of Social Workers (SA) submission, 13 Apr. 2007, pp. 2–3.

¹⁷¹ *ibid.*, p. 7.

¹⁷² Relationships Australia (SA) submission, p. 17.

Relationships Australia (SA) submitted that front-line worker education programs¹⁷² coverage of sexual abuse should include:

- what constitutes child sexual abuse
- that it is a crime and a breach of human rights
- its prevalence in family and other contexts
- statistics on different perpetrator groups
- the tactics that perpetrators use to secure silence
- the abuse of power inherent in child sexual abuse
- that adult perpetrators are solely responsible for the abuse
- that children, by definition, are incapable of giving informed consent to sexual abuse
- that children should be able to tell trusted adults about any abuse they are subjected to
- what others can do if they suspect that a child is at risk (for example, reporting to police, Families SA)
- that child sexual abuse is a community issue requiring vigilance and appropriate responses
- how to respond to a disclosure
- how to understand the dynamics involved in disclosure (for example, a child disclosing has usually identified some quality in the confidant that they can trust—people who have been abused are often very attuned to 'reading' people's likely responses)
- understanding needs beyond mandatory reporting protocols and requirements (that is, the needs of the person or child who has been subjected to child sexual abuse).

In oral evidence to the Inquiry in April 2007, Relationships Australia (SA) advised that it had provided training to juvenile justice workers and some residential care workers for about 10 years since 1997. The department now conducts that training. The training by Relationships Australia was always provided with a panel of children and

4.1 State response to sexual abuse of children in State care

young people. It said, however, there were complaints about the training because workers considered they were being 'told what to do by these kids who have no idea how hard their job is'. It said workers had the same reaction when foster carers were involved in providing feedback during the training.

It's not that I would agree with everything that the foster parents or the children said, you know, but the fact that the workers couldn't hear it without their own over-reaction was of great concern to us.

The witnesses from Relationships Australia also said it was necessary to alert the Inquiry to

... the fact that [these ideas] have been operating and yet they are not readily accepted, and sitting behind that are a whole range of attitudinal things.

... what you're asking of the services is very complicated ... You cannot hear the criticisms or the concerns of people in care because you then feel responsible for it all, so therefore you deflect it; you get very defensive in relation to it. Whereas we need to encourage workers to be able to open their ears and listen and sit with the problem, knowing that they'll have probably an inadequate response.

Relationships Australia stated that within that context there have been managers who have been very supportive. The witnesses made the point 'that we need to keep thinking further about how to develop the skills of listening to children'.

Like training, 'Oh, training, the best thing to do with a child, da, da, da, da, da,' it misses the boat. It's actually about speaking into those things and in a much more complex way. It puts that at the heart of

it, the importance of that child's voice in the system we're talking about.

On the issue of the participation of children and young people in such training, the department advised that the current practice is to engage the CREATE Foundation to inform the training of social workers about matters relevant to children and young people in care. The department said, however, that as CREATE had limited numbers of young people available and could not attend all training sessions, an alternative was being discussed to invite CREATE to provide a series of stand-alone intensive workshops covering a range of staff roles.¹⁷³ The department said, however, that:

It can also be a traumatic experience for any young person to stand up in front of a room of strangers and share intimate details of past life. To address this possible trauma, Families SA offers briefing and debriefing to non-professionals who present to training sessions. This may be managed by the allocated social worker or facilitator of the training session.¹⁷⁴

Former children and young people in care, as well as members of the Inquiry's Young People Advisory Group, informed the Inquiry of their willingness to be involved in such training.

In summary, it is clear from evidence to the Inquiry that there is limited ongoing training to social workers specifically related to child sexual abuse and what is available is not mandatory; there is a need for children and young people to continue to participate directly in the training; and for the training to include the participation of professionals working in the area of child sexual abuse.

¹⁷³ Families SA, written response to this Inquiry, May 2007, p. 87.

¹⁷⁴ *ibid.*, p. 88.

15 RECOMMENDATION 15

That the training of social workers by Families SA in regard to child sexual abuse be reviewed to include:

- what constitutes child sexual abuse
- that it is a crime and a breach of human rights
- its prevalence in family and other contexts
- statistics on different perpetrator groups
- the tactics that perpetrators use to secure silence
- the abuse of power inherent in child sexual abuse
- that perpetrators are solely responsible for the abuse
- that children, by definition, are incapable of giving informed consent to sexual abuse
- that children should be able to tell trusted adults about any abuse to which they are subjected
- what others can do if they suspect that a child is at risk (for example, reporting to police or Families SA)
- that child sexual abuse is a community issue requiring vigilance and appropriate responses
- how to respond to a disclosure
- understanding the dynamics involved in disclosure (for example, a child disclosing has usually identified some quality in the confidant that they can trust—people who have been abused are often very attuned to ‘reading’ people’s likely responses)
- understanding needs beyond mandatory reporting protocols and requirements (that is, the needs of the person or child who has been subjected to child sexual abuse)
- listening to children and young people
- empowering children and young people
- caring for a child or young person who has been sexually abused.
- the role of the Guardian for Children and Young People generally and specifically as an advocate for a child in care who has been sexually abused

- the role of the Health and Community Services Complaints Commissioner as an independent investigator.

Input in regard to the content of the program and its delivery should be received from current and former children and young people in care and professionals working in the area of child sexual abuse.

The training program should be mandatory for all social workers.

The importance of suitable and stable placements

I shouldn't even have been in that place. I should have been in a stable home—in a stable family home—and I should have been given a chance in life.

PIC placed in State care in the 1970s, aged 13

Based on submissions to the Inquiry, it is evident that disclosures of sexual abuse are also more likely to occur if the child or young person in care has a suitable and stable placement. In *Keeping them safe – in our care: draft for consultation* (September 2006), the government stated:

*Above all else, we must deliver stability and certainty for children and young people in our care. This is about providing children and young people with a sense of security and safety; the capacity to form and maintain meaningful relationships; a strong self belief and the ability to reach their full potential; and an understanding of what their future holds.*¹⁷⁵

There is no doubting the principle. In its submission to the Inquiry, Relationships Australia (SA) emphasised that a child ‘who is placed in care needs to have a consistent and reliable “protective cocoon” provided by a range of appropriately skilled interested parties’ and ‘needs ongoing relationships with skilled, empathic adults who are consistent, and readily available’.¹⁷⁶

Since 2004–05, the types of placements for children and young people in care in South Australia have been family-

¹⁷⁵ DFC, *Keeping them safe – in our care: draft for consultation*, p. 11.

¹⁷⁶ Relationships Australia (SA) submission, p. 25.

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based care, residential care and emergency/short term care. In 2006–07 the number of children in those types of care was as follows:

- Family-based care, 87.3 per cent (consisting of foster care, 54.2 per cent; relative/kin care, 32.9 per cent; financially assisted adoption, 0.2 per cent)
- Residential care, 6.4 per cent (Families SA and non-government facilities). (There are six purpose-built Families SA community residential care¹⁷⁷ facilities in metropolitan Adelaide—Gilles Plains and Sturt assessment units for new referrals; Lochiel Park, Campbell Town, Enfield and Regency Park community units for long-term care)
- Emergency/short-term care, 6.3 per cent (department housing, non-government organisation emergency, interim emergency)].

According to the department¹⁷⁸, no children were placed in emergency/short-term care in 2002–03 and 2003–04, and four were placed in 2004–05. This rose sharply to 106 in 2006–07 because of the increasing number of children being placed in State care and the shortage of foster carers.

The Inquiry heard evidence about the inability of the child protection system to accommodate children in suitable care placements. In 2005, the Australian Centre for Child Protection's Professor Scott, said that there is a shrinking capacity to care well for children in care:

*There is such a shortage of placements that in some States children are now put in motels. The number of foster families is rapidly decreasing while the number of children coming into care continues to increase. The out-of-home care system is thus under tremendous pressure and also at risk of collapse.*¹⁷⁹

The government acknowledged the problem in September 2006¹⁸⁰ and again in May 2007¹⁸¹, stating that 'our care

services are having difficulty keeping pace with escalating demand and the needs of many children in the care system are being inadequately met'. It reported in September 2006¹⁸² that:

- children are living in transitional accommodation because of a lack of long-term care options
- children and young people are moving from emergency placement to emergency placement
- children are being placed in potentially risky situations, for example, with unassessed carers or being returned to their biological family because there are no other options
- too many children are living in one foster care household
- there is burnout and a loss of foster carers
- children are being accommodated in unsuitable accommodation.

In May 2007, the government stated that 'an immediate injection of funds will be provided to help transition children and young people in these placements into stable and quality care options'.¹⁸³

In November 2007, the department advised the Inquiry that at the end of October 2007 there were 47 children and young people placed in serviced apartments, bed and breakfast accommodation and motels (at an average weekly cost of \$5000 a child) and 29 children living in houses leased from Housing SA (at an average weekly cost of \$3800 a child); those children were being cared for by contracted paid carers.¹⁸⁴ The average annual cost of such emergency accommodation per child (\$259,000) is 15 times more expensive than the average cost per child of foster care, relative/kin care or financially assisted adoption (\$17,400 for each type of care).

No person would suggest such arrangements are suitable for a child. The department acknowledged in May 2007

¹⁷⁷ Families SA, Community Residential Care, <<https://www.families.sa.gov.au/children-care/out-home-care/types-out-home-care>>

¹⁷⁸ Families SA executive director letter, 23 Nov. 2007, p. 6.

¹⁷⁹ Scott, Address to Parliamentarians Against Child Abuse, Canberra, 5 Sep. 2006, p. 4.

¹⁸⁰ DFC, *Keeping them safe – in our care: draft for consultation*, p. 6.

¹⁸¹ DFC, *Keeping them safe – in our care: implementation*, p. 2.

¹⁸² DFC, *Keeping them safe – in our care: draft for consultation*, p. 21.

¹⁸³ DFC, *Keeping them safe – in our care: implementation*; p. 8.

¹⁸⁴ Families SA executive director letter, 23 Nov. 2007.

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that 'it is a highly unsatisfactory situation, both for the children and for those trying to meet these children's care needs'.¹⁸⁵

Indeed, two of the participants in the CREATE Foundation response to the *Keeping them safe – in our care: draft for consultation*, had each spent more than six months in a motel. The recommendation by participants was that 'Young people in care should never have to stay in a motel'.¹⁸⁶ The Inquiry's Young People Advisory Group stated that there is never enough permanent housing or beds in emergency accommodation.

One issue is the shortage of foster carers. In May 2007, the department submitted to the Inquiry that there 'are currently insufficient foster placements available'¹⁸⁷ so that the primary focus of the selection process becomes one of placement availability rather than suitability. The manager of the department's office for Foster Care Relations, Stephanie Kiley, told the Inquiry that the department had a long history of not valuing and respecting foster carers highly enough. The office, which has the task of brokering goodwill and creating better relationships with foster carers, is trying to have their voices heard and find practical solutions to issues. The Foster Carers' Forum arranged by the Inquiry in May 2006 showed that foster carers want to be consulted. Approximately 250 attended the forum, most of whom were carers. A letter sent by Ms Kiley to the department's foster carers following the forum received 100 responses from carers saying they wanted to contribute to the change process.

The Inquiry received eight submissions on a shortage of foster carers in response to its Issues paper.¹⁸⁸ The Careworkers Coalition submitted that Anglicare placement officers report a 'chronic' shortage. The YWCA¹⁸⁹ submitted that carers feel pressured to accept children when social

workers say that there are 'no other options'; placement is according to availability not compatibility; and a system already stretched will be more likely to accept a lower standard of care. Suggestions made to the Inquiry to overcome the shortage included increasing foster carer payments; reversing poor treatment of carers by departmental workers; making foster care more professional, rather than a part-time enterprise; and conducting research to inform recruitment and retention programs.

During the past 10 years, senior lecturer in psychology at the University of Adelaide, Associate Professor Paul Delfabbro, has been commissioned by the department to participate in research on various aspects of the foster care system. In a recent report, he outlined various reasons for difficulties in recruiting foster carers, including the increasing involvement of women in the workforce, the ageing population, cost of living increases, a reduced interest in volunteering and frequent negative media coverage of reported cases of child abuse in statutory care.¹⁹⁰ In giving evidence to the Inquiry, Associate Professor Delfabbro said that 'there's no question [that in] the last few years the numbers of foster carers are dropping off'. He said there are many reasons for this, including older carers becoming discontented with their role and not wanting to take on too many more children; and, with the cost of living rising rapidly, payments not covering expenses.

The department advised the Inquiry¹⁹¹ that foster carers are paid a subsidy ranging from \$93.80 a week (\$4895 a year) for children aged up to four years to \$160.65 a week (\$8380 a year) for young persons aged 15 to 17 years.¹⁹² It was acknowledged that the rates of subsidy have not kept pace with rising costs of caring for children¹⁹³, which has

¹⁸⁵ Families SA written response to this Inquiry, p. 58.186 CREATE Foundation, *Keeping them safe – in our care*, Feedback from group consultations with children and young people about the 'New directions document', Nov. 2006, p. 4.

¹⁸⁶ CREATE Foundation, *Keeping them safe – in our care*, Feedback from group consultations with children and young people about the 'New directions document', Nov. 2006, p. 4.

¹⁸⁷ Families SA written response to this Inquiry, p. 54.

¹⁸⁸ CISC Inquiry, Issues paper, issue 9.

¹⁸⁹ The YWCA is a global network of women that aims to advance social justice and create opportunities and services for the development of women and their families, see <www.ywca.org.au>

¹⁹⁰ DFC 2007, *Evaluation of the South Australian foster carer recruitment services*, Report prepared by P Delfabbro, M Borgas and R Vast, p. 11.

¹⁹¹ Families SA written response to this Inquiry, p. 63.

¹⁹² The department provides access to other payments or assessments that may include school fees, the cost of recreational pursuits or transport.

¹⁹³ The department's submission notes that the National Centre for Social and Economic Modelling (University of Canberra) published *The estimated costs of children in Australian families in 2005–2006* is on average \$188 a week for a single child (\$9776 a year).

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resulted in a disproportionate share of the cost placed on foster carers, many of whom are unable to absorb the additional expense. It was stated that 'the levels of remuneration should reflect the actual costs of caring for a child or young person'. It was acknowledged that 'South Australia's subsidy to foster carers is the lowest of any Australian jurisdiction' and that 'Families SA is currently developing a model of funding for foster carers'. Nine submissions in response to the Inquiry's Issues paper said that the level of financial support was inadequate. In *Keeping them safe – in our care: implementation*¹⁹⁴ (May 2007), the government stated that 'as an immediate measure', the rates were to increase by five per cent from 1 July 2007 'while we finalise new improvements to carer payments'. On 7 January 2008, the Minister announced an average 21 per cent increase in carer payments, effective from 31 January 2008.

Another factor identified by Associate Professor Delfabbro as being important to recruitment strategies was to 'allow people to adopt a variant of roles in the system'. He considered that:

*Greater advantage should be taken of people's desire to become involved in short-term foster care, for example, via offering respite, mirror family and child-care opportunities to assist existing carers.*¹⁹⁵

This was also the view of Professor Scott, who told the Inquiry:

There is so much we could do to support the placements that have a risk of breaking down, and particularly where there's been that duration of a placement ... it's shoring up those foster parents to be the closest to kin that this child will ever have. It becomes a very, very vital priority.

The Inquiry received six submissions that were generally supportive of residential care¹⁹⁶ as an option for children and young people who do not want to live in a family care setting or whose needs are better suited to a different type of care. The department stated that:

*While foster care does afford the most appropriate care for the vast majority of children and young people under the guardianship of the Minister; there will always be a group of children and young people with high and complex needs where traditional family-based foster care is not the most appropriate type of care to meet their individual needs.*¹⁹⁷

The department referred to Families SA research, in which Associate Professor Delfabbro found there was a need for residential care. The government reported receiving 'mixed views' about residential care in the responses to action eight, Residential and leaving care, in its *Keeping them safe – in our care: consultation responses*. Some people said there should be placements in a 'family home' setting where possible because residential care lacks continuity of carers; others felt that some children and young people do not benefit from placement in foster care; still others believed there was a need for therapeutic care models in residential care and a need to ensure more home-like environments.¹⁹⁸

In regard to staffing levels in residential care facilities, the department submitted that its 'experience in this area indicates that homes should be limited to three residents plus one emergency'.¹⁹⁹ The Guardian for Children and Young People (GCYP) submitted that an acceptable standard was two adults with a maximum of five children and young people, less if they had a serious intellectual disability, or behavioural or mental health problems.²⁰⁰ In a progress report provided to the Inquiry in November 2007, the GCYP advised that this is supported in principle by the department, which said that it will be considered in long-term planning as immediate implementation would result in a loss of 16–22 placements in residential care. She said, however, that Community Residential Care facilities are being asked to accommodate more children (up to 12). As part of the work of the GCYP, its senior advocate visits residential and secure care facilities as often as possible. In her evidence the GCYP said:

¹⁹⁴ DFC, *Keeping them safe – in our care: implementation*, p. 7.

¹⁹⁵ DFC, *Evaluation of the South Australian foster carer recruitment services*.

¹⁹⁶ CISC Inquiry, Issues paper, issue 24.

¹⁹⁷ Families SA written response to this Inquiry, p. 102.

¹⁹⁸ DFC, *Keeping them safe – in our care: consultation responses*, p. 19.

¹⁹⁹ Families SA written response to this Inquiry, p. 104.

²⁰⁰ GCYP submission, p. 20.

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[the senior advocate] does a bit of one-on-one with young people, particularly if she's there in the residential care units because she can be there for three hours and so she will spend a bit more time with them.

She said that there has been a 'great' response from the children and young people; 'they've really enjoyed it, particularly as they are starved of one-on-one attention, so they certainly appreciate that when they can get it'.

The recommendations in the CREATE Foundation's response to *Keeping them safe – in our care: draft for consultation* included making residential care 'more like a home' and organising 'less people living in a unit'.²⁰¹

RECOMMENDATION 16

That adequate resources are directed towards:

- ensuring that no child or young person ever needs to be placed in emergency accommodation such as serviced apartments, bed and breakfast accommodation, hotels and motels
- placing children and young people according to suitability of placement rather than availability
- the recruitment and retention of foster carers including providing adequate support (such as respite care) and ongoing consultation
- accommodating a maximum of three children in residential care facilities.

Training of carers

I ... told [my foster mother about the abuse] ... She said I mustn't tell [my foster father] because I'd be sent back ... She said no-one would believe me and in fact I don't think she believed me either.

Evidence from PIC placed in State care in the mid 1940s, when newborn

The Inquiry considers that all carers, like departmental social workers, should receive training in regard to child sexual abuse.

Section 43A of the *Family and Community Services Act 1972* provides that the chief executive of the department must ensure that training courses are available to approved foster parents together with ongoing support and guidance. Associate Professor Delfabbro found, in his recent research, that 'the availability of training is likely to influence both the recruitment and retention of foster carers'.²⁰² He referred to the view of The Fostering Network in the UK, that if applicants know that training is available, both during assessment and once they are registered, they may be more likely to persist with the recruitment process. He also referred to international studies that have shown that foster carers are interested in receiving training.²⁰³

The Inquiry received 11 submissions on the issue of training carers in response to its Issues paper²⁰⁴ and all identified a need for improvement.

The Careworkers Coalition submitted that Anglicare's training is a four-day course over four weeks. While attendance at this course is compulsory for prospective carers, it was submitted that carers do not attend all the seminars. The Careworkers Coalition submitted that it had anecdotal evidence that training, particularly for foster carers, was 'patchy' and some had not received any training in the prevention and recognition of child sexual abuse. It said that new care workers were supposed to undertake a four-day training course, but some were registered as carers despite not doing the course. Many who did not do the course were still registered as carers. The coalition believed that training in protective behaviour for foster carers should be included.

Children in Crisis Inc. submitted that present and past foster carers, relative carers and children in care should be involved in the training of carers:

The current voluntary-based system is one that continues to rely on carers who only have a very

²⁰¹ DFC, *Keeping them safe – in our care: draft for consultation*, p. 7.

²⁰² DFC, *Evaluation of the South Australian foster carer recruitment services*, p. 74.

²⁰³ *ibid.*, pp. 74–5.

²⁰⁴ CISC Inquiry, Issues paper, issue 10; six submissions were from individuals and five from organisations, including the department.

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short orientation training program to prepare them for their role. Once they are registered as foster carers, there is no compulsory, competency based in-service training to ensure that all carers are adequately trained and skilled to meet the physical, emotional and psychological needs of the child while working with other professionals to achieve case plan goals.

It appears there is generally an ad hoc approach to in-service training which sees topical information presented for carers who may be interested in attending. It is not compulsory for foster carers to attend training sessions, and even if they do, the training is not accredited to ensure competencies have been attained.

Children entering the care system may indeed find a loving and nurturing family home, but due to lack of appropriate training and support, chances are they will not always find what they also equally need—skilled, competent and well-supported carers.²⁰⁵

Families SA submitted:

It is clear that foster carers require substantially more education regarding the effects of abuse and neglect, and the effect that disrupted and disturbed attachment relationships can have on children.

Relationships Australia (SA) submitted that ‘foster carers require training and support to understand trauma and its potential behavioural manifestations and be able to respond appropriately’.²⁰⁶ In 2005 it opened a new training centre, the Australian Institute of Social Relations (AISR), which has received federal funding to become the first specialist training centre to provide training to community services and health sectors on issues such as domestic violence, sexual abuse, youth work, community development and social health. It has provided nationally recognised training to youth workers in several communities across the APY Lands. It was also involved in

developing and delivering customised training for foster carers in the Remand Intensive Neighbourhood Care (RINC) program.²⁰⁷ Further, Relationship Australia’s Respond SA service provided statewide Aboriginal youth worker training about childhood sexual assault in Port Augusta, Ceduna, Murray Bridge and the APY Lands; and to Department for Correctional Services staff.

In 2006 the government acknowledged that there are children and young people with complex needs who can have challenging behaviours²⁰⁸ and the level of support, training, and payment of carers needed to reflect this.²⁰⁹ In *Keeping them safe – in our care: consultation responses*, carers indicated that they needed training and many people agreed with the proposal of establishing categories of carers around the needs of children and young people, with competency-based training, accreditation and remuneration. The government indicated that it would fund increased training for carers as one of its immediate actions.²¹⁰

Submissions from foster carers to the Inquiry also revealed a concern about the lack of specialised training provided in relation to the needs of the children and the problems they suffer; one suggested that ‘professional development’ should be compulsory at least twice a year. One PIC who works as a professional in the field told the Inquiry that

While it’s stipulated within documentation that carers need to continue to attend foster care training, most of the carers will identify that they haven’t done any training in the last 12 month period, and I would advocate that I think that a carer’s registration needs to be conditioned on the proof that they actually have attended training.

The Inquiry considers it is critical for carers to attend compulsory training in regard to child sexual abuse. The training should be regularly updated and completed by carers every three years. Completion of an initial training course and updated training every three years should be part of a system of registration/accreditation of carers.

²⁰⁵ N Weston, ‘Foster care A vision for the future’, *Children in Crisis*, 2006, p. 1.

²⁰⁶ Relationships Australia (SA) submission, p. 25.

²⁰⁷ Remand Intensive Neighbourhood Care (RINC) is an alternative care program for children and young people who enter the criminal justice system. It is administered by Families SA. The young people are placed with selected foster carers, who have received specialist training.

²⁰⁸ DFC, *Keeping them safe – in our care: draft for consultation*, Action 6, p. 29.

²⁰⁹ *ibid.*, Action 7, p. 33.

²¹⁰ DFC, *Keeping them safe – in our care: implementation*, p. 7.

17 RECOMMENDATION 17

That Families SA and relevant stakeholders develop relevant training programs about child sexual abuse for all carers of children and young people in care (foster, relative/kin and residential carers).

That the programs be developed in consultation with current and former children and young people in care, and professionals working in the area of child sexual abuse.

The particular training programs must address aspects of child sexual abuse, including:

- what constitutes child sexual abuse
- that it is a crime and a breach of human rights
- its prevalence in family and other contexts
- statistics on different perpetrator groups
- the tactics that perpetrators use to secure silence
- the abuse of power inherent in child sexual abuse
- that perpetrators are solely responsible for the abuse
- that children, by definition, are incapable of giving informed consent to sexual abuse
- that children should be able to tell trusted adults about any abuse to which they are subjected
- what others can do if they suspect that a child is at risk (for example, reporting to police or Families SA)
- that child sexual abuse is a community issue requiring vigilance and appropriate responses
- understanding the dynamics involved in disclosure (for example, a child disclosing has usually identified some quality in the confidant that they can trust—people who have been abused are often very attuned to ‘reading’ people’s likely responses)
- understanding sexual abuse of children and young people in care with disabilities and the difficulties of disclosure
- identifying and understanding cultural issues relating to supporting disclosures by Aboriginal children and young people in care

- listening to children and young people
- empowering children and young people
- understanding needs beyond mandatory reporting protocols and requirements (that is, the needs of the person or child who has been subjected to child sexual abuse)
- caring for a child or young person who has been sexually abused, taking into account the need for a therapeutic response and understanding their vulnerabilities
- protective behaviours for carers.
- the role of the Guardian for Children and Young People generally and specifically as an advocate for a child in care who has been sexually abused
- the role of the Health and Community Services Complaints Commissioner as an independent investigator.

The training program should be mandatory and accredited.

There should be a system of registration/accreditation of carers with registration being contingent on completion of this training; and the completion of updated training programs on this topic every three years.

Caring for children and young people with disabilities

Nobody told us she had sexual problems. Nobody told us she was depressed. Nobody told us she couldn't use a knife or fork. Nobody told us she couldn't cross the road ... They didn't even know her background. We never ever had a case plan. To this day, we've never had a case plan or anything.

Evidence from foster parents of a child with a disability

The need for stable care placements with carers specially trained in matters regarding sexual abuse of children and young people with disabilities is paramount in regard to protecting this particularly vulnerable group.

4.1 State response to sexual abuse of children in State care

Reasons for this increased vulnerability include reduced cognitive and emotional judgment, reduced communications skills, lack of education about appropriate sexual behaviour and a reliance on others for intensive personal care.²¹¹

The Intellectual Disability Services Council (IDSC) submitted to the Inquiry that there are acute difficulties finding appropriate care placements for children with disabilities. It said that as a result such a 'struggling service system contributes to ongoing difficulties for children in care who are subjected to inappropriate, unsafe, unsupported and/or multiple placements in which there is not the opportunity for rehabilitation or healing'.²¹² It considered that foster care is the preferred choice in the provision of alternative care, however, 'there is a serious shortage of people willing to provide foster care, particularly for children with disabilities'.²¹³ The IDSC submitted that while community residential settings may work well for some young people with intellectual disability, they are 'particularly vulnerable in this system' because it is possible for residents to leave the unit. IDSC told the Inquiry it was aware of several young people who regularly visited places associated with prostitution and substances abuse, stating that they are 'at high risk of developing relationships with adults likely to perpetrate further abuse, and are at risk of finding themselves in dangerous and potentially life-threatening situations without an understanding of the risks they are taking'.²¹⁴ The IDSC referred to the need for more intensive intervention and that while the idea of secure care is undesirable, there 'needs to be serious discussion about the reality of the current system and the risks involved' with 'open debate about secure care'.²¹⁵

In regard to the training of carers, Professor Briggs highlighted that although caregivers are told about the vulnerabilities of children with disabilities, the extent of

sexual abuse has not been appreciated. Associate Professor Hayes stated that caregivers may not receive adequate training in behaviour management and so may not be able to assess potential indicators of abuse, or may attribute any behavioural changes to alterations to the routine of care. Attempts at disclosure may occur in forms that are not recognisable as a disclosure to an untrained caregiver, such as altered behaviour patterns.

To inform parents and carers about protecting children with disabilities from abuse, in 2005 Families SA's Office for Disability and Client Services (ODACS) developed a resource booklet²¹⁶ about child abuse and strategies for protecting children. The booklet also provides a 'checklist' of items that parents and carers should consider when choosing a service provider who will have contact with a child. While the booklet has been a useful resource, Families SA said 'further work is required to raise awareness' of the issue.

The Child and Youth Special Service in Disability SA runs an alternative care disability support program in partnership with foster families, carers and service providers. Part of the program is the provision of 'education, information and training for foster families on factors contributing to challenging behaviour, and support to carry out specific intervention strategies' in relation to caring for children with disabilities, 'as very difficult child behaviour, stressful family issues, lack of support or knowledge about the child's disability can significantly affect the coping abilities of foster families'. It does not specifically address child sexual abuse.²¹⁷

Families SA submitted that the lack of specific training for carers in the area of disabilities 'continues to be raised as a major service gap which impacts on all systems and particularly the children and young people'.²¹⁸

²¹¹ V Lumley, RG Miltenberger, ES Long, JT Rapp and JA Roberts, 'Evaluation of a sexual abuse prevention program for adults with mental retardation', *Journal of Applied Behavior Analysis*, vol. 31, no. 1, (Spring 1998), pp. 91–101.

²¹² Intellectual Disability Services Council (IDSC) submission, 28 June 2006, p. 3.

²¹³ *ibid.*, p. 2.

²¹⁴ *ibid.*, p. 3.

²¹⁵ *ibid.*, p. 3; See chapter 3.2.

²¹⁶ Office for Disability and Client Services, *Protecting children and young people with disabilities: A booklet for parents and carers*.

²¹⁷ Disability SA information sheet, 'Children and youth specialist service—Alternative care disability support program'.
<<https://www.dcsi.sa.gov.au/>>

²¹⁸ Families SA submission, p. 111.

18 RECOMMENDATION 18

That there be mandatory specialist training for all carers and potential carers of children and young people with disabilities in State care, which includes the topics referred to in Recommendation 17 as well as particular issues concerning the prevalence of sexual abuse of children and young people with disabilities; prevention of sexual abuse of children and young people with disabilities; assessing behaviours as indicators of sexual abuse; supporting disclosure and responding to disclosure.

Caring for Aboriginal children and young people

The Aboriginal children that we have today that are going through the system—I call them the lost generation. We’ve already had the stolen gen., but the ones that are going through the system now—we still have a great deal of problems with children that are still placed in non-Aboriginal placement, because we don’t have enough Aboriginal foster carers so that they maintain that cultural connection.

Evidence from former South Australian child protection worker

As with all children, finding a suitable and stable placement for Aboriginal children and young people placed in care is crucial to prevent the risk of sexual abuse and to provide an environment in which they feel able to disclose the occurrence of any sexual abuse so that an immediate therapeutic response can occur. Because of the mistakes of past government policy in regard to taking Aboriginal children and young people into care in the first place²¹⁹, there are now real challenges to ‘getting it right’.

During the past 20 years, the Aboriginal child placement principle (ACPP) has been an important policy in Australia.

The ACPP evolved in the late 1970s in response to the continued high numbers of Aboriginal children entering non-Aboriginal care. It was inspired by the Indian Child Welfare Act 1978 (US), which was designed to ensure that Native American children living on reservations were placed with their extended families or tribal groups as a first option.²²⁰ It is based on the premise that Aboriginal children are better off cared for in their Aboriginal families and communities; that being in close contact with family and kin can be important for the sense of identity, and as a source of learning and support, of Aboriginal children and young people.²²¹

In asserting a right to raise their own children in culturally appropriate ways, Aboriginal people are claiming no more than what most other Australians already take for granted. The [Aboriginal child placement] principle is also an important acknowledgement by the government that previous policies directed at Aboriginal children have caused suffering to Aboriginal people.²²²

In 2003, a South Australian review of out-of-home care for Aboriginal children and young people stated that:

There is now increased understanding from Governments and those in statutory child welfare fields of the centrality of family, land and culture to Aboriginal people and that healthy identity development is inextricably linked with cultural identity. Thus the wellbeing of the community and the wellbeing of the individual are considered wholly interdependent.²²³

In South Australia, legislation²²⁴ requires that the ACPP be observed in relation to the placement of any Aboriginal child in alternative care. The principle is that an Aboriginal child should be placed in the following order of priority:²²⁵

- (a) with a member of the child’s family, as determined by reference to Aboriginal culture

²¹⁹ See discussion in this chapter, ‘Prevention through early intervention: Aboriginal children and young people’.

²²⁰ DHS, *Review of Aboriginal children in non-Aboriginal care in South Australia*, DHS, Adelaide, 2003, p. 4.

²²¹ Law Reform Commission Publications, Research report 7 (1997) – The Aboriginal Child Placement Principle, ‘The origins of the principle’, pp. 1–2, viewed 30 Dec. 2007 <www.lawlink.nsw.gov.au/lrc.nsf/pages/RR7CHP3>.

²²² Law Reform Commission, p. 2, citing R Chisholm, ‘Aboriginal children and the placement principle’ (1988) 2(31) *Aboriginal Law Bulletin* (1988), 4 at 4.

²²³ DHS, *Review of Aboriginal children in non-Aboriginal care*, p. 3.

²²⁴ *Children’s Protection Act 1993*, s. 4(5); *Children’s Protection Regulations 2006*.

²²⁵ *Children’s Protection Regulations 2006*, r. 4.

4.1 State response to sexual abuse of children in State care

- (b) with a member of the child's community who has a relationship of responsibility for the child, as determined by reference to Aboriginal traditional practice or custom
- (c) with a member of the child's community, as determined by reference to Aboriginal traditional practice or custom
- (d) a person with the same Aboriginal cultural background as the child
- (e) a non-Aboriginal person who is able to ensure that the child maintains significant contact with the child's family (as determined by reference to Aboriginal culture), the child's community or communities, and the child's culture.

The ACPP, however, is subject to the need to protect children from harm. As the Secretariat of National Aboriginal and Islander Child Care Inc (SNAICC) policy paper on out-of-home care for Aboriginal and Torres Strait Islander children and young people²²⁶ states:

*At the outset, it is important to clearly state that keeping children free from physical and psychological harm is paramount—equally as important for Aboriginal and Torres Strait Islander children as it is for other children. This paper focuses in large part on the need to maintain an Aboriginal or Torres Strait Islander child's involvement with their family and community. This involvement, however, should never be seen as more important than the child's safety. Maintaining connections to family and community is not a justification for leaving a child at risk of harm or making a placement that puts them at risk of harm.*²²⁷

In South Australia, application of the ACPP is subject to the fundamental right of a child to be safe from harm.²²⁸

At 30 June 2006, 77 per cent of the 359 Aboriginal children and young people in care in South Australia were placed according to the ACPP. Of the 359, 33 per cent were living with relatives/kin (as compared with 24 per cent for non-Indigenous children), and 38.4 per cent were living with other indigenous carers. There were 7.8 per cent living with other relatives/kin (as compared with three per cent for non-Indigenous children) as a result of providing for complex needs or keeping siblings together.²²⁹

Respondents to the *Keeping them safe – in our care: draft for consultation* indicated that the ACPP must be adhered to, to 'get it right' for Aboriginal children.²³⁰ A member of the Inquiry's Aboriginal Advisory Committee stated why it is so important:

It is going to take years to enable Aboriginal people to find their way, learn about themselves, go in the right direction and meet up with people they should be meeting with. Culture is passed on through the way you are held, the body contact. It's a whole mental involvement. You have to live the life totally and show them the bushes and the plants. It is difficult to transfer. You have to tell the stories and say what they mean. You have to start with languages. All the kids have to be proficient at the language first and get used to the terms and then start doing the different subjects like burials and dance and song.

However, some members of the Aboriginal Advisory Committee expressed concerns about a dogmatic approach to the ACPP. One said:

The Aboriginal child placement principle should not be mandatory. It should include the phrase 'an appropriate place'. A non-Aboriginal woman cared for two young Aboriginal people. She had a close connection with Aboriginal culture. The Aboriginal child placement principle tore her apart.

²²⁶ The Secretariat of National Aboriginal and Torres Strait Islander Child Care Inc, *Culturally strong out of home care for Aboriginal and Torres Strait Islander children*, Policy paper, 2005.

²²⁷ *ibid.*, p. 1.

²²⁸ *Children's Protection Act 1993*, s. 4; *Children's Protection Regulations*, r. 4.

²²⁹ Australian Institute of Health and Welfare, Canberra, *Child protection Australia 2005/06*, Child Welfare series no. 40, p. 52.

²³⁰ DFC, *Keeping them safe – in our care: consultation responses*, p. 10.

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The Layton report also revealed concerns that inflexible application of the ACPP was increasing the risk of re-abuse²³¹ and taking precedence over the needs of the child.²³² A departmental employee echoed that statement, telling the Inquiry that while the principle worked well most of the time, placements sometimes became politicised and application of the principle could take precedence over the child's interests and wishes. The employee gave an example of a five-year-old girl (whose parents and grandparent carer were dead), saying that after failed attempts to fulfil the ACPP, the girl was placed in the care of her grandmother's friend, who was not Aboriginal. The girl 'settled ... and formed an attachment to her'. However, eventually, another relative interstate was found and despite the girl being 'very clear' that she did not want to go, the matter went to court and she was placed interstate. When advised of the decision, the girl sobbed and said she did not understand why she was not listened to. The last time the employee heard about the girl, she was being 'handed around the family' interstate. The employee said:

We have to grapple with what does it mean in terms of an Aboriginal child placement principle when children are forming attachments to people that others deem they don't want them to be attached to because they're not culturally appropriate, they're not the right outcome we want. We get into a process where, particularly with it being reaffirmed even more strongly in the legislation now, that children continue to be disrupted out of placements and are unable to form any secure bond with anybody until they're put in the right place.

In response to the Inquiry's Issues paper, the Youth Court submitted²³³ that the ACPP provides helpful guidance but also can be driven by an ideological agenda that may not meet the needs of the child or family, particularly when the child has a mixed heritage. A non-Aboriginal relative may

not be viewed as satisfactory despite the wishes of the child, parents or other family. There has been pressure exerted to move a child from a satisfactory ongoing placement with a white relative to a placement with a less known Aboriginal family member. The department submitted that the ACPP provides scope for the placement of Aboriginal children in the care of non-Aboriginal carers and families.²³⁴

One member of the Aboriginal Advisory Committee referred to the lack of available care placements, saying that 'while it's a good principle, it's not being implemented in practice because there aren't any Aboriginal foster families left and none can be recruited. This is a national problem.' Indeed, the 2003 out-of-home care review in South Australia said that Aboriginal child placement agencies are faced with the task of trying to recruit carers from among the most disadvantageous families in the population.²³⁵ It observed that with Aboriginal people making up two per cent of the population and Aboriginal children 24 per cent of children in out-of-home care, 'even without accounting for very high mortality and morbidity rates, it is obvious that there is not the same pool of prospective carers on which to draw'.²³⁶ In *Keeping them safe – in our care: draft for consultation*, the government stated that given the numbers of Aboriginal children in care, it 'continues to be difficult to recruit sufficient Aboriginal carers and this is a significant challenge in meeting our obligations under the Aboriginal child placement principle'.²³⁷ It stated that it would work actively to increase the number of Aboriginal kinship or relative carers, and provide support, resources and appropriate training.²³⁸ In its submission to the Inquiry, the department submitted that Aboriginal alternative care agencies are contracted by Families SA to recruit, support and train Aboriginal foster carers. It submitted that improved partnerships between Families SA and those agencies would enable 'more appropriate and culturally respectful work with Aboriginal families and carers'.²³⁹

²³¹ Layton, ch. 8.9.

²³² *ibid.*, ch. 8.21.

²³³ Youth Court, Care and Protection Unit submission, 16 July 2007, p. 9.

²³⁴ DFC submission, p. 134.

²³⁵ DHS, *Review of Aboriginal children in non-Aboriginal care*, p. 6.

²³⁶ *ibid.*, p. 12.

²³⁷ DFC, *Keeping them safe – in our care: draft for consultation*, p. 24.

²³⁸ *ibid.*, p. 25.

²³⁹ Families SA submission, p. 138.

4.1 State response to sexual abuse of children in State care

Other members of the Aboriginal Advisory Committee expressed concerns about the safety of children in some Aboriginal placements. One member said that the relative care program is not working well

... because there is no authority in the home and that the majority of those children who are running around the streets in gangs are from families where there is no father figure, no discipline.

Other members were concerned about the neglect of children in some foster families:

Some children are left alone by some Aboriginal foster carers including in Intensive Neighbourhood Care placements. The carers are not supervised and no-one asks the children if they are satisfied with the placement. Evaluation of families needs to be more thorough and should continue with regular reviews. There is also a need for greater vigilance of some foster carers who may use allowances for drug abuse.

Submissions referred to in the *Keeping them safe – in our care: consultation responses* indicated that assessment and registration processes for relative, community and kinship carers should be streamlined.²⁴⁰ In its submission to the Inquiry, the department advised that the assessment process has been identified through several reviews and consultations as too intrusive, disrespectful and offensive to Aboriginal people and, as a result, a Kinship and community care assessment manual was being drafted.²⁴¹

Given what has been described by the government as the over-representation of Aboriginal children and young people in care²⁴², the issues raised about the application of the ACP and the difficulties in finding suitable placements for Aboriginal children and young people, the Inquiry believes that the Office of the Guardian for Children and Young People requires specialist and additional resources in regard to the individual and systemic advocacy for Aboriginal children and young people in care.²⁴³

²⁴⁰ DFC, *Keeping them safe – in our care: consultation responses*, p. 10.

²⁴¹ Families SA submission, p. 135.

²⁴² See this chapter, 'Prevention through early intervention: Aboriginal children and young people'.

²⁴³ *ibid.*

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RECOMMENDATION 19

That there be a specialist position created in the Office of the Guardian for Children and Young People to assist in carrying out the guardian's functions pursuant to section 52C *Children's Protection Act 1993* in relation to Aboriginal children and young people under the guardianship or in the custody of the Minister.

Responding to a disclosure by a child in State care of sexual abuse

... from my own personal experience, if someone had listened to me way back then, I wouldn't have had the horrific journey that I went through; the fact that nobody listened.

Evidence from PIC placed in State care in the early 1960s, when aged five

When a child or young person discloses that he or she has been sexually abused, it is vital that the response to that disclosure is appropriate. Some PICs who gave evidence to the Inquiry said that they did tell someone about the sexual abuse when they were children in State care. They described a systemic culture in which children in care were either expected to 'cop their lumps' or were not believed. One woman described how ingrained that system was:

Even on the way in here [to the Inquiry] I say, 'What if they don't believe me and I'm going to go home and I'm going to feel the worse that I've felt'.

Some PICs gave evidence that, after disclosing, they were told that action would be taken. But they said they were never told what, if any, action was taken and the allegations were not discussed again. One PIC who alleged sexual abuse at Glandore Boys Home told the Inquiry that a staff member responded to his disclosure by saying:

... he would do something about it because he'd had other complaints but [the alleged perpetrator]

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would stay there sometimes for three, six months or whatever, then all of a sudden he would disappear and I couldn't ever understand because three to six months later he would come back, and everybody's fear would just come back again because they knew what was going to happen. We could never understand why they kept bringing him back.

Another PIC said that after experiencing abuse in several placements with no action taken in response to any of his disclosures, he 'just shut up about it. And it was getting to the stage where I was just thinking it must be okay, must be all right.'

Many PICs reported responses that they were lying, confused, or mistaken. One woman who disclosed abuse in the family home to her departmental worker remembered him telling her she was fantasising. In response, she said, 'I just clammed up, shut up, and didn't say it again ... after a while you sort of give up telling people'. A man who reported sexual abuse by his father while on a visit out of the orphanage in which he lived recalled that when he disclosed to a nun on his return he got 'a backhander across the back of the head and told not be blasphemous'.

Some PICs told the Inquiry that they suspected they were not believed because they had committed offences. One PIC said that his departmental worker's response to his disclosure of sexual abuse was to tell him that he was an habitual troublemaker and liar: 'I said, "Please get me out of here". He said, "You are lying again."' The witness said, 'Why didn't [the departmental worker] believe me? ... I told officers what happened to me. They didn't believe me.' Some witnesses said that family members actively promoted the idea that they were untruthful. One PIC reported that her parent made statements such as 'Whatever [the PIC] says, don't worry about it because you know what? She lies about stuff.'

Responding to notifications of child sexual abuse

There was no independent person at any place I was at which was any of the homes; there was no independent person who I could go to to ask for help or to listen to me, so therefore I was stuck with the problem of either going to ask a senior officer or complain to a senior officer which, as I've stated in my file, the time I did that I was either ignored, I was told I was a liar, or told I was a troublemaker.

PIC placed in State care in the mid 1960s, aged 12.

The department may become aware of an allegation of sexual abuse against a child or young person either directly from the child or young person, or indirectly as a result of a mandatory notification to the department by a third person.

In South Australia, certain people must notify the department if they reasonably suspect that a child has been or is being abused or neglected.²⁴⁴ This includes sexual abuse.²⁴⁵ The reports are made to the child abuse report line (CARL) or, if the sexual abuse is suspected in relation to an Aboriginal child or family, then the report may instead be made to Yaiya Tiramangkotti (staffed by Aboriginal workers).

The chief executive of the department is required to assess or investigate the circumstances of the child if he/she reasonably suspects that the child is at risk.²⁴⁶ This power can be delegated.²⁴⁷

CARL or Yaiya Tiramangkotti assess the notifications and rate them according to a tier system. Tier one is an emergency response to 'children in immediate or imminent danger'; two is a priority response to 'children at high risk'; and three is a non-intrusive, collaborative response to 'children in need but low risk'.

Tier one reports are immediately electronically transferred to the department's district centres for urgent investigation; tier two are transferred the same day and are assessed for urgency; and tier three are transferred before the start of the next working day. There are two crisis care teams which operate outside normal hours.

²⁴⁴ *Children's Protection Act 1993*, Part IV, Division 1.

²⁴⁵ *ibid.*, s. 6.

²⁴⁶ *ibid.*, s. 19.

²⁴⁷ The power to delegate such responsibilities is set out in section 57 of the *Children's Protection Act 1993*, section 8 of the *Family and Community Services Act 1972*, and section 17 of *The Public Sector Management Act 1995*.

4.1 State response to sexual abuse of children in State care

The department advised that of more than 16,000 notifications of child abuse and neglect in 2006–07, 3385 were of suspected sexual abuse.²⁴⁸

Investigating notifications of sexual abuse of children and young people in care

It should have been so easy to see the signs. I mean, when you see kids drawing stuff like that—just that would be enough to send a beep off in my head and go, ‘There’s something not right here. I best dig further.’

PIC placed in State care in the 1970s, aged eight.

The department’s Special Investigations Unit (SIU) was established in 2003–04 to

... ensure the timely, independent assessment and investigation of allegations of harm or abuse by a carer, staff member or volunteer towards a child or young person in the care of the Minister.²⁴⁹

SIU is staffed by a manager, four investigations officers and one administrative officer. Manager Steven Edgington gave evidence to the Inquiry in 2005, when the unit’s guidelines were in draft form. The approved guidelines, Department for Families and Communities, *Special Investigations Unit, Philosophy and Practice Guidelines 2007*, were provided to the Inquiry.

For the purposes of SIU, a child or young person in the care of the Minister is:

- under a voluntary custody agreement²⁵⁰
- under an investigation and assessment order²⁵¹
- under a care and protection order²⁵² (includes children waiting for the finalisation of adoption orders)

- accommodated in a community residential care or secure care facility
- involved in a Families SA program or service
- in an approved and registered foster care placement paid for by DFC, or
- on a temporary protection visa and on community detention placed in an approved DFC care arrangement.

SIU may receive referrals directly from a person making an allegation, or from CARL or Yaiya Tirramangkotti. It will then determine whether the allegation is a matter that warrants a ‘special investigation’.²⁵³ If so, the matter will be managed by SIU. It is stated that ‘any matter that warrants a police investigation will constitute a special investigation’.²⁵⁴ However, allegations of sexual abuse where the alleged perpetrator is not a staff member, carer or volunteer but is another child or a third party are not dealt with by SIU but at district office level.²⁵⁵ SIU also does not handle historical matters where the victim of the alleged abuse is over the age of 18.²⁵⁶

The SIU guidelines state that:

If the allegations constitute a possible criminal offence, the matter must be referred to SAPOL [SA Police] for their immediate assessment, or within 24 hours ... concerns that should be referred to the police include: all allegations of sexual abuse ...²⁵⁷

In cases where SAPOL is involved in any investigation, the SIU investigation must be made in direct consultation to ensure the integrity of evidence is maintained.²⁵⁸

The guidelines state that, as part of a special investigation, a strategy discussion is convened ‘as soon as possible to

²⁴⁸ In 2002–03 – 2733; 2003–04 – 2816; 2004–05 – 3094; 2005–06 – 2932.

²⁴⁹ DFC, Special Investigations Unit (SIU), *Philosophy & practice guidelines 2007*, p. 2.

²⁵⁰ *Children’s Protection Act 1993*, s. 9.

²⁵¹ *ibid.*, ss. 20–1.

²⁵² *ibid.*, ss. 37–8.

²⁵³ DFC SIU, *Guidelines*, p. 7.

²⁵⁴ *ibid.*, p. 7.

²⁵⁵ SA Police must be contacted in relation to all allegations of sexual assault and there must be liaison with the police before intervening. DFC, *Child protection manual*, vol. 1, p. 177.

²⁵⁶ DFC SIU, *Guidelines*, p. 27.

²⁵⁷ *ibid.*, p. 9.

²⁵⁸ *ibid.*

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coordinate a multi-agency approach ...²⁵⁹ The strategy discussion includes the SIU investigation team, the Families SA district centre manager and the manager of the alternative care service provider. It may also include SA Police and other people. The strategy discussion is recorded on the SIU report form, a copy of which is provided to all participants.

The department advised that the number of notifications of suspected sexual abuse of children in the care of the Minister concerning carers, staff or volunteers in the past three years have been 19 (15 carers, four staff) in 2006–07; 15 (11 carers, three staff; one volunteer) in 2005–06; and 26 (22 carers, four staff) in 2004–05.

The SIU guidelines do not set out specific practices and procedures relating to sexual abuse; the Inquiry considers that it is important that they do so. It should be clear that those notifications must be referred to the police; that no investigation by SIU occurs before that referral; and that once the matter becomes a police investigation, any subsequent action by SIU is not to be taken without the prior written notification to, and then approval by, SA Police. This would reduce the potential for prejudice to a police investigation or possible prosecution for sexual abuse that exists if there are two investigations running, even if one of them (SIU) is not investigating the alleged crime. As the investigator of the criminal allegations, SA Police must always be aware of any action SIU proposes, to ensure that no such prejudice occurs. In its submission to the Inquiry, SA Police stated that:

*In some instances if there is a common aim, SAPOL and SIU work in partnership to ensure that the investigation is conducted appropriately and evidence relating to the sexual assaults is presented for prosecution.*²⁶⁰

The Inquiry considers that if such is to occur, there is a need for specific guidelines agreed between SA Police and

SIU regulating that investigation. This should include the police directing the investigation and all such directions being recorded in writing.

One further matter raised in the Inquiry's Issues paper concerned the potential for conflict of interest by SIU given that the investigations involve Families SA staff or carers. The department advised that:

*There is no potential for conflict of interest ... the unit was specifically established so that it is independent of Families SA, and reports directly to the chief executive of the Department for Families and Communities. The role and function, and the processes adopted by the unit, ensure there is independence, objectivity and fairness for all parties, that all information is sought, considered and assessed. This includes obtaining information from victims, witnesses and alleged perpetrators, and all documents held by Families SA, as well as any alternate care providers.*²⁶¹

Three other submissions to the Inquiry saw a potential for conflict of interest. The Careworkers Coalition submitted that SIU does not have the built-in checks and balances of a statutory body and that after three years of operation, it was not clear if SIU had completed an approved policies and procedures manual. Another submission, from The Premier's Council for Women, suggested a separate unit overseen by an independent commissioner for children. The Inquiry agrees there is potential for a conflict of interest and considers that the Guardian for Children and Young People should be part of any investigation from its beginning. The GCYP's role would be to monitor and represent the best interests of the child. This is considered consistent with the Inquiry's recommendation that the GCYP act as an independent advocate for any child or young person in care who makes an allegation of sexual abuse.²⁶²

²⁵⁹ *ibid.*

²⁶⁰ South Australia Police submission, 30 Mar. 2007, p. 21.

²⁶¹ Families SA submission, pp. 174–5.

²⁶² See this chapter, 'Responding to a disclosure by a child in State care of sexual abuse: Individual advocacy'.

20 RECOMMENDATION 20

That the practice guidelines of the Special Investigations Unit (SIU) be amended to include specific guidelines concerning notifications and investigations of alleged sexual abuse of children and young people in care.

In regard to notifications, it is recommended that the guidelines include requirements for mandatory notification of sexual abuse allegations by SIU to South Australia Police and the Guardian for Children and Young People immediately or within 24 hours, depending on the urgency of the circumstances.

In regard to SIU investigations, it is recommended that the guidelines include requirements for:

- a strategy discussion between SIU and SA Police before the start of any SIU investigation, with the GCYP given prior notification of the discussion and invited to attend
- a written record signed by SIU and SA Police of the strategy discussion, outlining any actions to be taken by each, with a copy provided to the GCYP within 24 hours
- SIU to only take action in accordance with what was agreed in writing at the strategy discussion
- SIU to take no action that would prejudice a police investigation or potential prosecution. In particular, the SIU must not speak to the child, alleged perpetrator, potential witnesses or other potential complainants without seeking, and then gaining, approval in writing from SA Police
- the GCYP to be kept informed by SIU and SA Police of the progress and outcome of the investigation. Both SIU and SA Police to provide the GCYP with information concerning the investigation on request and to respond within 24 hours to any request by the GCYP for information regarding the investigation.

The need for a therapeutic response

It must be realised by those who have not suffered abuse that it is extremely difficult for victims of abuse to firstly face the prospect of making a formal complaint, and secondly to then come forward and articulate that abuse to others. Many victims live every day with the feelings of the shame and humiliation that was perpetrated against them. Respect and empathy is imperative in dealing with the victims.

Evidence from PIC placed in State care in the early 1970s, aged seven

Many of the PICs who said they disclosed allegations of sexual abuse as children, told the Inquiry that the response was far from therapeutic. Even if the response was positive in the sense that they were listened to and believed, they were rarely offered any counselling or therapy. Evidence and submissions to the Inquiry were unanimous in support for children and young people to receive appropriate counselling and therapy after a disclosure of sexual abuse. Relationships Australia (SA) submitted that:

While child sexual abuse is destructive and can have ramifications that continue into adulthood, adults and children can and do move on from these experiences and can be assisted to do so. Just as the effects of abuse can be exacerbated by negative circumstances or events, they can also be assisted by positive relationships and appropriate therapeutic or other responses.²⁶³

The Victim Support Service Inc.²⁶⁴ submitted that:

Access to counselling and therapy for a child goes without saying. Where a child requires therapy it should be available at the time of need. The treatment should be from a qualified therapist who is skilled in working with the issues arising out of sexual assault and in working with children.

²⁶³ Relationships Australia (SA) submission, p. 11.

²⁶⁴ Victim Support Service Inc. submission, Mar. 2007.

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An individual submission said that the therapy should be provided by the same service that does the assessment. The Premier's Council for Women submitted that support and treatment services are essential, including counselling for the child to be provided by trained and accredited child sexual assault professionals 'since this work requires specialist skills'.²⁶⁵ Relationships Australia (SA) submitted to the Inquiry that

*When child sexual abuse has been disclosed we strongly support that the needs of the child should be the overarching priority. The child's needs for safety and wellbeing extend beyond legal and assessment responses and should include mental health and counselling services that are consistent and available in an ongoing way. People delivering such services need particular skills, including the ability to listen to, notice and act upon the priorities, preferences and needs of the child.*²⁶⁶

David Tully, team leader, Streetlink, UnitingCare Wesley, Adelaide, gave evidence in support of a therapeutic response:

I fundamentally believe unless certain interventions occur in certain ways, which revolve around a whole range of major issues, but mostly that if a child is blaming themselves for what's occurred, that person is going to have extended issues through their life.

Evidence to the Inquiry not only identified the need for a therapeutic response to children in care who disclose sexual abuse, but also indicated that the existing assessment and therapeutic service provided by Child Protection Services and Child and Adolescent Mental Health Services (CAMHS) for children and young people must be reviewed and its resources significantly increased. In the *Keeping them safe* and *Rapid response* reform agenda, reference is made to the provision of therapeutic services to children in care, but not specifically to those who disclose sexual abuse.

Strategies 2 and 3.1–3.2 of the *Rapid response* reform agenda deal with 'psychological developmental assessments' and 'therapeutic services, psychological'.²⁶⁷ Strategy 2 recommends an initial psychological and development assessment for all children and young people when they are placed in State care. Strategies 3.1–3.2 are aimed at prioritising a 'more assertive response to the therapeutic needs of children and young people under the guardianship of the Minister' and health regions providing therapeutic services where there are psychological, emotional or behavioural disturbances.

In *Rapid response* progress report 2007, Health Services reported that in partnership with Families SA, a set of Health Care Standards for Children and Young People under the guardianship of the Minister have been developed. In 2007 Health Services, in partnership with Families SA, released *Health standards for children and young people under the guardianship of the Minister*, which are to establish an agreed code of practice in relation to various matters including 'developing priority access to health services for children and young people under the guardianship of the Minister including time frames'.²⁶⁸ Standard 2 provides that Health Services will make an appointment within two to three weeks (in a non-crisis situation) of receiving a referral from Families SA for a psychological assessment, and that the assessment will be reviewed annually.²⁶⁹ Standard 3 provides that in relation to outpatient therapeutic services, if the child or young person is not a 'priority one (urgent)' (appointment within four to six weeks) then they will be automatically be put at the top of a 'priority two' (appointment within 12 weeks) and allocated an appointment based on clinical need.

Counselling and therapeutic services for children and young people are currently provided by Child Protection Services, based at the Women's and Children's Hospital (CPS WCH) and Flinders Medical Centre (CPS FMC), and Child and Adolescent Mental Health Services (CAMHS).

²⁶⁵ Premier's Council for Women submission, 20 Apr. 2007, pp. 4–5.

²⁶⁶ Relationships Australia (SA) submission, p. 31.

²⁶⁷ DFC *Rapid response*, pp. 23–4.

²⁶⁸ *Health standards for children and young people under the guardianship of the Minister*, 2007, p. 6.

²⁶⁹ *ibid.*, pp. 24–5.

4.1 State response to sexual abuse of children in State care

CPS WCH, which serves the central and northern metropolitan region and northern country areas of South Australia, assesses and treats children from birth to 18 years and their families where there are suspicions of child abuse or neglect. Its services include:

- telephone consultation to discuss child protection matters and how to obtain appropriate services
- forensic medical/psychosocial/psychological assessment to develop an understanding of a child's situation by gathering information, forming opinions and making recommendations with regard to abuse, safety and needs of the child and family/carers
- therapy for children and family members where abuse has been established and there is evidence of resulting harm, which needs to be resolved to restore and enhance health.

It also undertakes research into abuse and neglect and provides training and education for health professionals.

CPS FMC, which serves the southern metropolitan and regional areas, provides assessments and longer-term interventions of children from birth to 18 years when there are concerns about sexual, physical and/or emotional abuse and neglect. Assessment involves talking to the child and his/her parents/carers. A medical examination is offered to every child. CPS FMC works with Families SA and, when appropriate, with the police. It also has expertise in longer-term interventions in the areas of child abuse and neglect, and working with children who are sexualised, with high-risk infants and their parents, and with parents who neglect and harm their children.

As part of its services, CAMHS provides confidential counselling for children and young people up to the age of 18 years and their families. Northern CAMHS is a division of Mental Health, Women's & Children's Hospital, and Southern CAMHS is a community service of Flinders Medical Centre. Each has its own regional services.

Yarrow Place Rape and Sexual Assault Service is the main public health agency responding to adult rape and sexual assault in South Australia. It provides specialist services to any person who has been raped or sexually assaulted and who was, at the time, 16 years or older. Its services include counselling and group sessions, medical, training, advocacy and resource development. Staff include a youth sexual assault counsellor outreach to the Shopfront Youth Health and Information Service and two Aboriginal sexual assault workers: one for youth and one for adults.

Dr Terence Donald, director of CPS WCH, and Karen Fitzgerald, director of CPS FMC, gave evidence to the Inquiry. Both were asked about the resources available for the provision of therapeutic services to children. Dr Donald referred to \$2.6 million in recurring funding as a result of *Keeping them safe*. The money was used to create therapy positions at CPS WCH, CPS FMC, CAMHS and at Yarrow Place. However, he said that even with this funding,

... the majority of children who had been abused and harmed by abuse were not seen in any therapeutic context at all unless Families SA took some initiative with say CAMHS or something similar, and a lot of those kids were not getting any treatment. I mean, a lot of them aren't now ... we haven't even reached 30 per cent treatment level across the State for children who have been abused, which I think is a disaster.

Dr Donald said that CPS WCH made a decision to focus on children and young people under guardianship. He said that the program was now full and that all participants were in foster placements. 'Most of these kids will be managed long-term. We will still be seeing them, probably a year or two down the track. Maybe even longer.' He said that the therapy requires 'an incredible amount of extra input'.

When asked about possible reform, Dr Donald said that 'there's never been any proper look at our capacity to provide service' given that the service is based in the Department of Health but also relates to police and

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community services. He told the Inquiry that 'double the staff' in terms of psychologists and social workers would 'make a significant difference ... would increase our therapy provision very significantly' as 'we'd probably be able to see all the kids that we actually assess plus significantly more from Families SA who aren't getting treated'. In trying to nominate an initial 'reasonable goal', Dr Donald said there needs to be funding to ensure that 60 per cent of children who have been abused receive therapy.

CPS FMC's Ms Fitzgerald stated that it was also necessary to have a better service for country regions.

Dr Donald said that the CPS WCH service to Port Augusta had to be stopped because of a lack of resources. He considered that Whyalla, Port Augusta and Port Pirie could be covered by the use of hospital rooms, saying that 'in fact, the number of referrals that come from the country are not massive. We only get about 150 a year. So you can manage most of those relatively easily. It's a tenable thing'. He said that there should also be a triage system in the country to assist in making better decisions about which children should come to Adelaide.

The Victim Support Service Inc.²⁷⁰ submitted that 'it would be appropriate' if both CPS services 'were able to offer a comprehensive service to children'. The department submitted that Families SA social workers currently make referrals to appropriate services but that

*... generally, therapeutic services for children are limited and not always readily available when required. Provision of additional services/resources, as well as financial support to ensure carer involvement in such services, would ensure more responsive treatment to children.*²⁷¹

On 20 November 2007, a director working in Families SA told the Inquiry that the CAMHS services are 'so overstretched' that the department has to

... outsource to private therapists in the community, so already that is additional money that we're

spending because there's a gap in the services. It's really about two things: increasing capacity of those sorts of service and also in resourcing them and focusing on our client group.

In evidence to the Inquiry, the director of the Yarrow Place Rape and Sexual Assault Service, Vanessa Swan, said the service offered various forms of counselling to meet the needs of people presenting in different situations. If the sexual assault has occurred in the past 72 hours, counsellors respond within two hours: it is crisis oriented in that 'it's very much about people's safety, their immediate affirming of their experience ... making them feel safe and comfortable', Ms Swan said. She indicated that the service does offer long-term counselling but 'there's more work to be done than we can possibly do'. For example, Ms Swan said that if a person over the age of 16 was sexually assaulted up to a year ago, then the wait for the first counselling appointment may be eight to 12 weeks, 'and the chances of us being able to see you for very long are less'. However she said that because of some additional funding received under *Keeping them safe*, Yarrow Place did some counselling for 12–16 year olds; however it did not have the capacity to lower that age group at the moment. She said that Yarrow Place staff were 'quite comfortable with middle adolescents and even probably 14s and above' but 'once we go below that, our staff feel that it's a different body of knowledge'. She said that adolescence 'is not well-served because I think we tend to have adult services and child services and people stretch each way to cover adolescents'.

The evidence to the Inquiry establishes that the existing provision of therapeutic services to children and young people by CPS, CAMHS and Yarrow Place is both highly professional and well regarded. However, it also shows there is a need for a review to examine how many children and young people the services are able to respond to, identify structures that need to be put in place to increase the level of response with the appropriate expertise, and estimate the resources required to achieve those goals.

²⁷⁰ Victim Support Service Inc submission, Mar. 2007.

²⁷¹ Families SA written response to this Inquiry, pp. 118–9.

4.1 State response to sexual abuse of children in State care

There is no doubt that significant resources would need to be allocated to achieve an appropriate level of response.

The Inquiry believes it would make sense to encompass all children and young people in any such review of service provision, rather than only those in care.

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RECOMMENDATION 21

That there be a review of therapeutic services to children and young people provided by Child Protection Services, Child and Adolescent Mental Health Services (CAMHS) and Yarrow Place Rape and Sexual Assault Service.

The review should include the:

- services' ability to provide counselling and therapeutic services to children and young people in care
- structures required to increase the number of children and young people to whom counselling and therapeutic services can be provided, in both metropolitan and regional areas
- resources required to achieve an appropriate level of response, that is, the provision of counselling and therapeutic services to at least 60 per cent of children and young people who have been abused. Child Protection Services and CAMHS should receive a significant allocation of resources to increase their ability to provide such a level of response.

Helping the carers to care

These children [children who have been sexually abused] often appear naughty or out of control and the foster parents are often judged as having poor parenting skills. In fact, they often doubt themselves as they are not given sufficient information and training. In this situation, parents often lose confidence and isolate themselves for fear of being judged, both themselves and the children.

Evidence from foster carer

If a child or young person in care discloses sexual abuse, it is important that they are made safe and have a suitable and stable placement,²⁷² and that their carers are trained to provide an appropriate, caring response²⁷³ and a safe and caring environment.

Dr Donald from CPS WCH told the Inquiry:

One of the difficulties ... (is) often the foster parents have no idea of what to expect; what's happened to the child. It just blows them when they come [into a foster home] and they start doing things, particularly sexual things to other kids or their pets or toys. So trying to get some resources to provide, not just support, but actual therapy for the foster parents has been a big challenge.

Some of them will respond to just simply explanations, but some of them need actual therapeutic—it's an intervention approach, otherwise the relationship can be set awry immediately, and they ... instead of trying to understand why this kid has suddenly become like he is, they'd become punitive, which then escalates the whole thing. Then you end up with children running away ... (or) they can't cope, so they change placements. What we're trying to do is consolidate ... the relationship between the foster child and the foster parents.

Ms Swan from Yarrow Place expressed a similar view in relation to intrafamilial abuse, which applies equally to carers of children and young people in care. She told the Inquiry that the

... role or significance of the non-abusive parent ... is really crucial ... and I think that somehow catching some time in that crisis to support the non-abusive parent around what their response is and what their role is would be really critical as well, because I think that the immediate reaction at times can be that the non-abusive parent just does not want to know this information. It is very traumatising for them.

In its submission to the Inquiry, Children in Crisis Inc. stated that it must be recognised that the counsellor provides

²⁷² See this chapter, 'Promoting disclosure by children in State care of sexual abuse: The importance of suitable and stable placements'.

²⁷³ See this chapter, 'Promoting disclosure by children in State care of sexual abuse : Training of carers'.

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limited assistance on a regular basis, whereas the foster carer is in a position to observe the child daily, provide important information for the therapist, and manage the child's behaviours. It submitted that the foster carer is the key person who can help with the treatment of the child and assist all relevant parties to understand the child's feelings, problems and needs. This is why foster carers need to have specialised training and be acknowledged as professionals in their own right.

In *Rapid response*, recommendation 3.1.2 states that health regions will provide therapeutic services to children, young people and foster carers where there are psychological, emotional or behavioural disturbances, and ongoing support to assist foster carers to provide effective and responsive parenting to children whose behaviours reflect attachment disturbances and issues of loss and grief. The recommendation does not make specific reference to a therapeutic response to disclosure by a child or young person of sexual abuse while in care. The Inquiry believes support in this area should be available to the relevant carers.

RECOMMENDATION 22

That therapeutic support is made available for the relevant carers when a child or young person in care makes a disclosure of sexual abuse.

Submissions made to the Inquiry referred to the need for carers to be appropriately informed about a child or young person in care making a disclosure of sexual abuse. Children in Crisis Inc. submitted that many children 'are suffering and not receiving the help they need due to some agencies' reluctance to impart such information to foster carers'.²⁷⁴ The Careworkers Coalition submitted that foster carers should be given as much information as possible about the child's circumstances and needs. It said that

because the carer is accountable, 'nothing should be held back'. If it was, the coalition submitted that the carer may be unable to provide adequate support and would be vulnerable to allegations of inappropriate care. The department submitted that foster carers should be informed about the disclosure of the child and the features of any assessment relevant to the care of the child; 'this is essential if the child is to be afforded appropriate, responsive care'.²⁷⁵

The government has developed the *Information sharing and client privacy statement* in relation to children and young people under the guardianship of the Minister, as part of its *Rapid response* reform agenda.²⁷⁶ It concerns the provision of information about a child or young person under guardianship by government and non-government agencies to the Minister and by the Minister/Families SA to other government agencies and people (for example, people with responsibility for day-to-day care, such as foster carers). The statement on information sharing is 'to enable the improvement of continuity and quality of care and service' for children and young people while at the same time protecting privacy. It states that 'the views of the child (if she/he is able to form and express them) will generally be sought when disclosure of their personal information is contemplated'. For example, in the Foster Carers Charter released by the Department in September 2005, it is stated that foster carers have the right to 'have as much information as you need to meet the individual needs of the child in your care'. It stated that it provides 'the broad framework for information sharing and client privacy' but that 'specific procedural and protocol documents will be developed to provide operational guidance for staff and individuals in the wide range of contexts in which information sharing occurs'.

Individual advocacy

*I never forgot nothing because I knew one day—
through all what I went through—that one day I
would get a voice out there, out in the world way,*

²⁷⁴ Careworkers Coalition submission, p. 3.

²⁷⁵ Families SA submission, p. 27.

²⁷⁶ DFC *Information sharing and client privacy statement: For children and young people under the guardianship of the Minister*, 2005.

4.1 State response to sexual abuse of children in State care

you know, because virtually, when I got brought up in the homes and taken away at six, it was virtually—I didn't know—the world was shut out to me.

Evidence from PIC placed in State care in the 1950s, when less than six months old

In their evidence to this Inquiry, adults who were sexually abused as children in State care consistently said they would like to have had a person in authority to whom they could have taken their concerns and who would represent their interests and intervene on their behalf with the Minister and the department.

The Inquiry considers that a child in State care should have such an advocate from the time he or she has makes an allegation of sexual abuse until the completion of the criminal justice process. The role of an advocate would be to monitor the response of the State to that allegation, including the child's placement; organisation of therapy for the child; the response of the police in investigating the matter; the response of the Director of Public Prosecutions (DPP) in proceeding with the matter and providing witness assistance; and the response of the courts in progressing the matter.

One of the legislative functions of the Office of the Guardian for Children and Young People is to act as an advocate for the interests of children under the guardianship or in the custody of the Minister. In the GCYP annual report for 2006–07, Guardian Ms Simmons stated that the emphasis and intention in the legislation is on systemic advocacy and change.²⁷⁷ She advised, however, that the GCYP had been, in specific circumstances, advocating on behalf of individual children or young people. During 2006–07, the GCYP responded to 103 requests for assistance with individual children and young people, and intervened on behalf of 34. The sources of referrals and major issues of the 34 cases²⁷⁸ were:

Source of referrals

Families SA social workers	9
Self referrals	6
Foster carers	5
Educators in schools	5
Parents/guardians	1
Disability SA	1
Youth Court	1
TOTAL	28

The source of referral for six cases was not stated.

Major issues

Education	9
Families SA decision-making	8
Inappropriate placement	5
Reunification practice or decisions	3
Allegations of abuse in care	2
Lack of contact with social worker	2
Mediation between Families SA and foster carers	2
Accommodation for young person with a disability	1
Transition planning for young person post 17 years	1
Advocacy	1
TOTAL	34

In her evidence to the Inquiry, Ms Simmons said individual advocacy was not intended to be part of the role of the GCYP. However it had started to provide individual advocacy in 'limited circumstances', which was 'fully supported by the Minister', because there was 'no other service to provide it'. She said that 'then it expanded and now I've accepted and believe that it is a really important role of the office to do some individual advocacy work'. She said that the GCYP has acted as an advocate for the

²⁷⁷ GCYP annual report 2006–7, p. 10.

²⁷⁸ *ibid.*, p. 11.

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child in situations such as gaining access to birth family or siblings; Families SA not being able to get access to disability services or having a different view from the Department of Education and Children's Services (DECS) about the type of class that the child might need to be in; psychologists having a different view about case decisions; DECS not being satisfied with a decision made by Families SA which means that a child has to change school; or Disability SA disagreeing with a decision by Families SA or the Education Department about the child. Ms Simmons described the role of the GCYP in this area of individual advocacy as being 'a problem solver', but that in doing so 'we are partisan on the part of the child and that is our role and we will therefore take our action on that basis'.

There is no doubt that the areas of advocacy, investigation and complaints overlap. Ms Simmons said the GCYP is not an investigative or formal complaints body. It advocates for the child, the Special Investigations Unit (SIU) investigates and the Health and Community Services Complaints Commissioner (HCSCC) is responsible for formal complaints. Ms Simmons said that three years ago, when the three organisations were new,

there was a lot of concern that suddenly there was a large number of bodies that are all potentially looking at the same issue and people were saying, 'Well, where is the difference in your roles?'

She said she believes the roles are clearer now to the extent that people understand the GCYP does not handle formal complaints. She says there is a close working relationship between her office, the SIU and the HCSCC in that each refers the relevant aspect of the problem to the other.

Ms Simmons said the GCYP could take on a role as advocate for a child who had disclosed sexual abuse under the guardianship or in the custody of the Minister. However, she said that her office would not provide 'a support role' in the sense of counselling; rather the role would be to make sure that the child received the counselling elsewhere, to make all other necessary referrals and to follow the child

through the matter. She also said there should be discretion in the extent of the GCYP's involvement in each case, given that some children may already have an advocate, whereas others may not and may need more involvement. In all cases, however, the GCYP could 'monitor a matter to make sure that those things are in place for the child as the matter proceeds'.

23 RECOMMENDATION 23

That the *Children's Protection Act 1993* be amended to add a function to the Guardian for Children and Young People, namely to act as an advocate for a child or young person in State care who has made a disclosure of sexual abuse.

That in accordance with section 52B of the Act, the GCYP is provided with sufficient staff and resources to accomplish this function.

In order to undertake the role of individual advocate, the GCYP must be notified when a child or young person in care makes an allegation of sexual abuse. It is not intended to make it mandatory to notify the GCYP of third party allegations unless and until the child or young person makes the allegation. However, it is intended that it be mandatory for the SIU to notify the GCYP once the SIU has received such a third party notification to investigate.

24 RECOMMENDATION 24

That it be mandatory for the chief executive of the Department for Families and Communities or Commissioner of Police to notify the Guardian for Children and Young People when a child or young person under the guardianship or in the custody of the Minister makes an allegation of sexual abuse. (Also refer Recommendation 20.)

4.1 State response to sexual abuse of children in State care

The Inquiry believes that the methods of record keeping need to be improved in regard to children in State care who have alleged sexual abuse (see chapter 6). During the course of the Inquiry, it was not possible to make an inquiry on the department's computer system (JIS) to locate all children who had allegedly been abused while in State care. Given the recommended role of the GCYP as an individual advocate for such children, the department must ensure that appropriate records are maintained and are easily accessible. Families SA is currently developing a new case management system called C3MS (Connection client and case management system).²⁷⁹ The Inquiry recommends the system include a separate menu for allegations of sexual abuse of a child in State care, which would collate all the names. A separate field in relation to each child in care would record any information about allegations of sexual abuse, including when that information had been forwarded to the GCYP.

25 RECOMMENDATION 25

That Families SA's new C3MS (Connection client and case management system) include a separate menu for allegations of sexual abuse of a child in State care, which would collate the names of all such children.

That the system include a separate field in relation to each child in State care, which is dedicated to recording any information about allegations of sexual abuse, including when that information had been forwarded to the Guardian for Children and Young People.

Independent individual advocacy

The Inquiry: *Did you ever tell welfare about it?*

PIC: *No, I never had any confidence in welfare, you know. I didn't believe anything would happen, because, you know, welfare put me in homes.*

Evidence from PIC placed in State care in the late 1960s, aged seven

The Guardian for Children and Young People, Ms Simmons, gave evidence to the Inquiry that she did not feel at all constrained in the performance of her functions. The office describes itself as 'an independent government agency'.²⁸⁰ Nevertheless, as a result of the evidence given by current and former children and young people in State care, the Inquiry considers it is important that the GCYP's independence is formalised in the *Children's Protection Act 1993*. As one child welfare expert told the Inquiry, 'we do have to have some independent advocacy for children that's professional, that's dedicated and that's fearless because, without that, I think the advocate becomes as powerless as the child'.

The word 'guardian' is confusing and does not lend itself to the GCYP office being regarded as independent. The Minister is the legal guardian of children and young people placed in State care; he stands *in loco parentis* to children under the guardianship or in the custody of the Minister. Unlike in NSW²⁸¹, it is not the role of the GCYP in South Australia to exercise the parental responsibilities of the Minister as legal guardian so the office's title should not be open to confusion with the Minister.

26 RECOMMENDATION 26

That consideration is given to changing the name of the Guardian for Children and Young People to avoid confusion with the role of the Minister as legal guardian of children and young people placed in State care.

The GCYP is appointed by the South Australian Governor for a set term up to a maximum of five years and may be removed by the Governor²⁸² for reasons set out in section 52A(5) of the *Children's Protection Act 1993* as follows:

- (a) breach of, or non-compliance with, a condition of appointment, or
- (b) failure to disclose a personal or pecuniary interest of which the Guardian is aware that may conflict with the Guardian's duties of office, or

²⁷⁹ DFC, *Rapid response progress report 2007*, p. 21.

²⁸⁰ GCYP annual report 2006–7, p. 1.

²⁸¹ *Children and Young People (Care and Protection) Act 1998* (NSW), s. 181(1)(a).

²⁸² *Children's Protection Act 1993*, Part 7A, s. 52A(4)(e).

- (c) neglect of duty, or
- (d) mental or physical incapacity to carry out duties of office satisfactorily, or
- (e) dishonourable conduct, or
- (f) any other reason considered sufficient by the Minister.

On its face, section 52A(5)(f) gives broad, unqualified power for removal from office and does not sit well with the idea of an independent GCYP. Comparison can be made to other positions established by legislation in South Australia. The same power is given to the Minister/Governor in relation to members of the Council for the Care of Children²⁸³ and the Child Death and Serious Injury Review Committee.²⁸⁴ There is no such power in regard to the:

- Director of Public Prosecutions, whose appointment may be terminated by the Governor for limited and defined reasons.²⁸⁵
- Health and Community Services Complaints Commissioner²⁸⁶, who may be removed by the Governor for limited and defined reasons including becoming, 'in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office'. The Governor may also remove the Commissioner from office on the presentation of an address from both houses of parliament seeking the removal.
- Employee Ombudsman²⁸⁷, who may be removed by the Governor for defined and limited reasons including mental or physical incapacity; and after presentation of an address from both houses of parliament.

²⁸³ *ibid.*, s. 52G.

²⁸⁴ *ibid.*, s. 52O.

²⁸⁵ *Director of Public Prosecutions Act 1991*, s. 4.

²⁸⁶ *Health and Community Services Complaints Act 2004*, s. 6(3).

²⁸⁷ *Fair Work Act 1994*, s. 58(3)(f).

²⁸⁸ *Health and Community Services Complaints Act 2004*, s. 11(2).

²⁸⁹ *Fair Work Act 1994*, s. 60.

RECOMMENDATION 27

That section 52A of the *Children's Protection Act 1993* is amended to delete section 52A(5)(f), powers of removal of the Guardian for Children and Young People, and replace it with provisions similar to the powers of removal relating to the Health and Community Services Complaints Commissioner and Employee Ombudsman.

Subsections 52A(6), (7) and (8) of the *Children's Protection Act 1993* state that the GCYP is to be subject to the Minister's direction:

- (6) Subject to subsection (7), the GCYP is to be subject to the Minister's direction.
- (7) The Guardian is not, however, subject to directions –
 - (a) preventing or restricting the Guardian from carrying out inquiries and investigations that the Guardian considers necessary for the proper performance of statutory functions, or
 - (b) preventing or restricting the Guardian from communicating with any body or person, or
 - (c) as to the nature or content of advice, reports or recommendations given or made in the performance of statutory functions.
- (8) Any direction given to the Guardian by the Minister must be in writing.

The GCYP's independence from the Minister and the department is not expressly asserted in the Act. Such expression is clear for the Health and Community Services Complaints Commissioner²⁸⁸ and Employee Ombudsman.²⁸⁹ In order to fulfil the function in section 52C(1)(f) (investigating and reporting to the Minister on matters referred to the Guardian by the Minister), it is evident that there must be some direction from the Minister; albeit restricted to the performance of that specific function.

4.1 State response to sexual abuse of children in State care

RECOMMENDATION 28

That the *Children's Protection Act 1993* be amended to expressly refer to the independence of the Guardian of Children and Young People; that the GCYP must represent the interests of children and young people under the guardianship or in the custody of the Minister; and that the Minister cannot control how the GCYP is to exercise the GCYP's statutory functions and powers—subject to section 52C(1)(f).

One of the GCYP's functions is to advise the Minister on the quality of care being provided to children under the guardianship or under the custody of the Minister and whether their needs are being met.²⁹⁰ Under the *Children's Protection Act 1993*, the GCYP must report to the Minister as requested by the Minister pursuant to section 52C(1)(f) and also produce an annual report; copies of all reports must be laid before both houses of parliament.

The GCYP may, however, consider some matters require a special report to the Minister, which should also be laid before both houses of parliament. There is currently no provision for this in the *Children's Protection Act 1993*.

RECOMMENDATION 29

That the *Children's Protection Act 1993* is amended to allow the Guardian for Children and Young People to prepare a special report to the Minister on any matter arising from the exercise of the GCYP's functions under the Act. The amendment should require the Minister to table the special report in parliament within six sitting days of receipt.

It should be expressly stated in the Act that the Minister may not direct the Guardian to change the contents of the report.

²⁹⁰ *Children's Protection Act 1993*, s. 52C(1)(d).

²⁹¹ *ibid.*, ss. 52C(3) and (4).

Under the *Children's Protection Act 1993*, a government or non-government organisation must provide information relevant to the performance of the GCYP's functions if requested by the GCYP.²⁹¹ However, this does not apply to people who are not part of an organisation. Also, there is no penalty for non-compliance with the GCYP's request for information; nor is it an offence to persuade or attempt to persuade another by threat or intimidation not to provide that information or to generally obstruct the GCYP.

RECOMMENDATION 30

That the *Children's Protection Act 1993* is amended to provide the Guardian for Children and Young People with powers to obtain information *from any person* in connection with the GCYP's functions under the Act. This power should be coupled with a penalty for failure to comply. It should also be an offence for a person to persuade or attempt to persuade another by threat or intimidation not to provide information.

There should be general provision making it an offence to obstruct the GCYP.

It is recommended that the amendment be modelled on similar provisions to those of section 47(2)–(6) and sections 78–81 of the *Health and Community Services Complaints Act 2004*.

Complaints by current and former children and young people in care

As an ex-State ward who was abused ... which basically instantly gave me no choice but to run away from that danger. No matter what got in my way or what was in my way, I still ran away. There was nowhere to actually give my complaint. There was no tribunal that had any judicial powers to investigate my complaint properly that operated

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Chapter 4 State response

separate and independent and run away from under the direction and control of the Minister.

Evidence from PIC placed in State care in the mid 1960s, aged eight months

The Layton report²⁹² recommended that a special unit be created to investigate complaints and grievances in relation to services concerning children and young people.

The Health and Community Services Complaints Commissioner was established by the *Health and Community Services Complaints Act 2004* (HCSC Act), which came into operation on 3 October 2005. Leena Sudano, who was appointed the HCSC Commissioner, gave evidence to the Inquiry in 2007.

As its name implies, one of the main purposes of the HCSC Act is to provide for the making and resolution of complaints against health or community service providers. However, what might not be evident from the name is that the HCSC Commissioner has jurisdiction to receive, assess and resolve complaints in regard to child protection services, which fall under the Act's definition of 'community service'. This means:

*a service for the care or protection of any child who has been abused or neglected, or allegedly abused or neglected, and includes any service that relates to the notification of any case of child abuse or neglect (or alleged child abuse or neglect), or the investigation of a case where a child may be in need of care or protection, or any subsequent action taken by a service provider arising from any such investigation.*²⁹³

This broad definition enables the HCSC Commissioner to investigate complaints concerning the many services associated with child protection, care and sexual abuse,

including actions of the department and non-government agencies, hospital and medical services, counsellors and related services.²⁹⁴

The HCSC Commissioner has numerous other functions under the Act²⁹⁵, including reviewing and making systemic recommendations; providing education and advice about service rights and responsibilities; and assisting service providers in their complaints procedures.

The Commissioner's main aim is 'to improve the safety and quality of child protection services'.²⁹⁶

The grounds on which a complaint relating to child protection services may be made are appropriately numerous and broad, and most relate to the issue of reasonableness or otherwise of the service provided.²⁹⁷

The Commissioner may resolve individual complaints by:

- conciliation²⁹⁸
- investigation (including the power to search documents and examine witnesses) resulting in the provision of a report to any person the Commissioner thinks fit²⁹⁹ and/or the service of a notice on the service provider requiring action within 28 days. The service provider has a right of appeal to the Administrative and Disciplinary Division of the District Court
- referral to a registration authority, which must investigate the complaint and report back to the Commissioner,³⁰⁰ or
- referral to another person or body.³⁰¹

Ms Sudano told the Inquiry that:

Having complaints and grievance mechanisms widely available and accessible to these very vulnerable people and their advocates, having a reparations process that is restorative, and having

²⁹² Layton, recommendation 3, ch. 5.

²⁹³ *Health and Community Services Complaints Act 2004*, s. 4(1)(c)

²⁹⁴ *ibid.*, s. 4(1), see definition of 'community service provider': 'a person, government agency or body of persons (whether corporate or unincorporated) who or which (a) provides a community service or (b) holds himself, herself or itself out as being able to provide a community service'. 'Government agency' is further defined in the Act to include '(a) a department or administrative unit of the Public Service, or (b) any other agency or instrumentality of the Crown, or (c) a local government council'.

²⁹⁵ *Health and Community Services Complaints Act 2004*, s. 9.

²⁹⁶ HCSCC Child protection report, Mar. 2007; available at <www.hcsc.sa.gov.au>

²⁹⁷ *Health and Community Services Complaints Act 2004*, s. 25.

²⁹⁸ *ibid.*, Part V.

²⁹⁹ *ibid.*, Part VI.

³⁰⁰ *ibid.*, Part VII.

³⁰¹ *ibid.*, s. 39(5)(d).

4.1 State response to sexual abuse of children in State care

substance reparation in such a way that it is rehabilitative, not just restorative, is actually rehabilitative of their lives from the complex harms they've experienced.

In determining whether a service provider has acted reasonably, the HCSC Commissioner must consider the Health and Community Services Rights Charter and its principles; the generally accepted standard of service delivery expected of a child protection service provider;³⁰² and the public interest.³⁰³

The HCSC Commissioner's child protection jurisdiction came into effect in July 2006. Ms Sudano told the Inquiry that it was considered that child protection would require specialised expertise and a dedicated unit within the office, as it would be significantly different from health and other community services. She said the jurisdiction was not proclaimed until she had a dedicated resource.

In the first seven months of the Commissioner's child protection jurisdiction work, 81 complaints were received.³⁰⁴ Seven of those complaints were transferred from the Ombudsman. The complainants were:

Parents	49
Grandparents	9
Other relatives	6
Foster carers	5
Relative carers	5
Professionals	2
Young person	1
Other	4
TOTAL	81

The top three issues raised by complainants were delays implementing case management decisions, care arrangements and access arrangements. There were 10 issues concerning abuse in care.

In the first 12 months, the Commissioner received 93 complaints, of which 73 per cent came from family members. All but one complaint involved services provided by Families SA.³⁰⁵

The Inquiry supports the continued existence of the HCSC Commissioner as a separate and independent investigative body in relation to child protection services, and the GCYP as the advocate for children under the guardianship, or in the custody, of the Minister. A Green Paper titled *A Children's Commission for NSW*, released by the NSW Office of Children and Young People in 1997, rightly observed:

*While an advocate promotes the needs and interests of the group it represents, the impartiality of a complaints handler must be beyond doubt. For a complaint to be properly handled, the agency must be completely impartial and know the potential strengths of any argument from both the complainant and the agency. Locating the two functions within the same body could compromise the performance of one or both of the important advocacy and complaints handling function.*³⁰⁶

In recommending the establishment of the GCYP and the child protection jurisdiction of the HCSC Commissioner, the Layton report identified the need for their independence and clear delineation of functions:

*The clear message is that it is vital in developing a structure to ensure independence, avoid conflict and clearly articulate the functions of each body to eliminate overlap and confusion. Further, it is also important to provide an efficient process with minimum bureaucracy suitable to the circumstances of South Australia ...*³⁰⁷

Under the HCSC Act, the HCSC Commissioner must operate independently and is not subject to Ministerial control in the exercise of statutory functions and powers.³⁰⁸ Further, the HCSC Commissioner can only be suspended

³⁰² *ibid.*, s. 85(1).

³⁰³ *ibid.*, s. 11.

³⁰⁴ HCSC Child protection report, Mar. 2007; available at <www.hscsc.sa.gov.au>

³⁰⁵ HCSC annual report 2006–07, available at <www.hscsc.sa.gov.au>

³⁰⁶ Office of Children and Young People 1997, *A Children's Commission for NSW: Green paper*, Office of Children and Young People, Sydney, p. 18.

³⁰⁷ Layton, ch. 5.6.

³⁰⁸ *Health and Community Services Complaints Act 2004*, s. 11, HCSC to 'act independently, impartially and in the public interest'.

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or removed from office by the Governor on presentation of an address by both houses of parliament or if the Governor considers that the HCSC Commissioner has become mentally or physically incapable of satisfactorily performing the duties of office.

The HCSC Commissioner also has appropriate coercive powers with respect to production of documents, examination of witnesses, search and seizure to assist in inquiries, and to conduct self-initiated investigations. In addition and importantly, the HCSC Act creates offences in relation to reprisals and intimidation of complainants, and obstruction of the HCSC Commissioner and others in the performance of functions and powers under the Act.

The Inquiry notes that the HCSC Act³⁰⁹ does not permit children or young people under the age of 16 to make complaints directly to the HCSC Commissioner. Instead, the complaint must be from 'a parent or guardian'. The HCSC Commissioner's website advises that children and young people in care aged 16 years old can complain themselves; if they are under 16 they can 'ask someone you trust to contact us on your behalf' or 'the Guardian for Children and Young People can help you'. The GCYP gave evidence to the Inquiry that the HCSC Commissioner has used the GCYP to advocate for children by interviewing and hearing what the child has to say in a particular complaint. The GCYP reported that this arrangement is working well. The HCSC Commissioner reported in her annual report of 2006–07 that: 'The Guardian can complain to HCSC Commissioner on behalf of a child in the care of the Minister'.

The Inquiry acknowledges the sound working relationship between the Guardian and HCSC Commissioner in the matter of child representation in the complaints process. However, it considers there should be no age restriction on complainants. The provision in the HCSC Act seems contrary to the important recognition in the government's reform agenda of empowering children and young people. It also puts the onus on a child or young person in care to find an older person they trust. Further it may also be the case that the child or young person wants to complain about the GCYP.

³⁰⁹ *ibid.*, s. 24.

RECOMMENDATION 31

That the *Health and Community Services Complaints Act 2004* be amended to allow all children and young people to make a complaint directly to the Health and Community Services Complaints Commissioner.

The Inquiry is also concerned that the title of the HCSC Commissioner does not identify the HCSC Commissioner as an investigative body of child protection complaints, particularly to children and young people. Ms Sudano told the Inquiry that 'the level of complaints ... didn't ever materialise as a major part of the day-to-day work'.

The Inquiry considers that in order to raise awareness of the child protection jurisdiction, the HCSC Commissioner should be permitted to adopt a second title.

RECOMMENDATION 32

That the child protection function of the Health and Community Services Complaints Commissioner be promoted by permitting the Commissioner to adopt an additional title as 'Child Protection Complaints Commissioner'. This should be enacted in the *Health and Community Services Complaints Act 2004*.

That within a reasonable time after the delivery of the Inquiry's report to the Governor, there be a public awareness campaign concerning the role of the HCSC Commissioner to receive complaints from people (including current and former children and young people in State care) about child protection service providers.

4.1 State response to sexual abuse of children in State care

In its Issues paper, the Inquiry sought views on the establishment of a differently constituted, independent commission to receive evidence and information from people who were sexually abused while in care. The Inquiry received eight submissions in response: three recognised an ongoing need for such a commission and five did not consider this to be the most productive use of resources, but indicated a preference for extending existing services and/or the powers of existing bodies.

One of the Inquiry's terms of reference was to consider the State's response to the matters that gave rise to allegations of sexual abuse of a child in State care. Evidence was received from PICs complaining about the manner in which the department and other organisations responded to their allegations. The Inquiry considers that the HCSC has the potential to fulfil this function to some degree.

Complaints to the HCSC Commissioner about child care and protection service providers (including Families SA) must be made within two years from the day on which the complainant first had notice of the circumstances giving rise to the complaint.³¹⁰ The Inquiry did not have such a time limit.

However, the HCSC Commissioner has the discretion to extend this two-year limit after taking into account whether a proper investigation should still be possible; the complaint is still amenable to resolution; and it would be in the public interest. In deciding whether to extend the time, the Commissioner may also take into account any other matter considered relevant. In regard to the discretion being exercised in relation to historical allegations of sexual abuse in care, the HCSC Commissioner is obliged to consider the generally accepted standards of the child care and protection service³¹¹ of the time. These standards have changed significantly since the government's *Keeping them safe* reform agenda in 2004. As a result, historical complaints may not be appropriate for the systemic review considerations relevant to the HCSC Commissioner.

While it is a matter for the HCSC Commissioner's discretion, it is evident that the HCSC Commissioner is not set up to completely replace the Inquiry in terms of continuing to hear and investigate historical complaints regarding child protection services and sexual abuse of children in State care. The significant resources that the State has expended in establishing and maintaining the Inquiry during the past three years for that purpose must be acknowledged. Importantly for the current and future children in care, the HCSC Commissioner is able to continue the Inquiry's work by investigating complaints about more recent actions of child protection service providers. This will play a significant role in monitoring the implementation of *Keeping them safe*. As HCSC Commissioner Sudano said:

The advantage ... of my jurisdiction is that to the extent that any individual matter is pointing to systemic failures, I have the capacity to make systemic recommendations and, indeed, in this area of my child protection jurisdiction I've already started doing that fairly swiftly.

The Inquiry believes the HCSC Act, which is due for review in October 2008, should contain a specific provision stating that a relevant consideration for extending the two-year time limit in the child protection jurisdiction is where the complaint arises from circumstances dating back to May 2004 (when *Keeping them safe* was launched). This could be a matter to be considered relevant by the Commissioner pursuant to section 27(2) of the HCSC Act.

RECOMMENDATION 33

That an amendment to the *Health and Community Services Complaints Act 2004* provides that a relevant consideration for extending the two-year limit in the child protection jurisdiction is that the complaint arises from circumstances since the launch of the *Keeping them safe* reform agenda in May 2004.

³¹⁰ *Health and Community Services Complaints Act 2004*, s. 27.

³¹¹ *ibid.*, s. 85.

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The criminal justice system

Police response

When I got [to the police station] I remember he went—they took him somewhere and took me in another room. I remember sitting there. They came in and said: ‘What’s your story?’ I said: ‘Well, my foster father is having sex with me’. I remember clearly them saying: ‘Yes, he told us that you tell lies and that you were going to say this story’. That’s all I remember. I don’t know what else was said but that’s all I remember: that, you know, ‘You’re a liar and he told us this’.

Evidence from PIC placed in State care in the 1960s, aged four

A police investigation will take place if a child or young person in State care discloses to an authority that they have been sexually abused. Such an investigation usually involves taking a statement from the child or young person (either a video recorded interview—usually done by Child Protection Services in the case of young children—or written statement), possibly a medical examination, taking statements from other potential witnesses and an interview with the alleged perpetrator.

In its submission to the Inquiry, South Australia Police advised that since 1995 it has received about 2200 reports relating to sexual offences with about 33 per cent of the alleged victims being children.³¹² It does not keep a record of the number of children who were in State care. It acknowledged past criticism levelled at the police practices concerning investigation of sexual assault including paternalistic, insensitive and unsympathetic male attitudes; blaming the victim; unresponsiveness; and lack of information given to victims by police about processes and victims’ rights.³¹³ However, it submitted that ‘the police role and attitude in respect of investigating child sexual abuse and sexual assault in general has been the subject of some discussion in recent years³¹⁴ and that considerable progress had been made through ‘the enactment of major structural and organisational change’.³¹⁵

³¹² South Australia Police submission, 30 Mar. 2007, p. 7.

³¹³ *ibid.*, p. 7.

³¹⁴ *ibid.*

³¹⁵ *ibid.*, p. 8.

³¹⁶ See this chapter, ‘Child safe environments: National screening’.

After a 2003 review, the Commissioner of Police approved the establishment of the Sexual Crime Investigation Branch (SCIB) to investigate and manage all sexual assaults. The branch, which became operational in October 2004, has a particular focus on managing high-risk offenders outside intrafamilial situations. It investigates tier two (more serious) offences and the police local service areas investigate tier one (less serious) offences with oversight by SCIB.

The police Child and Family Investigations Units, which are based in six metropolitan local service areas, investigate intrafamilial child abuse. They have a working relationship with SCIB, as well as Families SA and other support agencies.

SCIB contains the:

- Child Exploitation Investigation Section (CEIS), which investigates persistent, systematic or predatory sexual abuse and exploitation of children, including suspected paedophile activities; organised child prostitution; serious sexual offences against children; and people who use their professional or voluntary involvement in child care, support, welfare, sport or other bodies for child exploitation or their own prurient interests.
- Paedophile Task Force (PTF), which investigates allegations of historical and systematic child sexual abuse in the Anglican Church in South Australia and other organisations; pre-1982 offences reported as a result of legislative change; and referrals from this Inquiry.
- Australian National Child Offender Register (ANCOR), which requires sexual offenders to keep the Commissioner of Police informed of their whereabouts and other personal details.³¹⁶
- Victim Management Section (VMS), which is considered by the South Australia Police to be expert in interviewing victims of sexual offences. The section is regularly asked to interview intellectually disabled or mentally impaired victims of sexual assault over the age of seven.

4.1 State response to sexual abuse of children in State care

SA Police submitted that:

*The introduction of SCIB has provided the catalyst for change in SAPOL workplace practices and organisational culture which ensures that a victim of sexual assault will receive excellent, professional and consistent service from all members of SAPOL.*³¹⁷

It submitted that SCIB represents a significant step toward ensuring 'a cultural shift' in SA Police by raising the status of sexual offence investigations. For example, SCIB is responsible for contributing to continuous training and identifying any training gaps across SA Police.

SA Police submitted that its training in general sexual assault included the mandated notifiers' course; a nationally accredited Certificate IV in child abuse investigation and interagency code of practice; a workshop on interviewing sexual assault victims conducted by SCIB to female officers (completed by 246 officers in metropolitan and country areas); and enrolment of VMS staff in Deakin University's advanced practice in forensic interviewing of children.

Proceeding to trial

It's almost like I'm carrying a backpack which was half full and every time something comes up in a delay it's putting another pebble in the backpack and makes it heavier.

Adult witness who was a victim of child sexual abuse

During an investigation, the police may seek the advice of the DPP about whether charges should be laid. As a result, a solicitor or prosecutor from the DPP's office may speak to the child. If a decision is made to prosecute, charges are laid and filed in the Magistrates Court. Some sexual offences³¹⁸ are dealt with in the Magistrates Court, either by a guilty plea or a trial, but most are dealt with in the District Court. Some are heard in the Supreme Court. In regard to those matters, the Magistrates Court conducts the committal proceedings, which involve the accused entering a plea, the filing of statements by the prosecution and the

magistrate determining whether there is a case to answer. If the accused pleads not guilty and the magistrate finds there is a case to answer, the matter is committed to the District Court.

Once in the District Court, the matter is listed for an arraignment hearing, at which the accused is required to enter a plea. If the accused pleads not guilty, the matter is then listed for directions hearings to discuss various matters including the use of closed-circuit television (CCTV) facilities, disclosure of material by the DPP, funding and legal representation of the accused, and setting a trial date.

The trial prosecutor speaks to the child before the trial and generally calls him/her as first witness. Today it is usual for a 'court companion' to accompany the child, sitting with him/her during the evidence. As well, children now usually give evidence by CCTV from another room, rather than entering the courtroom itself.

Unfortunately, the process from investigation to trial completion now takes many years. The Inquiry heard of a trial being listed for the second time in 2007 but not being reached the second time because of insufficient courts or judges; the complainant was 17 and had postponed her final year of school in order to 'get through the criminal justice system'. She found out the matter was not going to be reached the day before it was due to start.

The Inquiry also received a submission from Mothers Against Child Sexual Abuse (MACSA) stating that:

... quite clearly the investigation and prosecution of child sex offences needs to be fast-tracked. A 2–3 year delay to reach trial is wholly unacceptable given that 2–3 years is a large proportion of a victim's life. Delays clearly disadvantage children. Their families can't move on. Delays also help defence lawyers to suggest to juries that the evidence of child witnesses is unreliable e.g. by asking questions about minute detail that is unrelated to the offences e.g. what colour was the offender's shirt ... In understanding that some of our cases have taken up to six years to get to court,

³¹⁷ South Australia Police submission, p. 14.

³¹⁸ Summary offences and some minor indictable offences are dealt with in the Magistrates Court.

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Chapter 4 State response

*this is an extremely damaging position to take with huge repercussions on the emotional and mental state of child and mother, siblings and in turn damaging these relationships.*³¹⁹

The recognition of the particular problems caused by delay in the prosecution of allegations of child sexual abuse is not new. In 1986, the South Australian Government Task Force on Child Sexual Abuse reported delays of up to a year as normal and two years as not uncommon.³²⁰ The task force reported the detrimental effect on children as witnesses caused by delay:

Delays are likely to increase the ambivalence a child may feel about giving evidence. Feelings of guilt and fear of rejection by often hostile family members are likely to increase over time. It is also extremely difficult to engage a child in constructive therapy while a case remains unresolved.

The task force recommended the enactment of legislation to ensure that all courts charged with responsibility for dealing with criminal proceedings in which children are the alleged victims shall use their best endeavours to ensure a minimum of delay, with the child's welfare being an important consideration in the listing of cases. It also recommended guidelines requiring the matter to be finalised (from the filing of a charge in the Magistrates Court to the trial) within six months and that the Attorney-General monitor the listing of child sexual abuse cases and present a report at regular intervals to the State Child Protection Council.

The Layton report also considered the delays in court proceedings involving children.³²¹ It received submissions about the adverse impact that a delay of nine to 12 months can have on the prosecution of child sexual abuse allegations, including on the quality of the child's evidence and his/her emotional wellbeing.

The University of Sydney's Associate Professor Hayes gave evidence to the Inquiry about the deleterious effects of current delays in the criminal justice system on child victims of sexual abuse:

... the child two-and-a-half years later is a different child, and particularly if the child has had therapy. I mean, ironically what's started off to help the child is probably also going to change the child's evidence in an unknown way, and also at a period of time they've talked about what happened with an unknown number of people, and even though police can say to parents or carers scrupulously, do not talk about their experience, it's just not going to happen.

In 2006, the government released a discussion paper on issues concerning rape and sexual assault,³²² which raised the delay in the hearing of trials involving children as alleged victims of sexual abuse. The paper set out initiatives in other Australian jurisdictions, including a legislative three-month limit on the completion of a matter once it has been committed for trial³²³, a pilot program for a specialist child assault jurisdiction³²⁴ and a specialist list for allegations of child sexual assault in the Magistrates Court.³²⁵ After the government had received submissions in response to that topic in the paper, the *Statutes Amendment (Evidence and Procedure) Bill 2007* was presented in parliament to insert section 50B into the *District Court Act 1991* as follows:

Trials of sexual offences involving children to be given priority –

- (1) The court will give the necessary directions to ensure that a trial of a sexual offence where the victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows.

³¹⁹ MACSA email, 11 Dec. 2007.

³²⁰ SA Government Task Force on Child Sexual Abuse, *South Australian Government Task Force on Child Sexual Abuse Final Report*, 1986, p. 204.

³²¹ Layton, ch. 16.

³²² Attorney-General's Department 2006, *Review of South Australian rape and sexual assault law*, Discussion paper prepared by L Chapman.

³²³ *Sexual Offences (Evidence and Procedure) Act 1983* (NT) in Attorney-General's Department, *Review of South Australian rape and sexual assault law*, Discussion paper.

³²⁴ NSW Bureau of Crime Statistics and Research, 'An evaluation of the NSW child sexual assault specialist jurisdiction pilot', Judy Cashmore and Lily Trimboli, 2005 in Attorney-General's Department, *Review of South Australian rape and sexual assault law*, Discussion paper.

³²⁵ VLRC, Final report, 2004 at [3.94] – [3.137] in Attorney-General's Department, *Review of South Australian rape and sexual assault law* Discussion paper.

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(2) In this section sexual offence means –

- (a) rape, or
- (b) indecent assault, or
- (c) any offence involving unlawful sexual intercourse or an act of gross indecency, or
- (d) incest, or
- (e) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest, or
- (f) any attempt to commit, or assault with intent to commit, any of the offences referred to in a preceding paragraph.

The difficulty will be in determining what is a 'less urgent trial' because of a general backlog of criminal cases in the District Court. In 2006, a District Court judge prepared an extensive report about various court-related matters, including delay, which was forwarded to the Attorney-General in June 2006. The backlog of court matters has risen dramatically from 70 at 30 June 2001 to more than 1800 at 30 April 2006, and has the potential to grow by 200 a year. The burden on the courts is considerable and increasing.

In late 2006 the Attorney-General established a Criminal Justice Ministerial Task Force, chaired by the Solicitor-General, Chris Kourakis QC. The task force 'has a clear and simple mandate: to identify and implement practical measures to address backlogs in the criminal justice system'.³²⁶ It includes legal practitioners, members of the judiciary, government entities including the Legal Services Commission, South Australia Police and the State and Commonwealth DPP offices, as well as advocacy groups such as the Aboriginal Legal Rights Movement and the Commissioner for Victims' Rights. This year the task force will 'continue to work closely with the Justice Portfolio in developing a number of system measures to improve efficiencies, especially in the District and Supreme Courts'.³²⁷

³²⁶ Department of Justice annual report 2006–07, p. 5.

³²⁷ *ibid.*, p. 5.

RECOMMENDATION 34

That the Criminal Justice Ministerial Task Force gives special consideration to the backlog of cases of sexual abuse involving child complainants and developing measures to prioritise the listing of those trials.

RECOMMENDATION 35

That the Criminal Justice Ministerial Task Force, or another committee specially established for the purpose, develop appropriate guidelines to ensure that trials involving child complainants of sexual abuse are fast-tracked.

Children and young people with disabilities

... for years, you know, I've been called a liar. ... do you know what I mean? Because at the end I said that [the sexual abuse] didn't happen ...

Evidence from PIC with an intellectual disability, placed in State care in the 1970s, when aged four

The Inquiry heard evidence that children with a disability are generally disadvantaged in the criminal justice system, but face additional obstacles in the way their complaints are received and acted on when they are victims of sexual abuse. They reportedly have pressure placed on them not to proceed with their allegations; and when they don't, it is left to Disability SA to support them as best it can.

The University of Sydney's Associate Professor Hayes gave evidence to the Inquiry about her research in intellectual disability during the past 20 years. Much of her work focuses on the rights of people with intellectual disability, including those who have contact with the criminal justice system as victims or offenders.

She has argued that the police and judiciary's lack of knowledge of people with intellectual disabilities is in itself a form of discrimination, which marginalises this group in the criminal justice system and leads to secondary victimisation by the criminal justice system itself.

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She said:

Police and public prosecutors are not always making decisions about pursuing the case on the basis of the evidence, but rather on the basis of the IQ of the victim ... The time has come to face squarely these discriminating attitudes on the part of police, prosecutors, defence lawyers and the judiciary. Many of us have listened for years to polite suggestions that there needs to be more training for criminal justice personnel. Nothing has been done ... Our society does not evaluate the merits of a case on the basis of the gender, age or race of the victim, and yet there is no public outcry when a person's intellectual disability is the primary factor in deciding whether to proceed with a prosecution. Most judges would not allow a defence lawyer to imply that the case against his or her client was nonsensical because the victim was ugly, or old, or black—and yet the assumption that no 'normal' person would want to have sex with a person with a disability can be openly canvassed in court. When did the personal characteristics of the victim become part of the defence?³²⁸

In 1990 a project was set up in South Africa to assist victims with learning disabilities in sexual assault cases. Victims were prepared for court, and psychologists advised investigating officers and prosecutors and provided expert testimony in court. Almost all of the cases involved allegations of rape. The conviction rate was 28 per cent, which was almost identical to the best conviction rates for sexual assault cases among the general population.³²⁹

Dickman and Roux, who reviewed the South African project in 2005, argued that the assessment of a person's competence as a witness depends as much on the supportive facilities in court as it does on the abilities of the complainant. For example, it may be useful to have evidence given from another room using a camera, with a trained intermediary relaying questions to the victim.

In her research in NSW,³³⁰ Associate Professor Moira Carmody, Social Justice Social Change Research Centre, University of Western Sydney, stated that where a victim with intellectual disability does report abuse, the police interview is likely to be stressful, making it difficult for the victim to accurately relay what has happened. Police interviewers are usually not appropriately trained in communicating with people with intellectual disabilities. If a victim has difficulty in understanding conceptual terms or has memory problems, they will probably appear to be an unreliable witness.³³¹ To minimise the likelihood of this happening the interview should be taken as soon as possible after the incident.

The Inquiry heard evidence about a South Australian police operation in 2002 where the alleged victims were children with disabilities at a private church school. Parents of those children were concerned that a man [X] had not been prosecuted for sexual offences committed against children from that school. After locating [X] in Queensland in 1998, police had made a decision not to extradite him back to South Australia for two main reasons. First, it was stated that the alleged victims were intellectually disabled and therefore 'unreliable' witnesses. Second, it was decided it would not be cost effective to extradite him. However the decision was reviewed in 2002 and [X] was extradited to South Australia to face charges relating to three boys who were intellectually disabled.

The police task force worked closely with the education office of the church that operated the school, Child Protection Services at Flinders Medical Centre (CPS FMC), and the Intellectual Disability Services Council (IDSC). CPS and psychologists determined the intellectual functioning of relevant witnesses and alleged victims and advised the police accordingly. If an interview was appropriate it was to be undertaken by the CPS FMC's director, Ms Fitzgerald. Many of the witnesses or alleged victims, who had been children when the alleged offences occurred, were by then adults. Interviews of some of them were not possible because of their disability. One complainant who had an

³²⁸ S Hayes, *People with intellectual disabilities as victims of crime—the police and judicial response*, paper presented at the 39th annual conference of the Australian Society for the Study of Intellectual Disability, Adelaide, 9 Nov. 2004.

³²⁹ BJ Dickman and AJ Roux, 'Complainants with learning disabilities in sexual abuse cases: A 10-year review of a psycho-legal project in Cape Town, South Africa', *British Journal of Learning Disabilities*, vol. 33, no. 3, Sep. 2005, p. 138.

³³⁰ M Carmody, 'Invisible victims: Sexual assault of people with an intellectual disability', *Australian & New Zealand Journal of Developmental Disabilities*, vol. 27, no. 2, 1991, pp. 229–36.

³³¹ *ibid.*, p. 233.

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intellectual disability told the police of sexual abuse against himself, which was supported by photographs of himself and another boy naked as well as a videotape showing the sexual abuse of a boy. The complainant was able to identify himself in the photographs and say that [X] and another man were present when they were taken. [X] was charged with multiple counts of sexual offences involving the complainant and two other children. The matter was listed for trial and the complainant went to court on the first day, prepared to give evidence. [X] pleaded guilty on the first day of trial and was sentenced to 10 years' jail.

The police did a post-operational assessment and concluded that the initial decision not to extradite [X] was flawed. First, it was stated police had demonstrated prejudice and bias by assuming that people with an intellectual disability would make poor witnesses. Second, there was a mistake made in the information and assessment of the nature and seriousness of the charges against [X].

A matter of significance about this police operation is the manner in which the detectives approached this task once the decision to extradite was made. Experts, including workers at IDSC, worked closely with police to develop the necessary communication skills and supports for the prosecution to proceed. One detective in particular was highly commended by IDSC for his work with the complainant who was to give evidence at the trial.

In evidence to the Inquiry, Associate Professor Hayes said it is vital for police to receive training in communicating with people with intellectual disabilities. Furthermore, she said, every allegation should be followed up; it should not be the case manager's decision whether or not the police or some other independent investigator should be involved.

Associate Professor Hayes said that children giving evidence in court should be allowed to narrate their story as far as possible: 'Uninterrupted narration is likely to be the most accurate form of evidence'. She said research in which she was involved had shown that children who give

evidence about a traumatic event are highly accurate when they narrate. However, the accuracy diminished the more they were interrupted and the more leading questions they were asked.

Families SA supported the concept of training for investigators and prosecutors concerning allegations of sexual abuse of children with disabilities. In addition, Families SA submitted that specialist training regarding the special needs of children with disabilities should be provided to the judiciary and prosecutors, and that solicitors representing children should be required to have that training.³³²

RECOMMENDATION 36

That specialist training is undertaken by police, prosecutors, defence counsel and the judiciary in regard to working in the criminal justice system with (child) victims of sexual abuse who have a disability.

Alternatives to proceeding to trial

When somebody hurts you, I think if they come up and say, 'Listen, I'm really sorry I hurt you', forgiveness is able to flow; but when they continually deny or hide from it, it makes it difficult—that's my perspective.

Evidence from adult victim of child sexual abuse

The Inquiry received 15 submissions in response to its Issues paper on the topic of restorative justice as an alternative to the criminal justice system in cases of intrafamilial abuse.³³³ A few submissions expressed significant reservations about the concept of restorative justice for child sexual abuse matters, however most were in favour of having this alternative approach available.

Since 1997, the Centre for Restorative Justice (CRJ) in South Australia has been advocating for a different

³³² Families SA submission, p. 113.

³³³ CISC Inquiry, Issues paper, issue 6.

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approach to the criminal justice system. The centre was 'derived from significant community feeling at the time that different approaches to justice were needed to ensure that the current system did not continue to generate damage and harm'.³³⁴ A division of the Offenders Aid and Rehabilitation Services SA Inc. (OARS), the centre describes itself as a 'venture with key collaborators from the victims movement with beliefs and ideals that hope to bring a balanced approach with respect to the rights and needs of victims. A strategic partner is Victim Support Services'. CRJ chief executive officer Leigh Garrett gave evidence to the Inquiry several times. The CISC Inquiry Commissioner was the inaugural chair of the CRJ. The CRJ focuses on four areas, including:

- action research and information dissemination on restorative approaches to justice
- innovative program development and implementation using restorative approaches to justice
- training and professional development programs for justice officials and administrators; educational policy makers and teachers; police and correctional services; and businesses that want to provide a different framework for employee relations and conflict resolution in their organisations
- accreditation, evaluation and audit service from a restorative perspective.

The CRJ defined restorative justice as:

*A process that advocates that the people most effective at finding a solution to a problem are the people who are most directly affected by the problem, creating opportunities for those involved in a conflict to work together to understand, clarify, resolve the situation and work together towards repairing the harm caused.*³³⁵

Restorative justice is another model of justice in which the primary victim is the person who was violated, not the State. The role of the offender is changed from a passive

participant to one required to understand the consequences of their behaviour, and accepting responsibility both for these consequences and for taking action to repair the harm. This takes place within a community context, so that the process involves all the parties with a stake in the offence to come together to resolve collectively how to deal with the offence.³³⁶

In evidence, Mr Garrett said restorative justice formed the basis of justice in Western Europe until the 12th century and was the norm in non-western cultures in New Zealand, South Africa and North America until colonial times. He said there are about 300 restorative programs in North America and more than 500 in Europe; Norway has a national mediation policy; Austria, the Netherlands and the United Kingdom³³⁷ have incorporated restorative justice into legislation; and it forms the basis of the juvenile system in Belgium.

The CRJ has recently worked with DECS schools to implement a restorative practices framework that approaches behaviour management in a different way. It began as a pilot project in 13 schools at the beginning of 2007 and in its first nine months there were positive signs that there had been a reduction in bullying, suspensions and exclusions. However, 'most importantly, victims of bad behaviour and bullying are indicating their support for the process' and some teachers have observed that 'restorative approaches make it easier for some children to report matters of poor behaviour by others, because they believe that the process of resolving it restoratively is more likely to stop the poor behaviour'.³³⁸ The CRJ advised the Inquiry that it is now working with more than 40 other schools across the State to implement a similar framework. The CRJ submitted that:

Whilst there appears to have been little research that we could find about this, one could surmise that the development of a culture that encourages the reporting and restorative resolution of poor behaviour, may have as a corollary, the possibility of

³³⁴ Centre for Restorative Justice SA submission, 25 Sep. 2007, p. 1.

³³⁵ *ibid.*

³³⁶ H Strang, Law Program, Research School of Social Sciences, Australian National University, *Restorative justice: Current developments and research findings*, Paper presented at the 3rd National Outlook Symposium on Crime in Australia, Mapping the Boundaries of Australia's Criminal Justice System, convened by the Australian Institute of Criminology, Canberra, 22–23 Mar. 1999.

³³⁷ Conditional cautions, Part 3, Criminal Justice Act 2003 (UK); see also <www.cps.gov.uk/publications> setting out the Code of Practice.

³³⁸ Centre for Restorative Justice SA submission, p. 3.

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*encouraging reporting of external matters of abuse and neglect to the school.*³³⁹

It also advised that there are several overseas programs that use restorative approaches to assist in the prevention and reduction of harm associated with sexual misbehaviour and offending. In the Netherlands, the Centre for Restorative Action operates a family group conferencing process that is essentially restorative, to assist with the prevention of, and recovery from, sexual abuse of children in families.

The CRJ also referred the Inquiry to a 2001 paper by Professor Kathleen Daly, Professor of Criminology and Criminal Justice, Griffith University, Brisbane,³⁴⁰ in which there is discussion about retribution forming part of the restorative process. She stated that 'restorative justice must ultimately be concerned first with vindicating the harms suffered by victims (via retribution and reparation) and then, second, with rehabilitating offenders'.

In its submission to the Inquiry, Victim Support Service Inc. stated that 'there is a clear need for a greater recognition that restorative justice can become a significant track within the criminal legal system that supports the goals of victims'.³⁴¹ It stated that the process could only proceed with the victim's agreement and that the alleged offender must admit guilt.

The department, however, made an extensively researched submission to the Inquiry explaining its 'significant reservations' about using restorative justice in cases of intrafamilial sexual abuse of children.³⁴² These included the possibility that the process may amount to secondary victimisation (including the issue of how a child can consent to such a process); power imbalances between victims and offenders; how 'the best interests of the child' may not be the same as the best interests of the family or offender; and that it may not overcome a victim's

resistance to report sexual abuse. The department also said that international literature during the past 10 years needed to be carefully analysed to ensure that restorative justice would serve the best interests of a child.

Relationships Australia (SA) submitted that the child should not be pressured into a restorative justice process. It said the dynamics involved in intrafamilial child sexual abuse, ongoing perpetrator tactics and 'the acute sensitivity of children ... to further pressure and coercion' should be acknowledged.³⁴³ Relationships Australia said, however, that if an offender admits guilt then the offender should be dealt with in the criminal justice system because it was 'imperative that child sexual abuse is not decriminalised'.³⁴⁴ Nevertheless, it supported 'a cautious and well researched approach to the adoption of a restorative justice model in this area'.³⁴⁵ In relation to adult survivors of child sexual abuse, it submitted:

*Professional practice experience with adult survivors of childhood sexual abuse and research within Relationships Australia (SA), gives rise to some caution about the concept of restorative justice in relation to child sexual abuse. Nevertheless, we do support this issue as an initiative which warrants further research and discussion.*³⁴⁶

The Premier's Council for Women submitted that any decision to follow a restorative justice process must be made on a case-by-case basis, with an independent professional assessment of the victim's circumstances by a qualified child sexual assault expert.³⁴⁷ The council said it was important to recognise the continued existence of unequal power dynamics. It submitted that:

With clear guidelines, a restorative justice process could be useful in some cases, some of the time, and it should be one of the options open to those

³³⁹ *ibid.*

³⁴⁰ K Daly, 'Sexual assault and restorative justice' in H Strang and J Braithwaite, eds., *Restorative justice and family violence*, Cambridge University Press, Cambridge, 2002.

³⁴¹ Victim Support Service Inc submission, Mar. 2007, p. 3.

³⁴² Families SA written response to this Inquiry, pp. 29–40.

³⁴³ Relationships Australia (SA) submission, p. 33.

³⁴⁴ *ibid.*

³⁴⁵ *ibid.*, p. 34.

³⁴⁶ *ibid.*, p. 33.

³⁴⁷ Premier's Council for Women submission, p. 5.

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who have been subjected to [child sexual abuse]. However, it should not be the only option, or necessarily the preferred option.

Other submissions referred to concerns about the power imbalance between the child and the perpetrator; potential manipulation of the process by offenders; the need for the perpetrator to admit guilt and successfully complete treatment; whether it would reduce or increase trauma for the victim; and the risk of trivialising the offence.

The Inquiry heard evidence that the Sexual Offenders Treatment and Assessment Programme (SOTAP) operates what it calls a pseudo-diversionary program, which covers situations where the child does not want the perpetrator to be charged with an offence or go to jail, but it has been agreed that the offender needs treatment for the offending to stop. The benefit, said director Dr Andrea Louis, is that the 'whole family is alerted and educated'. To ensure the victim's safety, during treatment the offender can be separated from the family and not allowed any unsupervised access. SOTAP said 10 per cent of its clients are doing this program. Dr Louis acknowledged that such a program should be available to 'people who genuinely want to ... change, rather than that little minority who want to use it as a way to get back into the family'.

South Australia is the only State that has a conferencing process for young people who have committed sexual offences.³⁴⁸ The Inquiry heard evidence from professionals at Mary Street about the program's involvement with family conferences in the Youth Court. In relation to certain offences, rather than laying charges in court, a police officer may notify a Youth Justice Co-ordinator at the Youth Court of the offence so that a family conference can be convened involving the alleged young offender, his or her guardians or relatives and the alleged victim, although the alleged victim is not required to attend.³⁴⁹ The offence can be dealt with by way of caution or other remedies without going to court. If, however, the young offender breaches any undertakings, the police officer can lay the charge in court. Also, in relation to most charges laid in the Youth

Court, the court may refer the charges to be dealt with by way of a family conference rather than sentence by the court.³⁵⁰ Mary Street can attend the conference, which may be delayed if the young person agrees to participate in the Mary Street adolescent sexual assault prevention program for 12 months. There may also be agreement that after completion of the program there will be a meeting or another process that involves restitution. The young person may return to court if they do not comply with the agreement. Mary Street's Alan Jenkins said that it does not work for every young person. Rob Hall, a manager from Mary Street, told the Inquiry that experience has shown it is important that the child victim not attend the conference, but is represented by someone who has their best interests at heart. Mr Jenkins also said that there is a need to ensure that demands are not made of the victim:

I think, too, we're drawing a distinction between restitution and apology, and what is done in the name of apology can often be quite abusive in itself, whereas I see restitution requires a capacity to be able to understand something about what you've done and the effect on others, and then you can deliver something, you can connect in something that doesn't require something more of the person you've hurt, like: 'I've said I'm sorry. Now forgive me,' and there's a demand to give something more.

Although he had initial reservations about the conference process, Mr Jenkins said that he had now been 'won over' as a result of the difference from working with young offenders who have been through the traditional court system:

... I look at the process of the conference where, one, he doesn't have a lawyer—you know, there's no lawyers part of that process, so he's required to speak for himself, to be interviewed in that process about what he did and about what he thinks about it. He's required to listen to, say, the family of the child that's been assaulted, talk about what this has

³⁴⁸ *Young Offenders Act 1993.*

³⁴⁹ *ibid.*, s. 10.

³⁵⁰ *ibid.*, s.17.

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meant for them. He's required to participate in a process of looking at what would be a fair and respectful outcome of this, and there's a sense of engagement I suppose, and a sense of commitment, and a sense of realisation that begins. Now, it begins there. It's not enough; there's a lot more that needs to happen. But I suppose the precedent or the foundation that it tends to set, I've felt, has been much more helpful both in terms of the young person facing what he's done and in terms of the impact on others.

The Inquiry considers that a model for restorative justice should be developed by a panel of appropriately qualified people, including representatives from OARS SA, the Victim Support Service Inc., Yarrow Place, Child Protection Services, Mary Street, SOTAP, Aboriginal people nominated by the Council of Elders, the Office of the DPP, the Legal Services Commission, the Law Society, the Courts Administration Authority, SA Police and the judiciary.

37 RECOMMENDATION 37

That a panel of appropriately qualified people be formed to consider and establish a model for restorative justice in regard to complaints of child sexual abuse made by victims.

Adult disclosures of sexual abuse when a child in State care

During the three years 2004–07, the Inquiry received evidence from adults disclosing that they were sexually abused when they were children in State care. The alleged abuse dated back to the 1940s. The evidence included personal information about the long-term effects of child sexual abuse in care; the difficulties of disclosing child sexual abuse as an adult; and the motivations for disclosing to the Inquiry.

Long-term effects of child sexual abuse in care

The evidence received from adults about the long-term effects of child sexual abuse in care reinforces Relationship Australia's submission to the Inquiry, which referred to research literature being

... unequivocal in asserting that a significant proportion of people who are subjected to child sexual abuse will, as a result, experience short- or long-term social, emotional and psychological problems of a serious and disruptive nature.

Those problems included a reduced capacity for trust, intimacy and sexuality; symptoms of post-traumatic stress disorder; high rates of depressive symptoms, anxiety disorders, substance abuse, somatic and eating disorders and self-harm, including suicide; reduced ability to parent and difficulty seeking help.³⁵¹

One witness said: 'Some people are stronger and can get through stuff, some aren't, and no-one knows the degree of damage that it's done because we're all individuals'. Another said: 'I put on a good front. I think the psychological scars are always there in your background. A lot of things will remind you.'

Some witnesses said they found their own ways to cope: 'I've done my bit of crying, mate. It's over and done with. Now I'll just get on with my life.' A large number of people said that sporting or leisure pursuits helped them interact socially. Some finished their education. Some had undertaken private courses of counselling, joined community groups and sought professional support services to ease the trauma of sexual abuse. Some people had become youth workers and participated in programs to assist children who had been sexually abused.

Most witnesses linked their difficulties in adult life to their abuse in State care. One male witness said:

They [the State] were given one of the most important jobs to do as far as I can see, and that

³⁵¹ Relationships Australia (SA) submission, pp. 10–11, 20.

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was to raise children into teenagers and then from teenagers into men, and a lot of that wasn't done and it wasn't provided.

Another said:

When you've had nobody to really guide you through life as a child ... you don't know—you're out there by yourself and you have to learn by yourself.

The effects of abuse were both subtle and far-reaching. The Inquiry heard from many people who absconded as a result of abuse, or who were transferred among placements after being abused. As a result, many witnesses said they lacked basic numeracy and literacy skills. Asked whether he could read, one man said: 'I still can't, even today'. The evidence supports research that shows poor literacy and numeracy are secondary effects of institutionalisation.³⁵²

A significant number of witnesses said they were unable to express themselves as a result of being sexually abused. One woman said: 'You lived in fear and you got very good at hiding feelings ... Now I find it difficult to express emotion.' Lack of trust was a major issue. Another adult said: 'I've never trusted anyone in my life—never, ever. Not even my wife.' Emotional intimacy was another area affected by abuse. A woman told the Inquiry she believed, 'if you get close to people you just get hurt, so I try to keep my distance'. One man described his

... fear of getting close. Fear of intimacy, fear of abuse, fear of abandonment. It's easier to be a loner and not have to deal with any of that, than to possibly deal with the pain.

The Inquiry heard from many people who experienced confusion and uncertainty in adult sexual relationships, including about their sexual orientation. Others expressed a belief that their adult sexual relationships failed because the childhood abuse had resulted in distorted ideas of appropriate sexual activity. Some people became very highly sexualised, believing they had been taught to see

sex as love. Others rejected sexual intimacy. One woman said: 'I've felt very dirty down there all my life'. Another: 'I don't like being touched. I don't like any intimacy at all.'

From a man:

I find it difficult to talk to women and I find it difficult to talk—like, when it comes to the relations side of things I find it extremely difficult for me to trust a woman.

A woman said:

I don't want anyone to touch me in a sexual way. I even find it hard to let people give me a hug. I don't know why they want to give me a hug and I am always suspicious of people's reasons.

Feelings of shame and low self-worth remained strong for many who gave evidence. As one witness said:

Once you give up on yourself ... you turn yourself into a doormat and everyone will treat you so ... If that's all you know, you find comfort in abuse and it takes a lot to break free of that.

Another said: 'You always had that in the back of your mind. I think instability ... —or insecurity, should I say—they follow you on for many years'. Acknowledging abuse, one witness said: 'doesn't take away the fact that it's happened to you. It's there, and the shame still exists. That goes with you.'

A large number of people who gave evidence to the Inquiry described experiencing depression and unhappiness as adults. A male witness said: 'For 30 years I have had nightmares that have woken me in the dead of night ... I would become irrational and depressed and all those around me would suffer'. A woman said: 'I can't say I've ever felt happy. I don't know what a normal life is like.'

A man said:

I still suffer the nightmares. I still suffer the sweats and believe me it kills you; it hurts you; it knocks you out. I mean, I just want to, I don't know, forget about it all, but you can't.

³⁵² Research data: Queensland Aftercare Resource Centre in Relationships Australia (SA) submission, p. 26.

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Many have used drugs and alcohol to cope with their emotions:

I drank a lot. I must have drank a heck of a lot because what it did was just block everything out for me and I was quite happy that way.

Another said:

I had a great life. I met a woman, settled down, had four kids ... until all this stuff [the Inquiry] hit the papers and it brought back too many memories and I hit the booze.

The Inquiry also took evidence from people who self-harmed to cope with their emotions.

Witnesses expressed their difficulty in building close ties with children and grandchildren. Many said that sexual abuse as children in State care had affected their parenting as they did not have a stable upbringing to use as a reference. Some struggled to express affection, such as the woman who said: 'What's happened to me has affected my family ... Because I wasn't taught how to love, to care, I didn't do that with my kids.' On becoming parents and grandparents, witnesses told the Inquiry they often became over-protective toward children in their families. One woman told the Inquiry: 'I always tell [my adult children] to keep to themselves and I explain that there are lots of nasty people in the world who want to hurt them'. Some described a fear of emotional and physical contact with their children. One man avoided 'being too close to or touching my children' for fear of becoming an abuser. He said:

I think ... if I grew up with like a family structure ... or knew how to actually give love out properly ... I am sure I would have done a better job.

Inclinations felt by some toward sexualised interaction with their own children caused significant distress.

The difficulty of disclosure by adults of child sexual abuse in care

Disclosure for adults is an extremely difficult, complex and painful process that does not begin or

end with a single disclosure ... commonly, the abuse has been surrounded by silence, anxiety, confusion, fear and shame.

Submission from Relationships Australia (SA)

This sentiment was reflected in the evidence to the Inquiry which, for many adults, was the first time they had spoken about their sexual abuse. They gave evidence about not ever telling anyone and the mixed emotions involved in disclosing.

A woman said she 'had never sat down and spoken at length about any of this to anyone'. A man: 'I've wanted to, all my life, I've wanted to tell'. Reasons for suppressing disclosures of past abuse varied. Some witnesses described a long process of accepting what had happened before they could make any disclosure: 'You spend all your life making yourself forget things'. Many found it difficult to speak out after experiencing repression as children. One witness described the feeling: 'You get told so many times not to say anything, and someone suddenly says, "I want to hear what you've got to say"'. Others said of the Inquiry: 'I thought that perhaps for the first time in my life somebody would be willing to hear my pain' and 'I'm just still overwhelmed that all of this is happening'.

Many experienced relief at being able to disclose: 'Thank you for listening to my story ... I've never really told anybody about it.' Another said:

Thank Christ I've got that out of my system, you know. I've had good friends over the years, I've had good wives and good partners, and I told them nothing.

Many of the adults expressed how difficult it was to disclose to the Inquiry. A successful businessman said he was 'totally frightened' before giving evidence: 'The butterflies were building up in my stomach. I nearly was going to pick up that phone and say, "Forget it".' Many broke down during their evidence. Often, witnesses apologised when overwhelming emotions halted their evidence. Some were still so traumatised they were unable to give evidence after making initial contact with the Inquiry.

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Motivations for disclosing to the Inquiry

I think it's good that it's told so that it doesn't happen to other people.

PIC placed in State care in the 1980s, when aged seven.

Relationships Australia stated in its submission that 'for adults, the decision to disclose is not necessarily linked to the desire to report or have any formal action taken'.³⁵³ This was confirmed by the experience of the Inquiry. Some people asked for their allegations to be forwarded to the police at the time of their hearing; some needed time to think about it; and others did not want their information forwarded.

For some, the experience of approaching the Inquiry was affirming. Coming forward as one of many hundred people helped one woman in 'knowing that it's not just me'. Giving evidence provided some witnesses with a measure of personal comfort: 'I feel very empowered by coming here and doing this'. For another:

The experience [of giving evidence] has finally helped me realise I am not drowning in a sea of despair but treading water in a lake of sadness. That is okay, I can now float around a little then swim to shore and step on to firm ground when I am ready.

Others expressed a hope rather than a certainty that coming forward would be therapeutic: 'I've had days where I just want to give it all away. And I just hope that this [coming to the Inquiry] will end it.'

People gave evidence for others' benefit as well as their own. One young woman said she hoped her evidence would help police apprehend alleged current abusers 'before they do it to another person'. A man said: 'This is why I am sitting here today, so it doesn't happen [to children in the current system]'. An older man said: 'I'd like that nothing like this happens to any other kids, for a start, because I've got grandchildren'.

Witnesses also spoke of wanting to alert the community to the prevalence of sexual abuse of children in State care. One man said, 'I was thinking, well, if I don't come forward and no-one else comes forward, no-one's going to know what really went on'. One witness, who experienced sustained physical abuse at the hands of a carer who also locked her in a cupboard, saw the Inquiry as a voice for other 'frightened little girls hiding in cupboards'. By coming forward, some witnesses hoped to give comfort to others: 'Maybe my story might help someone else that had a lot worse things happen to them, and help them out'. Many witnesses said their motivation was to seek redress on behalf of former State children who had died:

Someone has to speak up, someone has to represent—I go back again to the people that aren't here to represent themselves because it wasn't fair on them, you know?

Acknowledgment / apology

Someone to say ... 'Look, I'm sorry it didn't turn out the way that it should have turned out'. I suppose having an understanding why it bloody went down the way that it did, yes. Someone to say also, 'Look, sorry we fucked it up'. I think it's only now as I'm a lot older that I do look back and I know the pain, the suffering and the struggles that I've gone through, and that still persists.

Evidence from PIC placed in State care in the 1960s, aged six

Many people who gave evidence to the Inquiry expressed a desire that the State Government acknowledge that children placed in State care were sexually abused. One man said: 'It's really up to I guess whoever is in power today ... but a sense of recognition of what happened would be helpful'.

Others sought an apology for varying reasons. Many

³⁵³ Relationships Australia (SA) submission, p. 19.

4.1 State response to sexual abuse of children in State care

wanted an alleged perpetrator to apologise. Some believed that the State should apologise as they were abused by people employed by the State Government, in institutions operated by the State Government, or in private placements funded by the State Government. Witnesses said: 'The homes back then and the people that run them should be held responsible for what happened'; 'I want a public apology. I want the government to take some responsibility'; and

... the government ... could apologise. Not just have it in a book like they've got, 'Sorry to the poor lost generation', but they would apologise to people that went through this. They were treated worse than a dog. Worse than a dog.

Some saw an apology as necessary to their healing: 'I've been hurt and that apology, a genuine apology, is extremely important to me, because it would help relieve some of the grief that sits there to this day'. Another witness said, simply: 'I would just like someone to say, "Sorry"'.

In response to the recommendations of the Forde Inquiry, the Queensland Government issued a statement of apology in 1999 to people abused in government and private institutions during childhood. The apology read, in part: 'we sincerely apologise to all those people who suffered in any way'.³⁵⁴

The Commonwealth *Forgotten Australians* report recommended that

... all State Governments and Churches and agencies, that have not already done so, issue formal statements acknowledging their role in the administration of institutional care arrangements; and apologising for the physical, psychological and social harm caused to the children, and the hurt and distress suffered by the children at the hands of those who were in charge of them, particularly the children who were victims of abuse and assault.

The Commonwealth Government's response was that this 'is a matter for State and Territory Governments, churches and agencies to consider'.

The Premier of Tasmania placed a formal apology on the parliamentary record in May 2005, part of which reads:

*The Tasmanian Government acknowledges and accepts that many children in the care of the State were abused by those who were meant to care for them, by those who were charged with providing them with a safe and secure home life. We apologise to the victims, and we express our deep regret at the hurt and distress caused.*³⁵⁵

In June 2005, the Premier of New South Wales apologised to children in the State Government's care who experienced abuse:

*The Government of New South Wales apologises for any physical, psychological and social harm caused to the children, and any hurt and distress experienced by them while in the care of the State. We make this apology in the hope that it may help the process of healing. The New South Wales Government is strongly committed to supporting families to reduce the need for children to be in care. Where children and young people are placed in care, the Government will assist with the services available to them. We hope that this apology will be accepted in the spirit in which it is made and that the New South Wales Government, our community partners and the community at large can continue to work together to build a better and safer place in which our children can live, grow and flourish. We know we need to listen to these people and work with them to make this a reality. I thank the House for the opportunity to make this important and much overdue statement. I hope this apology, along with the other measures that I have outlined today, will help bring healing and help to those young Australians who, at a vulnerable time in their lives, were let down by the system.*³⁵⁶

The Victorian Government issued an apology in August 2006, in response to the *Forgotten Australians* report:

The State, the churches and community agencies

³⁵⁴ See <<http://www.qld.gov.au/community/documents/getting-support-health-social-issue/queensland-apology.pdf>> Viewed 20 Dec. 2007.

³⁵⁵ See <<http://www.parliament.tas.gov.au/ParliamentSearch/isyquery/8216e02e-acf7-4b57-bb3d-3c66c433f491/1/doc/h17may1.htm>> Viewed 20 Dec. 2007.

³⁵⁶ See <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2008-10/recs_lost_innocents_forgotten_aust_rpts/report/index> Viewed 18 Dec. 2007.

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*cared for thousands of children over the years. For those who were abused and neglected, the message we wish to give to them is that we acknowledge their pain and hurt. We are also committed to working together with survivors of abuse and neglect in care and to promote the healing process. We take the opportunity provided by the release of this report to express our deep regret and apologise sincerely to all of those who as children suffered abuse and neglect whilst in care, and to those who did not receive the consistent, loving care that every child needs and deserves.*³⁵⁷

The Western Australian Premier gave ‘an unreserved apology’ to all children who were abused in State care as part of his announcement of a \$114 million compensation package in December 2007.³⁵⁸ He stated:

*Acknowledgement and apology are often of great importance to child abuse victims because many may not have been believed by friends, family or authorities in the past.*³⁵⁹

The Inquiry received four submissions in response to its Issues paper on the topic of whether the State Government should formally acknowledge that children in State care were sexually abused. The submissions were from a government agency, non-government agency, former young person in State care and a professional person working in a related policy area. All said there should be an acknowledgement that children were sexually abused in State care; one stated that an acknowledgment should make it clear that not all children in care were sexually abused.

RECOMMENDATION 38

That the South Australian Government makes a formal acknowledgment and apology to those people who were sexually abused as children in State care.

After the Inquiry: listening to adult survivors of child sexual abuse in care

... just listening and believing and hearing what somebody is saying is crucial and important.

Evidence from Relationships Australia (SA)

Evidence to the Inquiry showed how difficult it is for adults to make disclosures of child sexual abuse. There is no doubt that the decision to disclose after years of silence can take time and sometimes will never be made. Also, the decision to disclose as an adult after having been disbelieved as a child has its own difficult challenges. Some witnesses said they waited months or years after the Inquiry was established in 2004 before they had enough confidence in themselves—and the Inquiry—to make their disclosure. Some witnesses said it was important that the Inquiry was independent of government and its agencies, such as the department and police. Some were willing to make statements to police after being involved in the Inquiry.

As discussed earlier in this report, in its Issues paper the Inquiry sought views on the continuation of a differently constituted commission independent of government and its agencies to receive evidence and information from people who were sexually abused while in care. Of the eight submissions received on this topic, three recognised an ongoing need for such a commission and five did not consider this to be the most productive use of resources, preferring the extension of existing services and/or the powers of existing bodies.³⁶⁰

It has to be acknowledged that the Inquiry was extended from its original six-month time and resourced and conducted hearings for three years. Despite the extension, evidence from the PICs suggests there are other people who were sexually abused in State care, but who could not, or chose not to, disclose. After the Inquiry ended the hearings phase, a small number of people came forward wanting to speak about their experiences of sexual abuse. It is impossible to estimate how many more people may want to disclose.

³⁵⁷ See <<http://www.parliament.vic.gov.au/downloadhansard/pdf/Assembly/Jul-Oct%202006/Assembly%20Extract%209%20August%202006%20from%20Book%2010.pdf>> Viewed 20 Dec. 2007.

³⁵⁸ See <<http://www.abc.net.au/news/stories/2007/12/17/2121117.htm?site=wa>> Viewed 20 Dec. 2007.

³⁵⁹ See <[https://www.mediastatements.wa.gov.au/Pages/Carpenter/2007/12/\\$114million-for-child-abuse-victims.aspx](https://www.mediastatements.wa.gov.au/Pages/Carpenter/2007/12/$114million-for-child-abuse-victims.aspx)> Viewed 20 Dec. 2007.

³⁶⁰ See this chapter, ‘Responding to a disclosure by a child in State care of sexual abuse: Complaints by current and former children and young people in care’.

Existing organisations relevant to adults who were sexually abused as children

When I joined CLAN, I received a lot of newsletters ... there were a lot of things that reminded me of my own experience. There were a lot of stories that were way worse than mine as well, which was quite shocking and hard to deal with as well, but it made a difference to just know that you weren't alone.

PIC placed in State care in 1960s, aged three

Care Leavers of Australia Network (CLAN), which was established in 2000, is a national self-help support and advocacy group for people aged over 25 years who lived in orphanages, children's homes, other institutions and foster care. CLAN started with 38 members and now has more than 800 in Australia, New Zealand, Canada, the United States and Ireland. Its objectives are to:

- provide a national network through which care leavers can communicate with each other and share their experiences
- raise public consciousness of past institutional care practices and the effects of institutional care
- lobby governments to provide acknowledgment and support for former State wards and children who lived in homes
- provide, wherever possible, advocacy for people who have left care.

CLAN assists members to obtain their departmental files or information about the institution where they spent their childhood. It also publishes a bi-monthly newsletter and holds social gatherings. The CLAN library contains videos and more than 600 books on issues related to institutional care and its effects, as well as some histories of individuals and orphanages. CLAN also promotes awareness of issues facing people who have left care, through activities such as lobbying. Leonie Sheedy and Dr Joanna Penglase, who founded CLAN, still primarily run the organisation.

CLAN has not received funding from the Commonwealth Government. It has received modest non-recurrent grants

from the governments of NSW, Victoria and the ACT. In 2003 the South Australian Government contributed \$5000 and since then has provided \$15,000 a year in recurrent funding. Anglicare also has provided donations. CLAN uses some of this funding to employ Ms Sheedy and Dr Penglase part-time. It has also funded a website and has ongoing general running costs, such as administration, printing of newsletters and maintaining the library. CLAN does not have a representative in South Australia, but it can be reached on a free contact number (1800 008 774).

Advocates for Survival of Child Abuse (ASCA) is a national not-for-profit organisation for anyone who feels they have suffered 'sexual, physical, emotional or spiritual abuse'. It welcomes survivors of childhood abuse as well as their partners and family members, professionals working in the field and the public. Its services include a free Information Support Line (1300 657 380), a Supportive Listening Network (where survivors can contact other survivors), support group meetings network, social events, online support group, monthly newsletter, therapists' database and two main types of programs: 'Breaking free' and 'Towards healthier relationships'.

ASCA representatives gave evidence to the Inquiry that it has almost 1000 members, about 800 of whom confidentially receive the newsletter. The Sydney-based organisation relies on volunteers to provide many of its services, with some volunteer positions requiring special training. ASCA's South Australian branch holds a monthly meeting with a guest speaker, such as a psychiatrist or a therapist. Its main work is in providing healing programs and support, including bringing survivors together and facilitating group support. ASCA relies on donations and fundraising activities. An adult victim of child sexual abuse told the Inquiry that:

The ASCA meetings were the start of a very important part of my healing, because I was amongst my peers ... just talking with my peers and knowing that there were others who knew what I was talking about was extraordinarily important because I had had a lifetime of feeling alone.

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Ongoing services for adults who were sexually abused as children in care

This is an opportunity for people to finally state [the sexual abuse], and that is part of dealing with it, and I think if people are still caught up in that, then they need the ability to be able to access services so that they can deal with the past traumas. It's hard, though, to do that because it reminds you then constantly that there was something that went down and that you were vulnerable, and that it brings up a whole lot of emotional stuff again.

Evidence from PIC placed in State care in the 1960s, aged six

Adults who were victims of child sexual abuse while in State care require access to an extensive range of different support services. The Inquiry created a full-time position for a witness support manager in June 2005 and many witnesses used this service, for a variety of reasons. Some needed practical help, such as securing safe and stable housing, financial aid and disability support. Others sought assistance to obtain copies of historical records through the *Freedom of Information Act 1991* to understand the terminology used in records, lodge police statements, understand the Inquiry process, or gain information on pursuing compensation or police investigations. Others wanted to access treatment services for drug and alcohol addictions. The Inquiry also provided referrals and support to many people for mental illnesses and psychological disorders, such as post-traumatic stress disorder, anxiety, depression and suicidal inclinations. A significant number of people asked for referrals and assistance with dysfunction in their adult relationships, which included domestic violence, sexual intimacy, parenting skills, family relationships, conflict resolution and emotional connections with family and friends.

The witness support manager did not provide ongoing crisis counselling: the Inquiry believed it was important that external professionals, who could establish ongoing therapeutic relationships, undertook this role. The witness support manager ensured that the referral agencies were qualified to deliver the required services.

In June 2007 the department introduced Post Care Services (free call 1800 188 118) as part of its *Keeping them safe* and *Rapid response* reform agenda in response to the Layton report.³⁶¹ The service's five staff provide information, advocacy, referral and support services to adults who have been in care.³⁶² This may involve helping them to strengthen contacts or reconnect with their family and their community; obtain their personal records; and access a wide range of community services and programs.³⁶³

To be eligible for Post Care Services³⁶⁴, a person must be 18 and have experienced for six months or more in South Australia:

- foster care
- State institutional care
- church-based institutional care
- government approved, funded and/or licensed institutional care, or
- alternative care and were under a care and protection order or secure custody order.

Post Care Services has established a consumer reference group, consisting of staff and seven people who have been in care, which aims to provide feedback on the development of the program and its services.³⁶⁵ It has also established a working party to discuss the development of an appropriate memorial for people who have been in care, funded by an \$18,300 Commonwealth grant.³⁶⁶

³⁶¹ In particular, Layton, recommendation 69.

³⁶² DFC, *Rapid response progress report 2007*, p. 19.

³⁶³ *ibid.*

³⁶⁴ See <<https://www.dcsi.sa.gov.au/>>

³⁶⁵ DFC, *Rapid response progress report 2007*, p. 19.

³⁶⁶ *ibid.* As a result of the 2004 Senate Community Affairs References Committee Inquiry into children in institutional care, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, the Commonwealth Government allocated funds to each State to help erect a suitable monument/memorial to those who were formerly children in State care.

4.1 State response to sexual abuse of children in State care

Families SA told the Inquiry³⁶⁷ that Post Care Services does not provide therapeutic counselling. However, if its clients are referred to a psychologist by their doctor, Post Care Services will pay for the gap if the psychologist's charge is over the Medicare rebate amount. If there is no doctor referral, then Post Care Services approves funding for counselling on an individual basis. It also refers people to a range of non-government services for counselling, including those operated by Centacare Catholic Family Services, UnitingCare Wesley, Southern Junction Community Services, Yarrow Place and Victim Support Service.

A free specialist service for adults who were sexually abused in care

I think I've been carrying it for too long ... I felt that they should be obligated to help me get my feet back on the ground, so to speak, and that be with the help of counselling.

PIC placed in State care in the 1960s, aged less than one year

In June 2004, the government established Respond SA, anticipating that the service would provide support for people who gave evidence to the Inquiry. The service, run by Relationships Australia (SA), was available to all adult survivors of child sexual abuse; not limited by the Inquiry's terms of reference to those adults who had been sexually abused in State care. The service stopped in December 2007, when the government withdrew its funding. It was a free, non-government and not-for-profit service for people aged 16 and over who had experienced childhood sexual abuse. It operated a telephone helpline, face-to-face counselling, workforce development, research and advocacy.

Respond SA received referrals from several government agencies as well as 172 referrals from the Inquiry. From July 2004 to June 2007³⁶⁸, the helpline received 3149 calls

(72 per cent from women; 28 per cent from men) of which 75 per cent were from survivors of childhood sexual abuse. It provided 4924 counselling sessions to 1242 clients, and had 65 people on a waiting list. It made 188 reports of childhood sexual abuse to the police Sexual Crime Investigation Branch. It conducted 51 training workshops involving 849 participants, provided policy advice to the department, participated in regular meetings at the Inquiry, developed resources (a website, pamphlets, posters, booklets and information sheets) and contributed to community education (presentations to community groups, training and education to service providers and a newsletter).

Relationships Australia (SA) submitted to the Inquiry that because Respond SA was funded on the basis of short-term contracts, there were significant constraints on the service in relation to assuring clients and other agencies of ongoing support services and training, limitations in developing service partnerships to reach certain groups, and difficulties in staff recruitment and retention.

The Inquiry does not believe Post Care Services offers the same service as Respond SA because it:

- is not a specialist service dedicated to the provision of support to adult survivors of child sexual abuse
- does not provide free counselling
- considers the provision of funding for counselling on an individual basis
- refers adults to various organisations that are already overstretched in their capacity to provide counselling. For example, the Victim Support Service submitted to the Inquiry that 'there has been a growing, rather than declining, trend in the need for services'.³⁶⁹ It stated that 'prior to the Government establishing the Inquiry we were receiving many hundreds of enquiries for counselling from adults who had experienced child sexual abuse. We were unable to respond to most of these people'.³⁷⁰

³⁶⁷ Families SA executive director, letter, 21 Dec. 2007.

³⁶⁸ Statistical information from <www.respondsa.org.au>

³⁶⁹ Victim Support Service Inc, submission, 30 March 2007, p. 1.

³⁷⁰ *ibid.*, p. 10.

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In contrast, Respond SA provided free counselling services at five Relationship Australia (SA) offices in the city and suburbs, as well as outreach locations at an additional seven sites (including four community health services and three remand centres/prisons). Counselling was predominantly provided by Respond SA staff, with a small number of clients referred to a suitably qualified private practitioner registered with Respond SA.³⁷¹

There is a strong case for a specialist service for adult victims of child sexual abuse. A wide range of general services is available to these adult victims³⁷², including in generic settings such as community and women's health centres and those targeting particular populations or issues such as homeless youth, victim support services, drug and alcohol services, and domestic violence services. There are also some specifically funded services for adults that have focused on issues relating to childhood sexual abuse, such as UnitingCare Wesley's Streetlink service.

In its submission to the Inquiry, Relationships Australia (SA) referred to various publications and studies³⁷³ to support its statement that:

*There is considerable evidence to indicate that specialist responses to adult survivors of childhood sexual abuse are likely to be far more effective than generalist services that are established to respond to a whole range of psychosocial or mental health issues.*³⁷⁴

Information from Respond SA clients revealed inappropriate responses from professionals not specially trained in responding to adult victims of sexual abuse and a

preference for a designated service, primarily because they did not have to 'struggle to negotiate how to raise, explain or discuss child sexual abuse' and felt 'confident and safe' with the specially trained staff.³⁷⁵ The submission from Relationships Australia (SA) also referred to 'an overwhelming call from researchers and practitioners in the field for generalist and therapeutic professionals to increase their capacity to respond to adult survivors of childhood sexual abuse'.³⁷⁶ It stated that specialist services could potentially be more involved in capacity building in generalist services.

As a PIC told the Inquiry: 'You can't just go anywhere and talk to somebody ... It's not like a doctor, when you can go with a cold and he'll know what you've got'.

Other evidence to the Inquiry supported ongoing funding for a service such as Respond SA. Victim Support Service 'strongly supported' the continuation of such a service 'to provide a focused treatment service for adults who have experienced sexual abuse whether this is in State care or from other sources'.³⁷⁷

In December 2007 the Western Australian Government announced that people who experienced abuse while in State care would have 'access to a range of free, ongoing counselling and support services'.³⁷⁸

In relation to the provision of an ongoing service to adult survivors of child sexual abuse, the Inquiry does not consider that a distinction needs to be made between those who were in care or not. However, the Inquiry only has the terms of reference to make a recommendation concerning adult survivors of child sexual abuse in care.

³⁷¹ Relationships Australia (SA) submission, p. 4.

³⁷² *ibid.*, p. 29.

³⁷³ J Herman, *Trauma and recovery*, Basic Books, 1997; M Crisma, E Bascelli, D Paci and P Romito, 'Adolescents who experienced sexual abuse: fears, needs and impediments to disclosure,' *Child abuse and neglect*, vol. 28, no. 10, 2004, pp. 1035–48; T Holden, *It's still not my shame: Adult survivors of childhood sexual abuse report*, Women's Health Statewide, 2002. See <<http://www.whs.sa.gov.au/>>; E Jonzon and F Lindblad, 'Disclosure, reactions, and social support: findings from a sample of adult victims of child sexual abuse' in *Child maltreatment*, vol. 9, no. 2, May 2004, pp. 190–200; R King, *We could fly: improving services for adult survivors of childhood sexual abuse in rural South Australia*, Murray Mallee Community Health Service, 1998; CL Schachter, NA Radomsky, CA Stalker and E Teram, 'Women survivors of child sexual abuse,' *Canadian Family Physician*, vol. 50, March 2004, pp. 405–12.

³⁷⁴ Relationships Australia (SA) submission, p. 22.

³⁷⁵ *ibid.*, p. 24

³⁷⁶ *ibid.*, p. 22

³⁷⁷ Victim Support Service Inc. submission, p. 7.

³⁷⁸ See <[https://www.mediastatements.wa.gov.au/Pages/Carpenter/2007/12/\\$114million-for-child-abuse-victims.aspx](https://www.mediastatements.wa.gov.au/Pages/Carpenter/2007/12/$114million-for-child-abuse-victims.aspx)> Viewed 20 Dec. 2007.

4.1 State response to sexual abuse of children in State care

The choice of a service provider for such an ongoing service is a matter for the government. However, given the circumstances in which sexual abuse of children in State care has occurred, the Inquiry believes it is important that such a service is provided by an organisation that is independent of government and church affiliation, and has never provided institutional or foster care.

RECOMMENDATION 39

That the South Australian Government funds a free specialist service to adult victims of child sexual abuse (while in State care) as was provided by Respond SA.

That the service is provided by an organisation that is independent of government and church affiliation, and has never provided institutional or foster care. That the organisation employs practitioners specially trained in the therapeutic response to adult victims of child sexual abuse.

Redress schemes and other services

I have spent the last eight years working with former residents to determine what they wanted from the Forde Inquiry recommendations, and for the majority of people the ex gratia payments are meaningful and show that the government has accepted some level of responsibility ... Even though applying for the payments will bring up a lot of emotion it will give a sense of closure for many people.

Evidence from Karyn Walsh, coordinator of the Queensland-based Esther Centre, a support service for former residents and victims of abuse established under the Forde Inquiry recommendations

The Inquiry was not a 'compensation' Inquiry: people did not come forward for monetary gain and the issue of compensation was not investigated on behalf of any PICs.

The *Forgotten Australians* (2004) report recommended that the Commonwealth Government establish and manage a national reparation fund for victims of abuse in institutions and out-of-home care settings.³⁷⁹ In not supporting the recommendation, the government said although it 'deeply regrets the pain and suffering experienced by children in institutional care', it was of the 'view that all reparations for victims rests with those who managed or funded the institutions, namely State and Territory government, charitable organisations and churches'.³⁸⁰

Before the release of *Forgotten Australians*, both the Tasmanian and Queensland governments had held an inquiry into the abuse of children in care and established mechanisms for *ex gratia* payments and/or the provision of services. In Tasmania the ombudsman was asked by the Minister for Health and Human Services in July 2003 to conduct an independent review of claims by adults who suffered abuse while children in State care (this was phase one of the review). The ombudsman's report to parliament in November 2004³⁸¹ recommended that the government receive claims; the recommendation was accepted and phase two began.³⁸² The total number of claimants from both phases was 878, with 670 accepted as eligible. The government appointed a Queen's Counsel to independently assess the claims and make decisions in respect of individual *ex gratia* payments, which were capped at \$60,000.

The Queensland Government established a \$1 million Forde Foundation Trust Fund for victims in 2000. It is administered by an independent board of trustees, which assists people who experienced abuse as children in State care to gain access to services and therapeutic care. In 2001, the government provided a further \$1 million to the fund, which also received contributions from church organisations and individuals. The Forde Foundation was not established to pay compensation. Eligible people can apply for assistance for services relating to education, health and family reunion.

³⁷⁹ *Forgotten Australians*, see <parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fjournals%2F2004-08-30%2F0002%22>

³⁸⁰ Australian Government, Australian Government response to the committee's reports, *Forgotten Australians*, Recommendation 6.

³⁸¹ Tasmanian Ombudsman, 'Listen to the Children' – Review of claims of abuse from adults in State care as children. Nov. 2004.

³⁸² Tasmanian Ombudsman, Final report, phase 2, June 2006.

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The Queensland Government recently established a \$100 million redress scheme to compensate people who came within the terms of reference of the Forde Inquiry. Eligible people are those who experienced institutional abuse or neglect as defined in those terms of reference, had been released from care and had turned 18 years on or before 31 December 1999. Applications must be received by 30 June 2008. People may apply for a 'level one' payment of \$7000 if they establish eligibility; or a 'level two' payment of up to \$33,000 for those wanting to establish harm or loss of opportunity according to set criteria. The level two payments will be assessed on a case-by-case basis by a panel of experts. Applicants who accept payments are required to sign a deed of release preventing them from making any further legal claims on the State. The redress scheme is not open to people who were placed in foster care in Queensland. The Queensland Government also contributes funding to three organisations that provide services for former residents of institutions.³⁸³

In December 2007 the Western Australian Government announced a \$114 million program called Redress WA, which will be available to people who are over 18 years of age and who experienced abuse in foster homes, institutions or non-government care before March 2006. Applications to Redress WA open on 1 May 2008 and must be lodged by 30 April 2009. Applicants claiming abuse or neglect will be eligible for payments on a sliding scale. Where it can be demonstrated there is a reasonable likelihood that abuse occurred, the maximum payout is \$10,000. Applicants claiming physical or psychological suffering as a result of past abuse may be eligible for payments of up to \$80,000, based on the severity and impact of the abuse. This is assessed based on information provided by applicants and information on historical departmental records. Legal advice for applicants on the conditions of accepting redress payments will be made available, as will counselling and support services.

In a media release in December 2007, Senator Andrew Murray (Australian Democrats) urged the State governments of South Australia, Victoria and New South Wales to set up similar redress schemes. He also urged the new Rudd Government to take up the recommendation from the *Forgotten Australians* report and establish a national reparations fund.

South Australia does not have a reparations payment scheme. In 2003, the government established the Dame Roma Mitchell Trust Fund for Children and Young People, which awards grants to eligible children and young people who are, or have been, in State care or long-term family care supported by the department. The trust was established in response to research indicating that young people who have been in State care generally have poorer education, health, employment and socio-economic outcomes than their peers. Funds totalling \$1.7 million have been made available, to be distributed over 10 years. Grants of \$1000 up to \$10,000 assist eligible persons in the areas of education, personal development, business and the transition to independent living. The trust has three funding rounds a year and applicants must be 29 years or younger on the closing date of the funding round. The trust's board assesses each application and presents its recommendation to the Public Trustee, which determines funding applications.³⁸⁴ Each year, the demand for assistance has been greater than the funds available.

In its Issues paper, the Inquiry sought submissions on the provision of services and benefits for people who had been sexually abused as children in State care, and the need for a national approach to such provision.³⁸⁵ The six submissions (three from individuals and three from organisations) received on this topic were all in favour of a national approach, with one submission preferring a scheme for services and benefits such as the Veterans' Affairs scheme over a lump sum payment. Families SA submitted that to provide such a service would require

³⁸³ These are: the Aftercare Resource Centre, which provides direct and brokered counselling services, assists with record searches, family reunification and therapeutic services; the Esther Centre (centre for addressing abuse in human services and faith communities), which supports people who have experienced sexual, physical, emotional and spiritual abuse; and the Historical Abuse Network, an informal network of people who experienced abuse when they were residents in church or government institutions.

³⁸⁴ The board consist of 12 representatives, including a nominee of the chief executive of the department, the SA Council of Social Services, the SA Foster Care Association Inc., Aboriginal children and young people, and two people up to the age of 30 years who are, or have been, subject to a guardianship order or in long-term placement. A nominee of the Minister is appointed to chair the board of the Trust Fund. The Minister appoints the board but otherwise it is independent from government direction in making funding recommendations.

³⁸⁵ CISC Inquiry, Issues paper, issues 33–4.

4.1 State response to sexual abuse of children in State care

Commonwealth funding and administration to ensure consistency between the States. Three submissions (one from Families SA and two from individuals) said that a national approach modelled on the existing structure and operation of the Department of Veterans' Affairs would also serve those adults who live outside the State in which they were abused as children.

The Inquiry believes a task force should be established in South Australia to examine the redress schemes in three other states, to receive submissions from individuals and relevant organisations on the issues of redress and the provision of services, and to investigate with the Rudd Government the possibilities of national involvement.

RECOMMENDATION 40

That a task force be established in South Australia to closely examine the redress schemes established in Tasmania, Queensland and Western Australia for victims of child sexual abuse; to receive submissions from individuals and relevant organisations on the issue of redress for adults who were sexually abused as children in State care; and to investigate the possibilities of a national approach to the provision of services.

Investigation and prosecution of alleged perpetrators

You say you're going to talk about help that we need. I think that closure is a pretty good one. I know that this Inquiry is helping but the delays with [the prosecution of the offender] ... that's pretty hard because it's constant that something comes up.

Evidence from adult victim of child sexual abuse

The Inquiry has referred the allegations of 170 people, some against multiple perpetrators, to the Paedophile Task

Force (PTF). From those referrals, at October 2007, the PTF had documented 433 alleged perpetrators, of whom 315 are identifiable, 74 are unnamed/unable to be identified and 44 had died. Four of the alleged perpetrators have been arrested, 13 have been reported³⁸⁶ and 61 have been filed.³⁸⁷

These figures clearly raise the issue of delay in a criminal justice system already struggling with a backlog of cases, resources and priorities. In regard to priorities, a member of the SA Police told the Inquiry:

Now, whether that's an attitudinal approach to the way we deal with them [historical allegations of child sexual abuse] the criminal justice system, including investigators, DPP courts and everybody, I just wonder if we need something ... to put a greater degree of urgency on the historical [cases] ... because we know that the longer they go on the greater the propensity is they fall over and other things happen, but it seems to me, whether it's an attitudinal thing or a systemic issue, whereby once it's labeled 'historical' the degree of urgency drops off considerably.

In its submission, SA Police addressed the question of additional resources to manage the 'extensive disclosures' to the Inquiry. The PTF consists of 14 sworn police officers and 10 non-sworn staff. It informed the Inquiry that many of the referrals involve considerable research, retrieval of public records and statement taking, and initially do not require the exercise of police authority. It submitted that consideration could be given to establishing a special investigation unit (made up of suitably qualified retired police officers) to conduct preliminary investigations that do not require the exercise of police authority, for example, accessing public records and interviewing victims/witnesses. The proposed unit could be modelled on similar government investigation areas where suspected criminal matters are referred to the police for finalisation.

³⁸⁶ If an alleged perpetrator is 'reported', then charges have been recommended and the file has been sent to the Office of the DPP, which adjudicates the matter and decides whether charges will be laid in court.

³⁸⁷ If the matter has been 'filed', then the matter has been allocated to an investigator and investigated, as a result of which either the complainant has chosen not to proceed with charges for personal reasons; the complainant is now deceased; the complainant is unable to particularise the offences and there is insufficient evidence to proceed; or the identity of the person of interest cannot be sufficiently established.

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The proposed investigation unit would only conduct preliminary investigations, however if this led to a suspicion that a criminal offence may have been committed, the matter would be referred to SA Police for report/arrest of the suspect. The matter may also be referred to police to conduct further investigations requiring police powers, such as the execution of search warrants.

41 RECOMMENDATION 41

That the Paedophile Task Force, the Office of the Director of Public Prosecutions, the Legal Services Commission and the courts be allocated sufficient resources to investigate, prosecute, defend and conduct trials concerning the allegations of child sexual abuse arising from this Inquiry.

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The Inquiry heard evidence from PICs that it has been common for children in State care to abscond from placements. The reasons they gave for running away were varied.

Some PICs said they absconded because they were being sexually abused. A PIC who said he ran away after being sexually abused during his first week at Glandore Children's Home told the Inquiry: 'It scared the living hell out of me and I thought, "If this is all I've got here, I might as well not stay"'. Another PIC said he was taken from Lochiel Park Boys Training Centre by staff on several occasions to a private residence, where he was photographed naked and indecently assaulted. He remembered that after he reported the abuse, which happened 'half a dozen times at least I know of ... I just got sick of it and that's when I absconded from Lochiel Park'.

Some ran away because of both sexual abuse and physical cruelty. One PIC, who alleged he was sexually and physically abused at Glandore Boys Home, said:

I'd run away in the first place because I was sick and tired of the sexual abuse and the hidings and, believe me, it happened every day ... the abuse just kept on going on and on ... It just seemed like everybody was either bashing you or sexually abusing you in those days.

Some absconded because of the physically cruel regime. One man recalled 'a big mass break-out' from Glandore that involved 'a big dispute, I think, between the big kids and [the superintendent] about the treatment and the canings that we were getting from him'.

Others ran away just because they wanted to go home. One woman who absconded from foster care as a young girl said:

It was really hard, you know? ... I was 10. It was confusing. I just wanted to be in a spot that I knew, not comfortable with but with somebody I could call mum and dad.

While it is a tragedy that a child or young person should ever feel the need to run away from a placement for any reason, the Inquiry also heard evidence about the exploitation of some runaway children while they were on the streets, performing sexual favours in return for food, money, alcohol, drugs and gifts. On the evidence given to the Inquiry, there is no doubt that such exploitation has been extensive in Adelaide since the 1970s, involving paedophile parties where men exploit young boys and, occasionally, girls. Despite a number of police operations since the 1980s to investigate and arrest the perpetrators, this exploitation continues to thrive. Even worse, evidence to the Inquiry indicates that the tactics of these paedophiles who target such vulnerable children are so well developed that some children in State care abscond from their placements to go to the perpetrators. One man told the Inquiry he absconded from several placements and stayed with alleged perpetrators. There was one man with whom he stayed who he said sexually abused him:

A lot of times I'd be on the streets, on the run or something like that, and I'd end up at [the alleged perpetrator's] place, you know, at night time, nowhere else to go.

After hearing extensive evidence about this problem, the Inquiry considers that a therapeutic secure care facility must be available as a last resort to care for these vulnerable young people who have become victims of such sexual exploitation; and that a specialist police operation should be set up to target the paedophiles who prey on them.

Sexual exploitation

Since 1987, the State has been aware of the sexual exploitation of children, including children in State care, by paedophiles operating around Adelaide. Further evidence has been given to the Inquiry about the extent of the exploitation and the fact that it continues today.

The known problem

You have to actually assume our kids will be a magnet because of their victimology ... their easy vulnerability and because the system is not always a good carer.

Evidence about children in State care from departmental manager

In March 1987, a street worker employed by the Service to Youth Council addressed a meeting of the Hindley Street Youth Project, during which he asserted that child prostitution and paedophilia were common among children who frequented Hindley Street and adjacent areas. The *Sunday Mail* newspaper reported on 17 May 1987 that about 150 teenagers were working as child prostitutes in South Australia and that it was a 'flourishing industry' operating from the streets and escort agencies; that it involved death threats against a city street worker trying to expose the problem; that some teenagers were given air fares as part of an interstate vice racket; and that 'very heavy duty' people were in control. A Liberal Party member who spoke to children aged about 13 and 14 in Hindley Street was quoted in the newspaper as saying that their experiences were

... much uglier than I expected ... [the] fierceness of their remarks, their bitterness and their low self-esteem was far more intense than I imagined or than I had encountered before.

Following this publicity the Minister for Community Welfare received a report from the Acting Commissioner of Police in May 1987, stating that child prostitution did exist but describing as 'ridiculous' the estimate that 150 children

were involved. Despite this, in April 1987 the police had set up an operation ('operation D') to 'collect, collate and analyse material relating to paedophiles in South Australia for the purpose of identifying the extent of crimes against young persons and to identify offenders'. The operation involved the investigation of both intrafamilial and extrafamilial child abuse. In regard to extrafamilial abuse, the operation found that the offenders 'seek gratification through pornography, child prostitution, sexual abuse of "street kids" or "runaways", or abuse of children entrusted to their care'. It found that child prostitution was occurring at street level (involving children being given shelter, food or money for sexual favours) and in the trade (mainly through escort agencies). The operation received 23 reports of street kids being sexually assaulted by adults or subjected to procurement as prostitutes. Some children were victims of violence, including through the use of firearms. There were arrests over the production and distribution of child pornography.

In August 1987, the department reported to the Minister for Health and Welfare that child prostitution was occurring in and around Hindley Street but its extent was uncertain; the children were engaged in prostitution for accommodation, food, drugs or affection.

Evidence to the Inquiry concerning this period established that there was child prostitution at both street and trade levels (involving specific escort agencies in North Adelaide, the western suburbs and Unley). In particular, the Inquiry received evidence from five men who had worked in the escort agencies as children; three of them were in State care. One of the three told the Inquiry that at the time of the 1987 newspaper report child prostitution was occurring in Hindley Street. He said some street children met clients and were approached by paedophiles when begging.

By the end of 1988, another police report, *Child Prostitution*, was prepared as part of the ongoing work of operation D. Police were aware of children as young as eight to 10 working as prostitutes, confirming an earlier

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police report that ‘there is no doubt that some children who are “runaways” engage in prostitution or become victims to adults seeking sexual encounters with children’. Known conduct involving girls and boys between nine and 16 included prostitution; ‘peep’ shows; supply of children as escorts; sexual exploitation of children at private functions; harbouring of missing children; using children to produce pornography at studios; involvement of a few taxi drivers to procure girls as prostitutes for men; sexual exploitation of girls used by men as photographic models; and the use of girls over many months in a brothel. Information received was that most boys worked alone but some solicited in small groups. The usual price for sexual favours was \$10 but ‘novices would accept a Coke and a hamburger’. Experienced children charged up to \$35. The report concluded:

There is no doubt that child prostitution is, and has been, occurring in South Australia. The demand is Statewide but the prostitutes are particularly active throughout the metropolitan area. Intelligence indicates a substantial involvement by adults for the purpose of financial gain. It is not unreasonable to assume a child prostitute could earn on average \$400 a week; nor is it unreasonable to assume there are 50 active child prostitutes in this State. This indicates that child prostitution in South Australia has a potential annual turnover of more than \$1,000,000.

Towards the end of 1989, police working in operation D were over-stretched and could not record information about every alleged paedophile in the State, so they decided to concentrate on ‘high-value intelligence’.

During the early 1990s, a police operation based in the Elizabeth area (‘operation K’) reported mainly on intrafamilial child sexual abuse, but also identified some cases of extrafamilial abuse. It was originally intended to last six months but was extended to two years. It was an important police operation in that it provided considerable

outreach to children (posters were placed at schools and teachers were asked to pass on the message to children that sexual abuse ‘is not your fault; you are not to blame and you are not going to get into trouble’) and involved the police focusing on the impact of sexual abuse on children (requiring detectives to be suitable and, according to evidence to the Inquiry, rejecting the idea that a detective ‘is capable of investigating any crime’; and developing special personnel and procedures for interviewing child victims). During the two years of the operation about 600 people were investigated for offences involving child sexual abuse. The Inquiry heard evidence alleging that a high-ranking police officer wanted to close down the operation to protect an alleged perpetrator. The Inquiry investigated this allegation because one of the alleged victims of the alleged perpetrator was a child in State care. However, the allegation could not be substantiated.

During the early 1990s, some intelligence was gathered incidentally about the sexual exploitation of children on the streets during two police operations that were set up to target other criminal activity. Police detected child prostitution in Veale Gardens and the inner-city area; some of the children were living at residential care facilities and other homes run by the department. Police suspected brothels and escort agencies were using child prostitutes but were unable to obtain evidence to prosecute the operators. Evidence to the Inquiry established the widespread use of children, particularly boys, as prostitutes for men in some of the escort agencies during this time.

Also in the early 1990s, another police operation (‘operation DE’) was set up to target a small number of suspected paedophiles after a member of the public gave police photographs and videotapes. As a result, four men were arrested for child sex offences. Two of the 36 children identified as possible victims were children in State care. Two of the men were convicted and imprisoned. During the operation, police uncovered links between the men and paedophiles overseas.

4.2 Children in State care who run away

In the same period, a national operation ('operation E') involving all Australian police forces gathered intelligence about paedophilia and the sexual exploitation of children. It found there were networks operating in Australia and some had connections overseas. It considered that:

Most children involved in child prostitution are trapped by the need to survive, having been cast into their situations by abuse, neglect, abandonment, or poverty. Most find a means of financial and emotional support in prostitution and pornography. They perceive a distorted feeling of being wanted and a sense of importance which, in the absence of true and sincere emotion, is a temporary degree of satisfaction.

In the mid 1990s, SA Police established a special operation, ('operation TE') to target the exploitation of boys by men in certain areas, including Veale Gardens. Five boys who were in State care came to the attention of police because of the many times they were found in the relevant areas and their association with suspected paedophiles. The boys were placed at residential care facilities and frequently absconded. However, when asked, they or the alleged perpetrators denied involvement in child prostitution.

By this time, workers in the department had become more informed and, therefore, concerned about the sexual exploitation of children in State care who were running away from residential care facilities. Staff began to meet to discuss the problem, including the difficulty of charging and convicting known perpetrators, the unlikelihood of catching a child in the act of prostitution and children's perceived unreliability as witnesses. One employee told the Inquiry that at the time staff—often at meetings including police—explored 'the whole ideology of paedophilia' and realised that 'our kids will be prey, will be targets'. She said that in hindsight the dangers were self-evident, but not appreciated, until they accessed literature from the United States, where authorities were becoming more widely aware of the need to protect children from paedophiles.

In early 1996 the department established a task group to formulate systems, strategies and practical advice for

residential care services and district centres 'to assist with working with young clients who are at risk of, or involved with, paedophile activities'. The task group estimated that about 30 to 40 young people in State care, mainly boys, were involved with paedophiles to some degree. These young people were described as:

- being mostly under the guardianship of the Minister
- streetwise
- having an extensive history of physical, emotional and sexual abuse
- displaying a physical demeanour of vulnerability
- needing and wanting money that the government cannot provide
- being good at keeping secrets—having been taught from an early age (as young as two)
- lacking confidence in adults because their parents have mostly rejected them, and due to this rejection believing that the welfare system, operated by adults, has failed them by not making their parents accept them
- often having a borderline IQ or, due to the abuse they have experienced, having emotionally delayed personalities
- having experienced severe loss and grief, including loss of their childhood due to abuse, loss of their parents due to removal, and loss of many foster placements due to the high tendency of placement breakdown, to name a few examples
- mostly displaying extreme behaviour problems—such as self-mutilation, low self-esteem, destructive acts, constant absconding and offending—that make it difficult for caregivers to provide adequate care.

Standards of practice had been established for staff working with these 'extremely damaged and vulnerable young people'. The task group described these procedures as

... vague and unclear ... staff are confused and consequently concerned about the ethical responsibilities they have and the consequences

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that will be instituted if they are deemed to be in breach of duty of care. Staff are often required to have the ability to deal with the behaviour of the young person and then are expected to be answerable to that person's guardian, whether that be the Minister or their parents. Until recently, the impact of juggling these demands has gone largely unrecognised, which can only reinforce feelings of poor morale.

The Inquiry received extensive evidence from four senior staff members of the department and a child psychiatrist who worked extensively with children in State care over many years. All were deeply concerned about runaway children and their sexual exploitation by paedophiles. One worker said: 'People not only knew about it but knew that there was a tendency for paedophiles to gravitate into the neighbourhood of residential units because there's easy pickings'.

One facility from which boys were known to be absconding was Lochiel Park Boys Training Centre. As one staff member recalled:

[They] would disappear for two or three days at a time. They would come back looking like a lost, bedraggled dog, dirty, filthy, hungry ... sometimes with cigarettes, sometimes with new shoes.

Sometimes the boys would be away for days, prostituting themselves for cigarettes, drugs and alcohol. It was not uncommon at times for up to five Lochiel Park children to go missing in a day. There was an opinion among staff that some of the paedophile activity was very highly organised and a relatively large number of people would take the children, harbour them and obstruct department staff trying to find them: 'We were usually at a loss'. The evidence revealed that eventually the paedophiles became so bold that they contacted Lochiel Park, demanding that certain boys be allowed out. Staff started to patrol the Veale Gardens area when the boys ran off; many times they found them and brought them back. But the staff were fighting against the tide. The incentives for the boys to run

away outmatched the measures the department could use to detain them. A staff member said:

Sometimes they disappeared into men's homes, who would harbour them for three, four, five days at a time and then let them go. That's when they would come back with decent clothing ... they were basically prostituting for cigarettes, drugs, maybe some alcohol and a good time.

The witness said one of the boys left Lochiel Park and moved into the house of a paedophile, who

... looked after him better than we looked after him. He stopped offending, he got off the streets ... this bloke sent him to school ... stuck by him through thick and thin. [The boy] would run away, he'd bring him back. [The boy] would burn his house down; he'd build a new one. [The boy] would kill this man's cat; he'd buy another. I couldn't believe it. [The boy] one day walked into the unit and he was a young man ... you had a known sexual offender actually do more with this kid than the department could. It was just all bizarre.

This was not an isolated case. The Inquiry was told that on several occasions staff attempted to detain the children by securing the units, but the department disapproved. There was concern that the boys could contract sexually transmitted diseases, which occurred in some cases. It was recorded in documents pertaining to Lochiel Park that sometimes experienced boys took other, more naive residents with them and introduced them to 'unlawful and inappropriate sexual behaviour'. Clarence Park Assessment Unit logbooks record contact between one resident and a paedophile, that this resident engaged in 'inappropriate sexual behaviour' and was a habitual absconder.¹

The problem faced by professionals trying to provide therapeutic care to these children was also raised in evidence:

He was a little boy—and he had been missing for four days. She found him, brought him to an

¹ SRSA GRS 6638/1/66 Clarence Park Assessment Unit Observation Log.

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appointment and he fell asleep and we couldn't rouse him, he was so tired. Back to the cottage; two days later, running again. He had a severe attachment disorder so he couldn't attach to the cottage or to anyone else, but he attached to someone if they gave him goodies ... we would often see these boys coming back from running away and we would think, you know, 'They've been at risk. They've been on the streets. They haven't eaten or anything and they're better groomed than when they left, with gifts and all sorts of things.' And from a child's perspective there's a huge reward running away and once that process starts, undoing it without containing them is impossible. You can do all the talking, protective behaviours, interventions and all of those things fail. They're too superficial. Because every time they run and there's reinforcement, be it a dollar or a new pair of sneakers or a skateboard, you have lost whatever therapy you have done leading up to that.

In February 1995, police began another operation ('operation T') to target the main homosexual beats in the City of Adelaide, particularly Veale Gardens, and a beat in Unley Park. It sought to build a rapport with the gay community, which was concerned about the sexual exploitation of children. Police were aware that some boys who absconded from residential care facilities were picked up by paedophiles in Veale Gardens and were being asked by those paedophiles to bring other children. Police tried to gather information for prosecution but did not witness the sexual abuse and were unable to obtain statements from the boys for court purposes. One police officer involved in the operation had regular contact with the manager of Lochiel Park concerning runaways and had discussions with these boys. He informed the manager of the contents of one of the documents seized from a well-known paedophile, indicating the best places to infiltrate to get children—one was named as the department. A staff member told the Inquiry this indicated that:

We're really in trouble here. So they have our guardianship children, we're prime targets for a whole range of reasons, including they were already victims of sexual abuse and so easily manipulated, they were always on the streets, they were always down Hindley Street. So they were easy targets.

When the operation started, police had a list of about 270 suspected paedophiles in South Australia. When it ended in 1998 the list had doubled. Various officers who worked in the operation told the Inquiry it was successful in many respects; it provided good intelligence and led to the arrest and successful prosecution of men charged with the sexual abuse of children.

A senior police officer [J] who had worked on the operation from the start was removed at short notice in November 1996. A witness who was not a police officer suggested to the Inquiry that at the time there was an influential person in either the SA Police or parliament who had a history of paedophilia and was getting nervous:

It came from the Commissioner down. The pin was pulled pretty quickly. They had 24 hours to vacate. We did have suspicions about people in high places that were in some way connected to the paedophile stuff.

Another witness suggested that the operation was closed down by police officer [T] in 1996 to protect a person in high office in government. However, the Inquiry found the operation did not cease until late 1998 and was not closed down by [T].

There is no evidence to support the suggestion that operation T was closed down to protect a person holding high public office or any other person. None of the police officers working in the operation gave any support to the suggestion and the evidence at the Inquiry indicates the contrary.

However, a departmental staff member told the Inquiry that when the operation did cease there were concerns about lack of action over children in State care who were being

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sexually exploited. The staff member said the intelligence was passed on to the department's chief executive and most of it to the Minister. She recalled a meeting at Parliament House with both sides of politics and the department's then manager of community residential care. When asked whether anything had changed since that meeting, she said,

No. The NCA [National Crime Authority] got the intelligence, the Minister got the intelligence, the Minister got Crown Law, the Minister got everything. Parliament got it. This was the state of play, so how high do you have to take it?

The extent of this sexual exploitation over the past four decades was made clear to the Inquiry, not only by police and departmental staff but also by adults who were once child victims of exploitation. Adults who had been children in State care told the Inquiry about their experiences of sexual exploitation. They confirmed the success of perpetrator tactics. One PIC said: 'If I needed \$20 or \$40 I'd just go to his house, you know, and there was no question or doubt about it. He gave it to me.' This PIC said the arrangement was 'sex when he wanted it'.

The PICs spoke about the activity of paedophiles in Veale Gardens and other haunts around the city. One PIC told the Inquiry he ran away from his community residential care unit and frequented Veale Gardens 'to have sex for money'. Another said: 'I'd go down to Veale Gardens to try and make some money down there' after absconding from a community unit. Several boys in State care said they went to Veale Gardens 'because it's a very, very easy place to make money', or 'it was easy escape. If you didn't have money you'd get money.' Another PIC said that when he ran away he 'was running away from everyone and everything ... I knew I was going to have sex and I would be paid and I'd get whatever I wanted, you know: marijuana, alcohol, you know.'

The PICs described the methods by which boys would solicit, or be approached, for sex at Veale Gardens and

other beats. One said: 'The people that fraternised these places are a very close-knit community' so for boys 'it was very easy to find out where these locations were'. One PIC described the network: 'You'd go down the Torrens there, down the beat or ... over by the parklands there in South Terrace occasionally ... So you had a circuit where you would go.' One PIC alleged that at Veale Gardens 'there was judges, there was magistrates, there was police ... they all go down there, absolutely'. The PICs told the Inquiry that men would not identify themselves: 'You don't really get names ... not even nicknames; you just know faces'. One witness said the men referred to the young people as 'chickens'.

The PICs gave evidence about paedophile parties, usually attended by men who sought sexual favours from young boys and occasionally from girls. At some parties, one witness recalled: 'All we'd have to do is bring them drinks, make sure their glasses were always full, empty the ashtrays and just generally be standing around'. At other parties, children were given food, alcohol, drugs and sometimes money in return for sexual favours. One PIC told the Inquiry:

Everybody would just party. You could name your drug; it was there. You could name whatever you wanted to drink; it was there. The younger you were the more you were encouraged to drink.

Many of the men at the parties were referred to as 'suits', indicating they were well-dressed and had money. The parties occurred regularly over the years; according to some witnesses there was a party nearly every week.

The evidence reveals that the parties were held in homes in metropolitan suburbs including North Adelaide, Unley, Unley Park, Parkside, Magill and St Peters, and in the City of Adelaide. Some witnesses could not name the suburbs.

The PICs confirmed the evidence of departmental staff that paedophiles recruited boys from some homes run by the department. There was also recruitment by word of mouth among the children. Also, they were recruited from city and

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inner-suburban hotels and city streets. Men would frequent city hotels, nightclubs and other places of entertainment and 'pick up ... young people and pass them on' to men for sex, said one witness. Another witness recalled: 'You'd get picked up by a bloke in [the city] ... and we'd go to [suburb], or it would be one of three or four places we'd go.' One PIC told the Inquiry that after he was picked up and driven to various homes, the driver would 'go in and let them know what we were like ... then we'd go in and do the deed'. Usually these boys stayed at parties overnight. Several told the Inquiry they were drugged at parties. According to one witness:

I mean, they used to like us to bring our friends, but only after they were screened. And they wouldn't initiate the sex; they'd want us to initiate the sex with them, and then we'd all be bombed out and then God knows what happened, really ... You knew that something had gone on, you know, no matter how bombed out, but the whole point was you'd actually get really bombed out ... to be able to do everything, I suppose, and to not let it affect [you].

Some of the named perpetrators were prominent in the community and became known to the boys, although correct names were not used. Some perpetrators attended parties frequently. Different witnesses gave corroborating evidence identifying men who frequented beats and parties and had sex with children in State care. Several recalled names but refused to divulge them to the Inquiry out of fear. Although some of the parties occurred years ago and the sexually exploited children are now adults, various PICs would not provide statements to police for fear of repercussions. 'I was just told never to ask anything,' said one witness.

One PIC's evidence demonstrated the vulnerability of children in State care to this sexual exploitation:

And it's about trust as well, you know, because often enough they'd take you under the wing and—you know, a lot of these times it wasn't a one-off

thing, you know. You actually formed, in a strange way, relationships, I suppose ... these men were, in many instances, the closest things to father figures a lot of us had, in many ways—you know, in that way, and of being loving and showing affection, as such, and giving you—and making you feel good at something, and worthwhile.

Evidence to the Inquiry indicates that the sexual exploitation of children in State care is still a serious problem. A police operation ('operation C') that started in 2005 and continued for 18 months was established as a result of a concern about particular children in State care absconding from residential care facilities and being sexually exploited at Veale Gardens or in hotel rooms. It focused on children who were recent absconders from such facilities and were being sexually exploited. Because this is recent intelligence, it is not in the public interest to publish further details. The Guardian for Children and Young People provided information from residential care staff that of the 55 young residents in community residential care facilities at June 2007, 16 (29 per cent) abscond frequently (more than five times in three months) and all are at high risk.²

² Office of the Guardian for Children and Young People (GCYP), *Children missing from residential care, July 2007*, p. 3.

A therapeutic response to young people who run away

There is no doubt that the response to children and young people in State care who run away from placements should be therapeutic and not punitive. The reason for the absconding must be ascertained and appropriate counselling and other services need to be provided. This may seem obvious, but the strength of the evidence to the Inquiry about past punishment of children in State care who ran away and its harmful effects on them cannot be underestimated.

Historical response to children in State care who abscond

Evidence to the Inquiry from PICs demonstrates that the response to a child in State care who absconded was punitive, with little, if any, effort made to find out why the child was running away. One witness who absconded from Brookway Park said he was not asked why he had run away; only that he was ‘thrown against a wall and thrown into a chair’. The Inquiry took evidence from a man who had absconded from several institutions. When asked whether he was questioned about why he absconded from placements he said: ‘No, never. They don’t ask you. They just say the police bring you back, hand you over, and that’s it. That’s it.’

Another man told the Inquiry that after absconding from Eden Park at Mt Barker and being apprehended while heading for Adelaide, he was returned to Eden Park, where ‘I got the living daylight punched out of me’ by senior staff ‘to teach me a lesson for running away’. Another PIC said he ran away from Eden Park because of sexual abuse there. He fled to his family home but his parent returned

him to Eden Park, where he was placed ‘straight in the lock-up. I got belted ... six of [the] best across the hands’. The PIC said the senior staff member asked him why he had run away:

I told him I was being abused, [the alleged perpetrator] was screwing me. I had to play with him and stuff like that, and he called me a liar. So that’s when I got the six. I was only going to get three, he said, but he’d make it an extra three because I lied.

For decades, such a practice of punishing children who absconded was entrenched in legislation and policy. From the time the *State Children Act 1895* was enacted, children who ran away could be charged as being ‘uncontrollable’ or ‘incorrigible’ and detained in an institution, sent to a probationary school for up to three months, punished by whipping or released on probation.³ By 1903, absconding had become an offence punishable by ‘imprisonment’ in a reformatory school⁴; children could be apprehended without warrant for absconding and punished⁵, which included corporal punishment⁶ or confinement in a cell for up to 48 hours on a diet of bread and water.⁷ The State Children’s Council could direct that an absconding child be detained for one month beyond the existing period of detention.⁸ A similar regime continued under the *Maintenance Act 1926-37*⁹ from the 1920s onwards under the supervision of the Children’s Welfare and Public Relief Board (CWPRB).

As to the problem of absconding, the Delinquent report¹⁰ commissioned by the government and published in September 1939 expressed disagreement with provisions of the Maintenance Act that made absconding an offence:

³ *State Children Act 1895*, s. 34.

⁴ *State Children’s Further Amendment Act 1903*, s. 11.

⁵ *State Children Act 1895*, s. 48.

⁶ *ibid.*, regs 78–9. However, corporal punishment was to be ‘administered as seldom as possible’, and only resorted to when ‘absolutely necessary for discipline’ and not inflicted for first offences unless the offence was of ‘a grave nature’. In 1921, the regulations were amended so that girls could no longer be subject to corporal punishment, but could be placed on a diet of bread and water, given extra work or deprived of the usual outings. In 1921 several girls absconded from Redruth Reformatory School. The Council noted in its annual report for the year ending 30 June 1921 that it ‘had been criticised by many, that its attitude towards corporal punishment did not allow sufficiently stern measures to be adopted to maintain discipline’.

⁷ *State Children Act 1895*, rr. 80.

⁸ *State Children Act 1895*, s. 49.

⁹ *Maintenance Act 1926*, ss. 112, 123, 124, 140; Regulations under the *Maintenance Act 1926*, *The South Australian Government Gazette*, 7 April 1927, p. 793, rr. 100–9.

¹⁰ Government of South Australia, *Report of the committee appointed by the government to inquire into delinquent and other children in the care of the State*, Sep. 1939, p. 15.

4.2 Children in State care who run away

*We cannot agree with the present section of the [Act], which reads, 'Any State child guilty of an offence (i.e. of absconding) under this section shall be liable to imprisonment in a reformatory school', that a child placed under the care and control of the Children's Welfare Board through no fault of his own may now be 'imprisoned in a reformatory' if he absconds from his foster parent or from an institution. All cases of absconding either from foster home or training school should, in the interests of the child, be investigated ... and no child should be punished for running away without such an investigation.*¹¹

Despite these views, the same legislative provisions remained in force and children continued to be transferred to reformatory schools, including Vaughan House and The Pines for girls and the Magill Reformatory for boys.¹² Even with general legislative changes to the care and protection system in the mid 1960s, including the abolition of the CWPRB, the provisions regarding the punitive response to absconding largely remained.¹³ Caning was still the accepted punishment for boys who absconded during the 1960s, as evidenced by entries in the Magill 'punishment book' for 1958–75. Eight strokes of the cane were still administered up to 1966. Regulations thereafter specified that no boy should receive corporal punishment except for that authorised by the director.¹⁴ Records indicate that in

March 1969 the director authorised the reintroduction of caning in McNally Training Centre after a number of boys absconded from the facility earlier in the year.¹⁵

It was not until 1972 that absconding was no longer an offence.¹⁶ A child under the care and control of the Minister who absconded could be apprehended without warrant¹⁷ and placed in any home (including a secure facility¹⁸) nominated by the director-general. Regulations specified that punishment of children in homes and centres should normally be the deprivation of privileges, but that no child was to receive corporal punishment; a child 12 years or older could be placed in a detention room for up to 48 hours, if this was in the best interests of the child or in the interests of other children in the home.¹⁹ A child who absconded also could be made the subject of a 'safekeeping order' and detained in secure facilities.²⁰ These orders were most commonly made with respect to young girls. In the 1970s up to 70 girls were held at any one time in Vaughan House for behaviour including being in moral danger, promiscuity, refusing to obey directions and running away.²¹ The use of 'safekeeping orders' was gradually discontinued from 1983 after the release of a report²² and changes to the legislation.²³ From the late 1980s to 1994 the same provisions continued regarding punishment for absconding and the placement of children in a detention room.²⁴

¹¹ *ibid.*, p. 33.

¹² SRSA GRG 29/6 file 21/1948, Transfers of wards of the department.

¹³ *Maintenance Act 1926–1963* was renamed the *Social Welfare Act 1926–1965* by the *Maintenance Act Amendment Act 1965*. This Act vested the general powers, functions and responsibilities in a Minister. The Department of Social Welfare was established and a director appointed.

¹⁴ Regulations under the *Social Welfare Act 1926–1965*, *The South Australian Government Gazette*, 27 Jan. 1966, p. 159, r. 36.

¹⁵ SRSA GRG 29/6, file 105/69, Corporal punishment of absconders.

¹⁶ The *Social Welfare Act 1926–1971* was repealed by the *Community Welfare Act 1972*. The Act established the Minister, then called the Minister of Community Welfare, the department known as the Department for Community Welfare, and the director-general of Community Welfare.

¹⁷ *Community Welfare Act 1972*, s. 72.

¹⁸ *ibid.*, s. 6.

¹⁹ Regulations under the *Community Welfare Act 1972*, *The South Australian Government Gazette*, 29 June 1972, p. 2882, rr. 40–1.

²⁰ *Community Welfare Act 1972*, s. 44(1).

²¹ Department for Families and Communities (DFC), *An overview of past and current practice: a brief history of State involvement in the care of children and young people in South Australia* (Dr Susan Marsden, consultant historian), Sep. 2006, p. 49; Department for Community Welfare (DCW), *Difficult adolescent girls and safekeeping*, report prepared by E Crisp, DCW, 1983, pp. 5, 19.

²² *Difficult adolescent girls* found that a higher proportion of young girls were subject to such orders than boys and that the orders were being used in effect as a social control on what was perceived as sexually promiscuous behaviour; Families SA executive director letter, 3 Oct. 2006.

²³ *Community Welfare Amendment Act 1981*, s. 6; *Community Welfare Act*, s. 32(1)(d) starting in May 1983 and provided that the director-general could only place the child in a training centre or any other home used for the detention of children charged with, or convicted of, offences ... if of the opinion that the child's behaviour was such that the child was likely to cause serious self-harm or injury to others, or to property, and could not properly be controlled in any other manner, and then only for a period not exceeding seven days.

²⁴ Regulations under the *Community Welfare Act 1972*, *South Australian Government Gazette*, 28 Apr. 1983, p. 959, rr. 21, 26–27.

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Chapter 4 State response

Current response to children in State care who abscond

Significant legislative amendments came into effect from 1 July 1994 and remain in force.²⁵ There are no longer any legislative provisions that deal with absconding from a residential care facility.²⁶ Children considered to be 'at risk' can no longer be placed in secure training centres in any circumstances for 'safekeeping' or otherwise.²⁷ Regulations limit the treatment and types of discipline that can be inflicted on residents of training and residential centres generally.²⁸

Children and young people who frequently run away from placements are now generally considered to be at high risk and to have complex needs. Witnesses at the Inquiry were of the view that an early and intensive therapeutic response was required for children and young people who run away, especially for those who run away and are sexually exploited on the streets.

The government's *Keeping them safe – in our care: draft for consultation* recognises there are children in State care with complex needs who require more intensive therapeutic support.²⁹ It promises to 'develop and implement initiatives to expand the therapeutic component in other care services such as residential care', including 'more assistance for care teams to establish effective interventions' and 'intensively supported therapeutic foster care placements that are linked to 24-hour facility-based care'.

Evidence to the Inquiry establishes without question that there should be a range of placement options for each

child and young person in State care. Each should be placed in the most suitable option available. The department's current proposals—to provide and expand intensively supported foster care or family-based placements; to develop and implement initiatives to expand the therapeutic component in other care services, such as residential care; and to respond better to children with complex needs—must be adequately resourced, monitored and regularly evaluated to be effective. This response remains in its early phases.

Other responses: Victoria and the United Kingdom

The early stage of developing an appropriate response in South Australia contrasts with the State of Victoria and the United Kingdom, where well-developed systems and programs are in place. The Inquiry took evidence about the two models. The South Australian Council for the Care of Children concluded in its 2006–07 annual report that these models are a good starting point for reforming the system in this State.³⁰

Victoria has a coordinated system to deal with children identified to be at high risk. It has a range of placement options, including rostered and 24-hour residential units, secure welfare, home-based care, specialised home-based care, one-to-one home-based care, lead tenant arrangements and individualised flexible care to cater for the individual needs of children with complex needs.

In 1996 the secretary of the Department of Human Services in Victoria (DHS) determined that each region

²⁵ The *Community Welfare Act (Children) Amendment Act 1993*, which came into effect on 1 July 1994 made significant amendments to the *Community Welfare Act*, which was renamed the *Family and Community Services Act 1972*. The *Children's Protection Act 1993* and the *Young Offenders Act 1993* also started at this time. These Acts remain in force.

²⁶ However, a youth subject to detention who escapes from a training centre or lawful custody, or who is otherwise unlawfully at large, is still guilty of an offence and can be sentenced to imprisonment: *Young Offenders Act 1993*, s. 48.

²⁷ *Children's Protection Act 1993*, s. 51(1)(c).

²⁸ *Family and Community Services Act 1972* rr. 7, 9, 13. Residents cannot be subjected to any of the following kinds of treatment: (a) any form of corporal punishment, that is to say, any action which inflicts, or is intended to inflict, physical pain or discomfort; (b) isolation from other residents, that is to say, being kept apart from the normal routine of the centre in a locked room; (c) any form of psychological pressure or emotional abuse intended to intimidate or humiliate; (d) deprivation of medical attention, basic food and drink, clothing or any other essential item; (e) deprivation of sleep; (f) unjustified deprivation of contact with persons outside the centre/facility; (g) any other treatment that is cruel, inhuman or degrading. However, residents of training centres over 12 years of age can be locked in a detention room where an employee believes on reasonable grounds that the resident is about to self harm, harm another or cause significant property damage; or that it is necessary to maintain order in or preserve the security of the centre.

²⁹ DFC, *Keeping them safe – in our care: draft for consultation*, Action 6.

³⁰ SA Council for the Care of Children annual report 2006–07, <<http://www.childrensa.sa.gov.au/assets/documents/AR/WebAR2006-07.pdf>>

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should establish a high-risk adolescent register to monitor the circumstances, needs and service requirements of young people who pose a high level of risk to themselves or the community. DHS also reviewed placement and support services for high-risk adolescents, which examined their characteristics, needs and necessary service requirements, identifying service gaps and developing appropriate management strategies. Out of this review came an initiative termed the High Risk Adolescent Service Quality Improvement Initiative, consisting of three key service components: intensive case management, brokerage funds and one-to-one home-based care.³¹

Children identified as being at high risk can be referred to an Intensive Case Management Service (ICMS) and are assigned an experienced case manager who prepares and implements an individual case plan. ICMS is delivered by professional staff working in a multi-disciplinary team that includes drug and alcohol workers, mental health workers and intensive case managers. The ICMS works in collaboration with several other agencies, including the Central After-Hours Child Protection Service, Central After-Hours Bail Service, Streetwork Outreach Service, Juvenile Justice, Placement and Support Services, Secure Welfare Services, Mental Health Services, Drug Treatment Services, and the Department of Education. Teams work with children to achieve stable accommodation; establish and maintain positive relationships; attend to their health matters; address mental health needs, including therapeutic approaches to past trauma; reduce drug use and promote understanding of the impact of drug use; minimise criminal behaviour; access suitable day programs, including education, work placements and employment; and participate in recreation and leisure activities.

When the needs of a child at high risk are not met through mainstream services, brokerage funds may be provided to tailor a direct service response that meets an individual's

specific needs. Examples include specific educational or day programs, mentoring programs and personal or self-esteem development activities.

One-to-one home-based care is an intensive placement for high-risk adolescents aged 12 to 18. Each carer has been specifically recruited and trained to care for high-risk young people with multiple complex needs. One-to-one care differs from other forms of foster care in several ways. The level of remuneration paid to the carer is higher, a high level of support is provided to the carer and the young person, and the carer is included as an equal member of the care and case management team. Carers receive compulsory training and youth worker time is provided. This type of care is similar to what the department in this State proposes in its *Keeping them safe – in our care: draft for consultation*.

Berry Street is an independent child and family welfare organisation that provides ICMS to three regions in Victoria. In partnership with the Austin Hospital Child and Adolescent Mental Health Service (CAMHS), Latrobe University School of Social Work and Mindful, a child psychiatry training program of Melbourne University, it also runs the Take Two program. This program, which is funded by DHS, consists of a therapeutic service for children and young people at high risk in the child protection system.

Children and young people are eligible for referral to Take Two if they have experienced severe abuse or neglect and have been judged to be demonstrating, or at risk of demonstrating, behavioural or emotional disturbance. Each child undergoes specialist assessment and, if necessary, treatment. Their family and others who care for them are also assessed. Treatment planning is collaborative between all parties and designed to assist the child as well as the adults who care for the child. Some children simply come in for assessment, while others are given treatment, which

³¹ Department of Human Services, Victoria, *High risk adolescents service quality improvement initiative guidelines*, Care and Protection Branch, DHS, 1998.

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Chapter 4 State response

is ongoing and for as long as is required. Take Two also has a specialist team to work with Aboriginal children, who represent a disproportionately large number of children in need of this type of intensive care.

In the United Kingdom, children and young people with extreme behavioural and emotional issues, for which standard residential and foster care placements are not adequate, have the option of therapeutic residential care. This type of care is run by an organisation known as Childhood First, which has been operating for more than 35 years and provides intensive residential programs and specialist integrated care, education and treatment. Centres are supported by a team of consultant psychotherapists, psychiatrists and other therapists as appropriate. The context in which they are placed is much like a family home, although there is 24-hour cover by key workers, and group sessions. Although the home is not a locked-up environment, the presence of key workers at all times lessens the likelihood of the child running away. Should a child abscond there is a quick response; police are notified and the child is returned to the place of care immediately. The event is taken very seriously: key workers meet immediately with the child to discuss and discourage running away from care.

Recommended response

The Inquiry supports the early work and initiatives that are proposed by the department. However, there is an urgent need for a coordinated response to children in State care who are at high risk. In particular, there is a need to develop an intensive case management system and a therapeutic intervention program that identifies, assesses, assists and treats children with complex needs. This program should be run in conjunction with intensively supported foster care and residential care placements.

³² Department of Human Services 2003, *Our best investment: a State plan to protect and advance the interests of children*, report prepared by Robyn Layton QC, DHS, Adelaide, ch. 13 and recommendation 73.

³³ *ibid.*, ch. 13

RECOMMENDATION 42

That the provision of therapeutic and other intensive services for children in State care who abscond as envisaged in *Keeping them safe – in our care*, action six: ‘Children with complex care needs’, be implemented and developed as a matter of urgency and be adequately resourced.

That a group of care workers with suitable training and experience for such intensive therapeutic services be established and assigned to work on a one-on-one basis with children in State care who have complex needs and frequently abscond from placements.

That a specialist team be engaged to examine the benefits of establishing a specific therapeutic intervention program in South Australia that identifies, assesses, assists and treats children at high risk, similar to those in place in Victoria and the United Kingdom.

Therapeutic secure care

The need for this type of facility as a last resort for children who frequently abscond and place themselves at high risk became evident during the Inquiry.

Current initiatives

The need for therapeutic safekeeping arrangements with secure short-term accommodation for young people in serious conditions of risk was recommended in the Layton report in 2003.³² It was observed that some young people are caught in a cycle of drug addiction, sexual abuse and prostitution. The need for ‘those persons to have access to a place where they can be taken to give them a chance to “dry out” and assess their future lives with professional assistance’ was acknowledged. The report notes that [while] ‘voluntariness’ is a desirable goal, the age of these young people, their addicted state and their state of physical and mental health dictates that some enforcement may initially be required to help them.³³

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The report stressed that any use of safekeeping arrangements be strictly monitored and assessed to prevent 'systems abuse' and that they require the sanction of the Youth Court. The report suggested that agencies should

*... have to demonstrate that they have made all attempts to put in place other more appropriate services before safekeeping arrangements are sought. These arrangements cannot be seen to be a dumping ground for difficult adolescents because the service system has failed to provide proper supports and assistance at early stages.*³⁴

In relation to children and young people with complex needs, it is stated in *Keeping them safe – in our care: draft for consultation* that the government 'will explore innovative responses with our sector partners for children who engage in extreme risk-taking behaviours through persistent running away and who need some level of safekeeping'.³⁵

The *Keeping them safe – in our care: consultation responses* reported 'mixed views' on the issues of runaways and safekeeping orders. It also said some people had expressed concern about secure safekeeping for children and young people who engage in extreme risk-taking behaviours through persistent running away because therapy for long-term issues is hard to provide in short-term stays within a secure care unit; and because of concern that young people out of control may be placed in secure care because of limited alternatives, rather than as a last resort.

In September 2005, the Inquiry gave a discussion paper, *Recovery of State children and secure care*, to the chief executive officer of the Department for Families and Communities, Sue Vardon, and the executive director of Families SA, Beth Dunning. One issue for discussion was the need for a short-term therapeutic secure care-based facility for children engaging in extreme risk-taking behaviours.

Ms Vardon responded by letter and enclosed a detailed response from the department. It was indicated that the

department has considered such a model at different times. However, she said that currently '[there] is not a body of evidence that supports it as a constructive intervention in isolation but rather it possibly raises as many difficulties as it seeks to resolve'. Ms Vardon contends that 'such children are best assisted by intensive and supportive intervention to the level required to break the cycle of their extreme risk-taking behaviour' and that multiple service approaches are required with intense care management until the children re-establish themselves in a safer set of circumstances. She notes that the department is 'working to identify a suite of services and system change required to provide stability and certainty for children who may be an ongoing risk as runaways'.

Ms Vardon supports the development of a raft of system responses, recognising that greater emphasis must be placed on early intervention and real support at earlier stages for children and young people wherever possible, to prevent and not merely treat problematic behaviours. She also contends that:

Once an adequate suite of prevention-focused therapeutic support and placement options is in place, we will be better positioned to consider any potential role that an intensive short-term mandated treatment model could play as a part of a continuum of responses.

The department expressed the view that 'the subject of secure safekeeping requires more thought and debate'; further, that:

The use of this sort of intervention would need to be targeted at those children and young people for whom other interventions have not reduced significant and untenable levels of risk.

Their preferred option

... is to enhance and improve current systems, inter-agency accountability, service delivery models and multi-disciplinary approaches to address the complex needs of these people.

³⁴ *ibid.*

³⁵ *Keeping them safe – in our care: draft for consultation*, Action 6.

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Interstate and overseas experience

Other States and Territories in Australia and overseas jurisdictions have adopted the theory or practice of a therapeutic secure care facility. Brief discussion follows in relation to the situation in the Australian Capital Territory, New South Wales, Victoria, New Zealand and the United Kingdom.

Australian Capital Territory

The *Children and Young People Act 1999* (ACT) provides for therapeutic protection orders (TPO).³⁶ Therapeutic protection is defined as care provided by the chief executive of the department for a child or young person who is confined to a place in a way that the chief executive considers appropriate to protect them from serious harm.³⁷ The Children's Court may make a TPO if satisfied that there are reasonable grounds for believing a child is in need of such care and protection.³⁸ Unless the court otherwise orders, the TPO has the effect of a residence order in favour of the chief executive and a specific issues order that gives day-to-day responsibility for the care, welfare and development of the child or young person to the chief executive.³⁹ Provisions relating to therapeutic protection have been expanded in proposed legislation in the form of the *Children and Young Persons Bill 2007*. However, the ACT still does not have a secure care facility. Consequently, no therapeutic protection orders have been made under the Act.

New South Wales

In New South Wales, provisions in the *Children and Young Persons (Care and Protection) Act 1998* allow for compulsory assistance orders to be made in respect of a child or young person. At the time of writing this report these provisions were yet to be proclaimed.

'Compulsory assistance' is defined as

... a form of intensive care and support for the child or young person that is necessary to protect the

child or young person from suicide or other life-threatening or serious self-destructive behaviour.

It includes a requirement that the children reside and remain at specified premises and be under 24-hour supervision.⁴⁰ Before orders can be made, the court must be satisfied that:

- The children or young people will receive treatment, therapy or other services which will help them deal with the problems that have led them to be a danger to themselves.
- The program offered to them is likely to lead to significant improvement in their circumstances.
- The agency that will be required to provide intensive supervision of the child or young person has indicated to the court that it will, and is able to, allocate the necessary resources.⁴¹

The order must be made by the Children's Court and must not exceed three months.⁴² Interim compulsory intervention orders can be granted for up to 21 days.⁴³

Victoria

Victoria is the only Australian State running a therapeutic secure welfare facility, which it established in 1992. Under section 173 of the *Children, Youth and Families Act 2005*, if the department secretary is satisfied that there is a substantial and immediate risk of harm to a child who is in the custody or under the guardianship of the State, he or she can be placed in a secure welfare service for up to 21 days. This period can be extended in exceptional circumstances for a maximum of 21 days. Placement in the unit is considered to be a last resort, implemented only after other avenues have been exhausted or are not sufficient to secure the safety of the child.

In considering whether to place a child in secure care, the secretary is bound to:

- consider the best interests of the child

³⁶ *Children and Young People Act 1999* (ACT), ss. 232–45.

³⁷ *ibid.*, s. 233.

³⁸ *ibid.*, s. 235(1)

³⁹ *ibid.*, s. 235(2).

⁴⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s. 123.

⁴¹ *ibid.*, s. 125.

⁴² *ibid.*, s. 128

⁴³ *ibid.*, ss. 129–30.

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- ensure the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would
- consider the treatment needs of the child.⁴⁴

Importantly, section 174(1)(c) provides that the secretary must have regard to the fact that a child's lack of adequate accommodation is not in itself a sufficient reason for placing him or her in a secure welfare service.

Victoria has a secure unit for boys and one for girls, each accommodating 10 children. A specialist school co-located in the residential setting is funded by the Education Department. The facility is staffed by specially trained residential care workers. There also is access to medical staff, alcohol and drug treatment nurses and therapeutic intervention through Take Two and CAMHS. The average stay in the units is eight to nine days. Children and young people begin therapy while in secure care and are linked to other services so treatment can continue once the child leaves.

If a child is placed in a secure welfare service, the secretary must provide transitional or 'step-down' support for the transfer to and integration into another suitable placement.⁴⁵

While evaluation is difficult, those working in Victoria estimate that it is highly successful as a 'circuit breaker' for children who have an imminent risk of suicide, or are at risk of physical or mental injury or exploitation.

The Act also provides for children not subject to custody and guardianship of the State to be placed in secure care in certain circumstances if there is a substantial and immediate risk of harm to the child.⁴⁶

The manager of the Take Two program in Melbourne told the Inquiry:

Even I, who was, when I first heard about it, terribly critical of [secure welfare]—I've had so many kids

where, in the end, it was the only thing that was ending a trajectory that was going to end very badly, and I have been just so surprised over the years—the number of kids who have come in and said: 'Please put me back in. Leave me for a few days', or, 'I want to stay there for a bit longer' ... Although people talk about confinement, it's also about containment and care, and it's not as if they are frog-marched through the corridors or to school and everything. The intent of secure welfare is therapeutic.

International jurisdictions

Many other countries, including New Zealand, the United Kingdom, the United States (in various States) and Sweden, have legislation that provides for the therapeutic secure care of young people at risk.⁴⁷

New Zealand child protection legislation has provisions that enable children to be placed in therapeutic secure care. In particular, section 368 of the Children, Young Persons, and Their Families Act 1989 (NZ) allows for a child or young person to be placed in secure care in a residence if, and only if, such a placement is necessary to prevent the child or young person from absconding from the residence in circumstances where two of the following conditions are satisfied:

- The individual has absconded in the previous six months.
- There is a real likelihood that he or she will abscond.
- The individual's physical, mental or emotional wellbeing is likely to be harmed if he or she absconds.
- To prevent the individual from behaving in a manner likely to cause physical harm to himself, herself or any other person.

⁴⁴ Children Youth and Families Act 2005 (Vic), s. 174(1)(a),(b) and (d).

⁴⁵ *ibid.*, s. 175.

⁴⁶ *ibid.*, s. 242.

⁴⁷ B Andersson, *Diversity in residential care and treatment for young people in Sweden*, Goteborg University, 2007, Sweden.

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No child or young person can be kept for a continuous period of more than 72 hours or on more than three consecutive days unless a court grants approval under section 376 of the Act.⁴⁸ The court can then extend the period for up to 14 days if satisfied that it is necessary on the basis of the criteria set out above.

In the United Kingdom, children and young people with such extreme behavioural and emotional issues that standard residential and foster care placements are not adequate, have the option of therapeutic residential care. It is only if that type of care fails that someone may be referred to a fully secure environment as a 'last resort' for his or her own safety. Dr Jenny Pearce, Professor of Young People and Public Policy at the University of Bedfordshire in the UK, told the Inquiry:

My view is that it's an absolute last resort for a terribly small minority, but that for those young people it is better to secure them and contain them than it is to allow them to wander around the streets and do further damage to themselves, because other people will damage them ...

Section 25 of the Children Act 1989 (UK) allows children who are being looked after by a local authority to be placed in secure accommodation only where they have a history of absconding, are likely to abscond and, if they abscond, are likely to suffer significant harm; or, if they are kept in any other type of accommodation, are likely to injure themselves or other people. A child can be placed in secure care for up to 72 hours without the need for a court order.⁴⁹ A court can order that a child satisfying the criteria set out above be kept in secure accommodation for up to three months, although this can be extended for a further six months at any one time.⁵⁰

Secure children's homes are run by local authorities and overseen by the Department of Health and the Department

for Education and Skills. They focus on the physical, emotional and behavioural needs of the young people they accommodate and provide intensive support programs tailored to their individual needs. To achieve this, they have a high ratio of staff to young people and are usually small facilities, ranging in size from six to 40 beds. These homes are generally used to accommodate offenders aged 12 to 14, girls up to 16, and boys aged 15 to 16 who are assessed as vulnerable.⁵¹

The Secure Accommodation Network is a group of about 24 secure children's homes run by local authorities. Staff include social workers, experienced teachers, doctors and other health professionals. The behavioural, emotional and mental health needs of young people are assessed and treated by a range of specialist services including psychiatrists, psychologists, substance abuse workers and people with expertise in areas such as sex offending. Staff also work closely with family and friends to enable and facilitate the rebuilding of broken relationships and to provide a support network for young people when they go home or move on to an alternative community placement.⁵²

Evidence to the Inquiry

In regard to the issue of children in State care who abscond and engage in risk-taking behaviour, the Inquiry held a public meeting in September 2005⁵³ and a meeting of departmental staff and non-government agencies involved with young people in October 2005.⁵⁴ The Inquiry also heard evidence about this issue from witnesses who work, or have worked, in the field of child protection and from representatives of relevant organisations.

Many workers thought a secure care therapeutic facility was necessary 'to break the cycle', One said: 'Sometimes people need to be protected from themselves for a period of time'.

⁴⁸ Children, Young Persons, and Their Families Act 1989 (NZ), s. 370.

⁴⁹ *The Children Act 1989* (UK); s. 25(2), *The Children (Secure Accommodation) Regulations 1991*, reg. 10.

⁵⁰ *The Children Act 1989* (UK); ss. 25(2) and 25(4), *The Children (Secure Accommodation) Regulations 1991*, reg. 11–12.

⁵¹ Youth Justice Board for England and Wales, <<https://www.gov.uk/government/organisations/youth-justice-board-for-england-and-wales>>

⁵² Secure Accommodation Network, <<http://www.secureaccommodation.org.uk>>

⁵³ Attended by about 200 people.

⁵⁴ Attended by 18 people from CREATE Foundation, UnitingCare Wesley, residential care units and other department staff, Life Without Barriers, Emergency Housing, Port Adelaide Youth, Baptist Community Services, Inner City Youth Services, as well as Inquiry staff.

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While many viewed secure care as an option, they were concerned that it not be the only option. One worker said:

I think that our response needs to be very flexible and offer a range of styles and options ... [Secure care] will never ever meet the needs of all runaways, but it will meet the needs of some of them.

Evidence was received from residential care workers about the one-to-one care in different units. They said young people who were runaways in real danger eventually stopped this behaviour because of one-to-one care. It is likely that there have been many cases where a close relationship was established between a carer and a child or young person on a one-on-one basis with positive results, without the need for secure care. Another former residential care worker expressed his dislike for secure care but disclosed having locked in a young teenage girl because her father and brother were abusing her.

Witnesses involved in treating children with behavioural issues indicated that a child's treatment was disrupted by absconding, and in most cases treatment was more successful in cases where the child had committed an offence and as a consequence was detained in the Magill or Cavan training centres. This particularly applied to those with substance abuse problems. One specialist in the field said: 'Running interrupts, amongst other things, it interrupts their therapy ... for example, if they're on medication and they're gone two days, then that's stuffed up.' He added: 'We often hoped that a child would get a lengthy sentence so we could treat them'. This specialist advocated a 'long-term residential system for the treatment'.

There was evidence that an increasing number of young people were being detained or remanded in training centres, not as a result of the seriousness of any offence they had committed but because of mental health or substance abuse issues. There was no other appropriate place to send them for treatment. The location of treatment programs in the training centres makes a secure response seem more punitive than therapeutic.

Another specialist told the Inquiry:

I'm not convinced that their offences are serious enough to warrant being in custody, but certainly they are in custody because of their mental health issues ... I would suspect the courts struggle with knowing that there aren't community options for those young people and so, in the best interest of young people, they will remand them for a period of time to help stabilise their health issues.

Many people were concerned that any secure care facility may be used inappropriately; for example, by children being placed in such care simply because there was nowhere else:

I know the fear is, if you have a facility of this type, then you will use it and you will place people there regardless of whether there is a need or not. I think it's pretty clearly demonstrated that there is a need for some kind of facility.

Advocates of a therapeutic secure care facility were clear that such a facility should be separate from juvenile training centres. Many referred to the past practice of placing children on safekeeping orders among children who had committed offences:

... these people may be at significant risk but they should not be put in jail and contaminated with people who have committed, at times, quite serious offences and, more to the point, quite serious behaviour.

Some people were concerned that the facility might become like the institutions of old or a detention centre:

I would hate them to become large, big environments because then they become institutions. I have done some work at Magill and I wouldn't want it to become like that.

On the nature of such a facility, one worker suggested these children needed a safe place, an 'asylum'. He pointed out that there is 'an extraordinary fine line between asylum and detention, and how we actually go about that, I think, is going to be critical'. He added:

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They have to feel that it's going to be a safe place for them, not just someone taking over their life again and locking them up, and that's very hard to do. But if it can be done, then I think that it's a fundamental shift in the right direction.

People were concerned that if a secure care facility was established then placement of children and young people there should be tightly controlled. Many saw the type of staff as critical to the success of any such proposal, and one commented:

It doesn't matter how well you design a program, it doesn't matter how well-meaning you are. Unless you've actually got the people at any one time who actually fit that bill, it will never work.

Another witness said:

You need to find very special people to be able to—not just ordinary institutional secure care staff ... to have a secure physical environment, but ... very special people that have got the training and the values and the motivation to give that person not just the security, but some warmth and some love and some caring, because they're the sorts of things that are going to turn that kid around.

Advocates of secure care considered that the provision of some type of transitional or ongoing support to young people after they had left secure care was critical:

There should be an ability to have ... a residential type program that can work in partnership with a family, and ... there needs to be some skill development of perhaps the foster carers with a particular child, where they can get some—not only respite, but also some support and skills. So that even when kids go into that sort of secure care there is still a family that is there and available for them when they get to a certain point, that they obviously get along with. So I think it's about doing a whole range of things at the same time.

Some witnesses who had absconded while in State care agreed with the need for and benefit of a therapeutic secure care facility:

... at the same time I think about it and I think, well, if somebody had stuck me in one of them, instead of letting me just do what I wanted to do, and said, 'Right, this is it. You're here, and the premises is locked at this point in time and if you're not here, we're going to go send coppers looking for you, and you'll come back and you're going to stay here and we're going to sort this out and we're going to get you help, and we're going to do this and we're going to do that and we're going to do the other', then all of a sudden my life would have been different.

At the Inquiry's public meeting, differing views were expressed about secure care for children in danger. Some people, mainly parents, were strongly in favour and wanted runaway children to be placed in therapeutic secure care. One young woman told the meeting she had been prevented from absconding and had been placed in secure care for assistance. However, most people at the meeting were opposed to therapeutic secure care. Views expressed were that children should not be locked up for safekeeping and that secure care should be restricted to punishment for criminal behaviour; in the past there had been secure care for safekeeping, which was unfair and unjust. Much the same view in opposition to secure care was expressed at the meeting of departmental staff and non-government agencies involved with young people organised by the Inquiry.

To provide a response to *Keeping them safe – in our care: draft for consultation*, CREATE Foundation consulted with young people formerly and currently in State care. In relation to runaways and secure care the responses included:

- Talk to young people about why they run away.
- Have safe houses where young people can go when they run away; where they know they will get help.

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- Restraint affects all young people in a unit—even those who are not being restrained.
- Bedroom doors should not be locked.
- Restraining should not be used except as a last resort.

The responses to CREATE included 'No restraining in CRC [community residential care]'; 'No detention'; and 'Children run away if they get scared'. Twenty per cent of participants said that apart from foster care or relative care there should be 'independent living with one-on-one support'.

The Guardian for Children and Young People said in evidence to the Inquiry:

It's definitely time for a discussion. It's definitely a time to consider the idea more seriously, to think about if we were to have it what is it that we would need to have in place to ensure that it was the safest facility that we could have, that protected the rights of the children and young people who entered there.

What needs to be done

The Inquiry recommends that urgent attention be given to the provision of appropriate services and care, including intensive therapeutic services to children who abscond from their placements. Secure care should be an option of last resort for children in serious danger. The government has known for several decades that children and young people in State care who run away from placements are at high risk of sexual exploitation. The high risk continues and secure care must be a last-resort option to protect and care for these children.

The establishment of therapeutic safekeeping arrangements with secure short-term accommodation for children at risk was a recommendation made in the Layton report in 2003. Experience in other jurisdictions suggests there is a proportion of children with complex needs who will benefit from a short-term therapeutic secure environment in addition to other therapeutic alternatives.

The Inquiry believes the secure therapeutic welfare systems used in other jurisdictions, particularly the Victorian system, should be examined and assessed with a view to establishing such a system in this State.

The facility should be a residence in metropolitan Adelaide near other intensive therapeutic services being envisaged as part of *Keeping them safe – in our care*. A full range of therapeutic services should be available at the residence and elsewhere as appropriate, and the staff must have suitable training and experience. The residence must be capable of being secured to prevent residents from absconding. The facility should be used only as a last resort and for a short period of up to 21 days.

Once a runaway child or young person in State care has been found, any decision to place him or her in secure care must be made by the executive director of the department. When making the decision, the executive director must have regard to the matters set out in section 174(1) of the Victorian legislation. If such a decision is made, the child may be placed in the secure care facility and the executive director must inform the Minister of the decision and placement within 24 hours. There must be judicial supervision of the secure care of any child in State care. The executive director must start proceedings in the Youth Court within 24 hours and seek orders and directions of the court as to the immediate future care of the child. The child must not continue to be kept in secure care without a court order. In giving directions and making orders about the child, the court must also have regard to matters set out in section 174(1) of the Victorian legislation. The role of the court is to ensure there is independent judicial supervision of the length of time the child is kept in secure care and the services and programs that are provided. The Guardian for Children and Young People must be notified of the secure care placement. The child, members of his or her family and any person who the court decides has a sufficient interest in the child may apply to the court for discharge or variation of the order.

43 RECOMMENDATION 43

That a secure care therapeutic facility to care for children exhibiting behaviour placing them at high risk be established as a last-resort placement.

That the Minister appoints a panel of suitably qualified persons to select and design the secure care therapeutic facility and determine the therapeutic services to be provided.

Locating children in State care who run away

The Inquiry heard evidence from police officers, residential care workers and the Guardian for Children and Young People (GCYP) that in the past timely responses in recovering children have been impeded by poor communication between police and the department, different interpretations of what constitutes a missing person, slow responses, and disagreement about responsibilities, as well as a general shortage of resources.⁵⁵

One police officer said:

It does take up a lot of resources to basically play taxi for kids ... some that just want to walk out and then ring up the workers and get a taxi back to the unit, and that does happen.

He said, however, about the police: 'I think the attitude that might have developed was a bit dismissive: "These kids again. They're wasting our time"'. Some residential care workers said that when children ran away from a placement the staff who worked closely with them were often the most successful at locating them and persuading them to return: 'Ninety-five per cent of the kids you will get back just by doing that and they will come back with you

willingly'. However, they said they needed support from police because often in retrieving a child they put themselves at risk: 'We don't have the resources to go down and get them all the time'. It was felt that with more resources the agencies could work in collaboration and respond faster and more appropriately to runaway children and young people. The ratio of staff to young people in residential care units has also been of concern to the GCYP⁵⁶ and is the subject of a recommendation in this report (see Chapter 4.1).

Operational response to missing children in State care

The police operation (operation C) undertaken over 18 months from April 2005 identified a need for a more coordinated and stronger operational response to the issue of children absconding from residential care facilities. A report by the GCYP in July 2007 acknowledges the work done by that police operation, but notes that at present the coordination of the response between the department and police when children and young people abscond varies from one region to another.⁵⁷ The Inquiry heard evidence that Holden Hill police and the two units in that area were making progress toward setting out procedures for developing a missing persons protocol. The Inquiry endorses the recommendation of the GCYP that the protocol between police and the department for a rapid response to missing persons reports be implemented in all regions where residential care facilities are located (including transitional accommodation houses). The Inquiry also considers there should be contact officers in the SA Police local service areas where residential care facilities are housed and also to facilitate the flow of information about children who frequently abscond and are 'at risk' of sexual exploitation.

⁵⁵ GCYP, *Children missing from residential care*, 2007, p. 4.

⁵⁶ *ibid.*

⁵⁷ *ibid.*, p. 9.

RECOMMENDATION 44

That a missing persons protocol between the South Australia Police local service areas and the Department for Families and Communities be implemented in all regions where residential care facilities are located (including transitional accommodation houses).

That a contact officer be established in each SA Police local service area where residential care facilities are located (including transitional accommodation houses) to facilitate the development and implementation of the missing persons protocol and to facilitate the flow of information concerning children and young people who frequently abscond and are 'at risk' of sexual exploitation.

Record keeping

The Inquiry also heard evidence about the need to improve record keeping in relation to children in State care who frequently abscond (see chapter 6). The SA Police computer system (PIMS) does not record as a separate field the fact that a child or young person is in State care; nor does it record as a separate field the fact that a child is a frequent absconder. This means that information about the number of children in State care who are missing or considered to be frequent absconders is not readily available. The status of a child as being in State care should be on a separate menu, with a subset of that menu permitting an inquiry into all children who are 'at risk' from frequent absconding.

The Inquiry also believes SA Police local service areas and the Missing Persons Unit should keep specific files about children in State care who frequently abscond. The files should contain information about each time a child absconds, including where he or she has been located. This would assist in finding the missing person and overcome the difficulties encountered by changes in personnel.

RECOMMENDATION 45

That the South Australian Police computer system (PIMS) create separate fields to record if a child is in State care, and if a child is 'at risk' due to frequent absconding, to enable that information to be readily available.

That the SA Police local service areas and Missing Persons Unit maintain specific files about children in State care who are considered to be 'at risk' due to frequent absconding. The files should contain information about each time a child absconds, including where he or she has been located.

Power to retrieve a child in State care

Once a child in State care has been located, a police officer or authorised departmental officer has the power to use reasonable force to remove him or her from a place when the officer believes on reasonable grounds that the child is in a situation of 'serious danger' and needs to be protected from harm or further harm.⁵⁸

The department told the Inquiry that this legislative provision has now strengthened the ability of the department and police to remove children from dangerous situations, is now actively invoked and may be used to return runaways home.⁵⁹

There is, however, a limitation on the use of the power: the officer must first believe that the child is in 'serious danger'. What is 'serious danger' is open to interpretation and may not always be immediately apparent to the relevant officers. There should be a more general power to retrieve and recover children in State care who abscond from placements. The power should not be premised on the need for a belief on reasonable grounds of 'serious danger'. An example is in Western Australia⁶⁰, where the officer must have a reasonable belief that there is 'a risk to the wellbeing of the child'.

⁵⁸ *Children's Protection Act 1993*, s. 15–6.

⁵⁹ Families SA executive director, letter, 3 Oct. 2006.

⁶⁰ *Children and Community Services Act 2004* (WA), s. 41(2).

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This legislative amendment is recommended on the basis that the response to a child in State care who has run away and is then found must be therapeutic, not punitive.

RECOMMENDATION 46

That section 16 of the *Children's Protection Act 1993* be amended to provide for a more general power to recover children in State care by deleting the requirement of a reasonable belief as to 'serious danger' and inserting a lesser standard such as 'a risk to the wellbeing of the child'.

Stopping the perpetrators

A range of criminal offences with severe penalties that relate to the sexual abuse and exploitation of children already exists. However, prosecutions of alleged offenders for such offences rely on children and young people disclosing the offence to the police and then giving evidence in court against the perpetrator. The Inquiry has heard evidence about the alleged victims' unwillingness to do that for various reasons, including intimidation and fear or not wanting to lose the source of gifts such as money, cigarettes, drugs, alcohol, shelter or clothes. There was a concern and frustration expressed that young people were 'continually sexually abused' and the perpetrators were known; however, 'they are not prosecuted, they are not even followed up closely'. It was observed that under the current system it is difficult to get a conviction because 'a lot of our young people will protect the people who are abusing them'.

Proof of serious criminal offences of child sexual abuse and exploitation will almost always rely on the child being prepared to give evidence. However, the Inquiry heard

evidence from people who would like the introduction of a legislative provision that made it an offence for an adult to harbour a child, but did not rely on evidence from the child. One departmental worker said:

I certainly would advocate for a system where the people who harbour these kids are the ones who actually get some consequence and not the children themselves, who really are the victims in these situations.

Another departmental worker said: 'If we get some type of deterrence it would help at least persuade these people not to attempt to do so'. Another said the biggest issue was cutting off the places that absconders run to so workers can get them into a unit long enough to show them that 'the place is a good place to be, and long enough to put things in place so that they can have a stable and normal life'. Witnesses were concerned that any action to remove the child occurred as quickly as possible and did not require cumbersome procedures.

Harbouring children in State care: current legislative provisions

All States in Australia have provisions that make harbouring or concealing and/or the unlawful removal of a child under guardianship an offence.⁶¹ South Australia's legislative provisions that attempt to deal with the issue of the taking and harbouring of children are:

- Section 76 of the *Family and Community Services Act 1972*, which makes it an offence to unlawfully take a child from his or her placement, or to harbour or conceal a child.⁶² It is rarely used. Proof of the charge generally requires evidence from the child that he or she was 'induced' or provided with a 'refuge'.⁶³ A child who absconds from a residential care facility to obtain benefits for sexual favours and/or leaves to go to a

⁶¹ *Children and Young People Act 1999* (ACT), ss. 389–390; *Children and Young Persons (Care and Protection) Act 1998* (NSW), s. 229; *Community Welfare Act 1983* (NT), s. 96; *Child Protection Act 1999* (Qld), ss. 162, 164; *Family and Community Services Act 1972* (SA), s. 76; *Child, Youth and Families Act 2005* (Vic), ss. 495–6; *Children, Young Persons and Their Families Act 1997* (Tas), ss. 95–6; *Children and Community Services Act 2004* (WA), ss. 108–109.

⁶² Punishable by six months' imprisonment or a \$2000 fine.

⁶³ Harbouring has a distinct meaning at common law and is said to require a positive act such as 'the provision of shelter in the sense of providing a refuge': *Darch v. Weight* (1984) 79 Cr App R 40.

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'refuge' is not likely to be willing to give evidence against the person who gave those benefits and/or provided that refuge.

- Section 80 of the *Criminal Law Consolidation Act 1935*, which makes it an offence to abduct a child under 16.⁶⁴ However, it requires proof that the child was taken or enticed away by 'force or fraud'; or that the child was harboured by someone who knows the child was taken or enticed away in those circumstances. A youth support worker who took a 15-year-old child under the guardianship of the Minister interstate was recently convicted of an offence against section 80(1a).⁶⁵ Generally, however, it is not well suited to deal with the situation where a child in State care runs to the paedophile because proof of 'force or fraud' would require the child to both report and give evidence against the offender.
- Section 99 of the *Summary Procedure Act 1921*, which provides for a court to make a general restraint order against a person. However, it requires proof that a person has been behaving in an 'intimidating or offensive manner' on two or more separate occasions. Such proof in court would generally require the evidence of the child. Failure to comply with a restraining order is an offence punishable by imprisonment, although proof of non-compliance may require evidence from the child.
- Section 99A of the *Summary Procedure Act 1921*, which provides for the making of paedophile restraint orders. It does not rely on the evidence of the child or children, and the application can be made by a police officer. An order may be made restraining a person from loitering near children in any circumstances, or it can restrain the person from being near children at specified places or in specified circumstances. The court must first be satisfied that the person has been found loitering near children on at least two occasions and there is reason to think the person will do so again unless restrained. 'Loitering near

children' means the person loiters, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present; and children are present at the school, toilet or place at the time of the loitering.⁶⁶ Again, its applicability to children in State care who run away and are sexually exploited is very limited.

- Section 38 of the *Children's Protection Act 1993*, which permits the Youth Court to make an order that a person not have contact with a child. However, this applies only to someone who is a party to an application for a care and protection order relating to the child; usually a parent, guardian or custodian. It is evident that the current legislative provisions are not generally suited to addressing this particular issue and/or would require evidence from the child.

Offences of acting contrary to a written direction

It is considered that offences should be created regarding the harbouring of (or communicating with) a child in State care contrary to a written direction of the chief executive. Examples of offences based on acting contrary to direction from a chief executive include the following:

- In Western Australia a legislative provision permits the chief executive of the relevant department to direct a person not to communicate, or attempt to communicate, in any way with a child specified in the notice.⁶⁷ If the person fails to comply with that direction, then an offence is committed, with a penalty of a fine of up to \$6000.
- In South Australia, it is an offence if a person, having been forbidden to do so by the chief executive of the department, communicates in any manner with a child who is being detained or who lives in a training centre, a children's residential facility established by the Minister or other specified facilities.⁶⁸

⁶⁴ Punishable by seven years' imprisonment.

⁶⁵ *South Australia Police v Moore* (unreported), 24 Sep. 2007.

⁶⁶ *Summary Procedure Act 1921*, s. 99AA(4).

⁶⁷ *Children and Community Services Act 2004* (WA), s. 110.

⁶⁸ *Family and Community Services Act 1972* (SA), s. 77.

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The elements of the proposed offence of ‘harbouring a child in State care contrary to written direction’ should be that the person charged is providing accommodation for the child, was aware at that time that the child was in State care and knew that he or she had been previously directed in writing not to provide accommodation for the child. There should be a presumption, or deeming provision, in the legislation that upon proof that the person had been previously served with a written notice from the chief executive of the department or the Commissioner of Police, the offence is committed when the child is found with that person. The authorised officer (police or authorised departmental officer) recovering the child could serve the notice, contravention of which would form the basis of this offence. The punishment should be a fine or imprisonment, and the penalty should increase for subsequent offences.

A similar offence in relation to communicating with a child contrary to a written direction from the chief executive should also be created.

RECOMMENDATION 47

That the following offences be created:

- (1) Harbouring a child in State care contrary to written direction.
- (2) Communicating with a child in State care contrary to written direction.

The legislation should provide for a written notice to be served on a person with a presumption that, upon proof of prior service, the offence is committed if the child is found with that person.

Police operations

... to this day we cannot understand ... why there is still a Veale Gardens to go to? Why are these haunts and these beats still there to go to? If that was my backyard and my child was in that backyard, I would go down there and stop it. I beg of this community to be loud and to be heard about this.

The Inquiry has been impressed by the dedicated work of a number of police officers during the past 20 years in regard to the investigation of child sexual abuse generally. As a result of their actions, there was a change in culture towards these investigations and an immense amount of intelligence has been gathered, as well as cases being prosecuted successfully .

It is apparent to the Inquiry that beats such as Veale Gardens have not come under close police scrutiny since the end of a specific police operation about 10 years ago. It is known by the State that sexual exploitation of children, including children in State care, at Veale Gardens and other beats continues. The Inquiry asks—as did several witnesses—why this conduct is permitted to occur. Young people continue to be sexually exploited at these beats; they provide sexual favours in exchange for money, cigarettes, alcohol, drugs and other benefits. They are collected from those beats and taken elsewhere for sexual offences.

The Inquiry received evidence from police officers about their present approach to the policing of these beats. For operational reasons, that evidence will not be published. In summary, the view was that ‘we are sort of walking a fine line’. The officers did not want the police to be perceived in any way to be targeting or harassing members of the homosexual community who meet at those areas for legitimate purposes, and also expressed the view that with ‘a heavy-handed approach to the policing of the area, you just displace the occurrences to some other location’. A police witness posed the question about legitimate homosexual activity:

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Is it not better to allow it to be in this area, which it's been for many, many years and people feel a degree of safety when they go there because they build up networks of people and trust ...

There must always be great reluctance to make recommendations about how police should undertake their work and what that work should be, particularly in an operational sense, but a known haunt for serious crimes involving children, including children in State care, should not be allowed to continue. It is recommended that another operation of the nature of the police operation (operation T) 10 years ago be undertaken and adequately resourced, with a view to detecting sexual crimes against children and young persons in State care at Veale Gardens and other city beats to reduce its prevalence. If it is conducted with the same approach and sensitivity as used in the previous operation, appropriate understandings between police and the homosexual community in those areas shall not be compromised.

48 RECOMMENDATION 48

That the South Australia Police undertake an operation in relation to Veale Gardens and other known beats to detect sexual crimes against children and young persons in State care, apprehend perpetrators and develop further police intelligence.