CREATE Foundation response to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper:
Institutional Responses to Child Sexual Abuse in Out-of-Home Care

April 2016

CREATE Foundation
A Level 3, 630 George Street
Sydney, NSW 2000
T 02 9267 1999
E create@create.org.au

Contents

About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 43,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:
- **CONNECT** children and young people to each other, CREATE, and their community *to*
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard *to*
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices, and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people in care and developing policy and research to advocate for a better care system.

Introduction

CREATE welcomes the opportunity to provide a response to the *Consultation Paper on Institutional responses to child sexual abuse in out-of-home care*. CREATE acknowledges and commends the Royal Commission into Institutional Responses to Child Sexual Abuse's ongoing efforts to highlight that sexual abuse of children in institutions has occurred in recent times and continues to happen. CREATE again draws the attention of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) to the more than 43,000 children and young people living in out-of-home care across Australia and the need to ensure individual and systemic responses to improve their life outcomes.

CREATE's response is informed by the United Nations Convention on the Rights of the Child (1989) and emphasises that the National Standards for Out-of-Home Care (the National Standards) have specific relevance to how institutional responses to sexual abuse of children and young people in out-of-home care should be framed. The National Standards are an initiative of the federal, state, and territory governments under the *National Framework for Protecting Australia's Children 2009-2020* (the National Framework) (Council of Australian Governments, 2012). CREATE believes that children and young people with a care experience play an important role in providing the Royal Commission with insight into their experiences within Australia's statutory care system. CREATE's policy positions are informed by the voices of children and young people with a care experience, gathered across Australia through consultation and research.

CREATE notes the pressures and challenges facing out-of-home care (OOHC) as identified by the Royal Commission in the Consultation Paper (p. 24) and draws its attention to the responses CREATE has made to the Royal Commission over the last three years. As a framework for this response we have provided a summary of CREATE's submissions that are relevant to this paper:

CREATE's response to Issues Paper 1: Working with children check

CREATE's submission to this paper:
- outlined the diversity amongst Australia's jurisdictions and called for consistency to improve the approaches and noted the complexity in developing a nationally consistent approach;
- supported the COAG Working With Children Checks work group's recommendations; and
- highlighted the need for culturally appropriate processes and systems to reduce barriers for Aboriginal and Torres Strait Islander people to become kinship and foster carers for Aboriginal and Torres Strait Islander children and young people (CREATE , 2013a).

CREATE's response to Issues Paper 3: Child safe institutions

CREATE's submission added to our responses to Issues Paper 1 and
- reinforced the importance of good complaints processes;
- argued for the involvement of children and young people to assist in the development of policies and procedures to improve organisations;
- called for enforceable requirements for child safe environments; and
- stated the importance of independent oversight and monitoring systems.(CREATE, 2013b).

CREATE's response to Issues Paper 4: Preventing sexual abuse of children in out-of-home care

We acknowledge the Royal Commission's reference to this paper within the consultation paper and highlight that our submission drew the Royal Commission's attention to, and provided information on the following key areas:
- including and facilitating the voices of children and young people in OOHC;
- educating children and young people in OOHC to inform and empower them to be able to identify early warning signs of, and know how to report sexual abuse;
- incorporating sexual abuse risk management processes as part of a broader risk management framework to reduce all forms of abuse;
- extending regulation of out-of-care providers to include visitor programs;
- requiring independent oversight mechanisms to be child friendly and culturally and linguistically appropriate and accessible;
- improving access to mental health services for children and young people in OOHC;
- keeping accurate records; and
- fostering positive relationships to reduce isolation and build trusting relationships that encourage children and young people to feel safe to share their concerns (CREATE , 2013c).

CREATE's response to Issues Paper 10: Advocacy and support and therapeutic treatment services

CREATE's response to Issues Paper 10 recommended:
- continuing commitment to the National Framework for Protecting Australia's Children to work towards best practice in child protection that is child and young person centred, with a focus on helping children and young people to reach their potential;
- listening to the voices of children and young people in out-of-home care as an important part of measuring how the system is working for children and young people and addressing areas for change;
- improving support for more positive mental health for children and young people in out-of-home care, and to provide services to assist mental health recovery;
- advocating at both the individual and systemic level for children and young people with an out-of-home care experience. Individual advocacy assists children and young people to resolve individual issues they may have in relation to their individual situation. Systemic advocacy allows the identification of trends or shared issues to be addressed in ways that improve individual lives more efficiently; and
- developing independent complaints systems across Australia to ensure children and young people are able to approach an independent agency for help if they are experiencing problems in the system. This will enable them to seek remedies for their situation, and receive a fair hearing with feedback on their situation (CREATE , 2015d).

CREATE's response to Consultation Paper: Redress and civil litigation

Pertinent out-of-home care recommendations from this paper relate to:
- keeping accurate and accessible records;

- planning for future support for those transitioning, with special consideration if abuse has been demonstrated while they were in care;
- providing technical, financial and emotional support to people making a claim;
- establishing an independent authority with the powers to investigate complaints, make redress decisions and compel institutions to comply with orders for information and other requests as deemed necessary;
- pursuing appropriate investigations and disciplinary processes when allegations are received;
- adopting a mandatory reporting policy and compliance with legal requirements to report or disclose the abuse; and
- requiring institutions to provide claimants with any requested relevant information of their time in out-of-home care (CREATE, 2015c).

In this submission, CREATE will address all areas identified by the Royal Commission as they pertain to children and young people in out-of-home care and will be referring to these papers in our responses to the key areas.

Child sexual exploitation and child-to-child sexual abuse

CREATE draws the Royal Commission's attention to our responses to Issues papers 1, 3, and 10.

Child-to-child sexual abuse

CREATE is concerned a strong focus on children as perpetrators of sexual abuse may further stigmatise children and young people with a care experience. As stated in the Consultation Paper there is no nationally reliable data of the rates of child-to-child sexual abuse and while CREATE acknowledges that this type of abuse does occur, the limited data indicates greater research and investigation is required prior to developing full strategies in this area. As Lutman and Barter (2016) state there is limited evidence on peer violence in foster care and what is largely missing is the views of young people affected by these incidents of violence.

All instances of abuse (sexual and all other types) against any child or young person in care are of concern and we support efforts to reduce the incidence of abuse, and address all areas where this occurs. Considering the limited data available and structural reasons for child-to-child sexual abuse occurring, CREATE supports developing improved data systems, placement matching, monitoring of behaviours, and improved training for all providers of out-of-home care. A strong system with robust structures would minimise the occurrence of problem behaviours and improve responses to concerns in every area.

Data limitations, including the inadequacies of current OOHC data

CREATE draws the Royal Commission's attention to our responses to Issues Papers 3, 4, and 10 as well as the consultation paper on *Redress and civil litigation*.

Data set limitations

National Data set

Addressing the data limitations and inconsistency of methods, terminology, and processes would provide an improved picture about what is happening for children and young people in OOHC on a national level. National data on OOHC in Australia is poor due in part to eight separate jurisdictions supplying information in different formats on separate child protection systems. Addressing this deficiency has been identified in the third action Plan under the National Framework; however, this is in development stage and changes are not expected to be fully implemented until the end of the third year. In 2015, the Australian Institute of Health and Welfare (AIHW) released results from a pilot national survey measuring eight of the national standards, *The National Standards Report Card* (AIHW, 2015). These data have been collected from children and young people who are currently living in

out-of-home care using the *ViewPoint* survey tool that is administered and collated by the people who are funding and oversighting the care provided. For this reason CREATE has serious methodological concerns with this report and the results that are being reported as the process raises many issues regarding the veracity of the results and calls for improved independence of this process. Furthermore, this data set is incomplete with many areas either not currently having any data available, or jurisdictions not supplying data in certain areas which adds to the weight of the case for improving data set to properly assess accurately the current situation prior to measuring improvements or changes.

Rates of sexual abuse

CREATE highlighted the work of the Queensland Child Protection Inquiry in its submission to the Royal Commission's Issues Paper 4 regarding quantifying the rates of abuse occurring, as some of findings from that process highlighted the complexities involved in attempting to quantify the rates of abuse.

Using the rates of notifications of abuse to relevant government child protection agencies and/or the police as a measure of whether or not abuse of children is increasing or decreasing is complex and needs to be carefully examined and understood. While the National Framework's indicator of change "Number and rate of children with substantiations related to sexual abuse" is a sound starting point, it is important to acknowledge the complexities of using data alone to develop an understanding of this issue.

Furthermore any estimate of the rate of sexual abuse occurring in out-of-home care is not likely to be a true reflection of the actual rate of occurrence. Increased awareness of the issue of child sexual abuse, as well as improvements in complaint and oversight mechanisms, may contribute to increased reporting of issues of concern. This being said, and irrespective of the mechanism used to measure rates of abuse, it is important that government departments and non-government agencies do not treat a decrease in notifications or reporting of abuse as an automatic indication in improvement of rates of offending. Such decreases could mean that offending is declining; however it could also mean that victims of sexual abuse, the children and young people whose life outcomes we are all trying to improve, do not have the opportunity to raise issues or that abuse is going undetected.

Voices of children and young people

This is one of the most crucial points regarding evaluating the importance and adequacy of current out-of-home care data with respect to the work of the Royal Commission: The data that needs to be captured and stored needs to reflect the voices and experiences of the children and young people. This is why CREATE believes the out-of-home care system(s) across Australia should adopt and foster culture(s) of seeking continuous feedback from children and young people throughout their care experience. This is an important area of data collection and would be a rich resource to inform future policy and reform.

CREATE adopts the view that truly unbiased, unfiltered feedback from children and young people in care is best achieved through their engagement with external independent bodies whose primary role is to provide meaningful opportunities for the expression of views. Examination of key issues at a systemic national level is an opportunity to develop a comprehensive picture of the experiences of children and young people in care.

Regulation and oversight

CREATE draws the Royal Commission's attention to recommendations and advice provided in our submissions to Issues papers 1, 3, 4, and 10 and also our response to the *Redress and civil litigation* consultation paper.

CREATE endorses The Senate Community Affairs References Committee (2015) recommendations that the Coalition of Australian Governments develop and implement nationally consistent powers for independent child commissioners and guardians to:

- review individual out-of-home care cases;
- address complaints and concerns by children and young people;
- ensure the voice of children and young people is heard in all decision-making processes about placements and case planning; and
- provide community visitors to visit all out-of-home care placements.

Complaints

CREATE promotes independent oversight of government agencies. This is particularly important for agencies that deal with such a vulnerable cohort of the population, and those that are generally operating within a system that, by virtue of the nature of its substance and clients, is closed-off to public scrutiny and accountability.

Independent oversight of out-of-home care systems is essential to ensure the concerns of children and young people are heard and addressed both at the individual and systemic levels. Independence from out-of-home care providers is essential. CREATE's research has found that children and young people may see complaints systems located in departments and NGOs as biased or compromised.

The CREATE Report Card 2013 (McDowall, 2013), in summarising the views of children and young people in out-of-home care in Australia regarding their knowledge and use of complaints about their treatment in out-of-home care, found that:

- about half of the children and young people surveyed (n = 1069) knew how to complain if they needed to, and 19% had made a complaint;
- of the 204 children and young people who had made a complaint, 45% reported being at least quite satisfied with the outcome, compared with 24% who were quite dissatisfied;
- older age groups had better knowledge of complaints systems and had used them more. The older groups were also more likely to have wanted to complain but chose not to; and
- children and young people in residential care and permanent placements also reported more knowledge of complaints systems.

The following comments from a consultation on complaints processes illustrate the complexity of making a complaint when you are a young person living within the out-of-care system:

> I wasn't meant to be in a tier-three house where people had just come out of juvey (sic). It's hard when people are trying to kill you. I brought it up but the response was – just wait it out. (Male, 20)

> …no one ever got back to me. And half the time I knew what the results would be because it's always the same. The result would be nothing or not much. (Male, 14)

> …actually there was one time I discussed something with my caseworker and he went and spoke to the carer about it and then I got punished. I didn't know my caseworker was going to do this. (Female, 18)

(CREATE, 2015c)

CREATE believes independent complaint mechanisms are important for children and young people in care to be able to air their concerns, complain and/or seek redress without fear of repercussions and potentially harming the relationship with their care provider. CREATE recently released its "Complaints Mechanisms in Out-of-Home Care" Position Paper (CREATE, 2015b). It is especially relevant to the work of the Royal Commission in the context of this Consultation Paper and it is attached to this submission for the Royal Commission to consider when developing its framework (Appendix 1).

Privacy

Privacy is often cited as a reason for not sharing information with children and young people in out-of-home care. This includes the ability of children and young people in care to access information about themselves and their histories. There are issues around record keeping and access which can be

approached from the perspective of individuals reporting historical sexual abuse, the perspective of organisational record keeping and reporting of abuse systemically, and also external accountability mechanisms.

Maintenance of a comprehensive record system is crucial for children and young people in care. CREATE suggested in its submission to Issues Paper 4 that, for example, it may be beneficial for the Royal Commission to evaluate whether there is value in jurisdictions being compelled to institute retention policies for documents (beyond any existing minimum legal requirements) in the event former children and young people who have been in care wish to access their records. This is especially pertinent regarding delayed reporting of sexual abuse. It is crucial that organisations are compelled to implement, if they have not done so already, sound and open information-sharing policies that achieve the right balance between protecting the right to privacy and the right to information.

Child-Safe Organisations

CREATE draws the Royal Commission's attention to our statements and recommendations in our responses to Issues paper 1, 3, 4, 10, and the *Redress and civil litigation* consultation paper.

Children and young people's awareness of rights

A child-safe organisation is one in which children are aware of the standards of treatment they are entitled to and empowered to speak up on issues of concern. This involves both providing children with information on acceptable standards of behaviour as well as how to raise concerns if they feel unsafe or concerned about something. A child-safe organisation should strive to make children and young people aware of the standards of care they are entitled to (in an age-appropriate and child-friendly manner).

In Australia most states and territories have adapted the guiding principles of the Convention on the Rights of the Child (UN General Assembly, 1989) to develop their own individual Charter of Rights for Children and Young People in Out-of-Home Care (or similar). Awareness of child rights was one of the issues examined in CREATE's 2013 Report Card (McDowall, 2013) which involved a detailed analysis of the results of a survey of over 1,000 children and young people in statutory out-of-home care in Australia. Interestingly CREATE Foundation's Report Card found that of all respondents in the 15-17 year age group, only 17.8% knew about the Charter of Rights in their state or territory. For child-safe strategies to be effective, children and young people need to be aware of the standards of care they are entitled to and they must be empowered to raise any concerns about safety and to disclose harm.

In developing child-safe policies and processes it is crucial for organisations to consider not only the age-appropriateness of strategies but also potential barriers to children and young people being able to identify and raise concerns. Identifying and addressing such barriers is a crucial aspect of minimising the potential for harm to occur to children in the organisation and should also assist in developing an understanding of what is meant by "child safe" for children and young people in a variety of contexts. For example, programs and supports may need to be tailored to the particular needs of children with disability, those from cultural and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander children. Awareness of power dynamics between children and adults should also be fostered in organisations and taken into account in the development of child-related policies and procedures. Fostering an organisational culture that recognises the barriers children and young people may face in being aware of their own rights, and enabling them to speak up, is an important step to addressing organisational factors which may create conditions in which harm is undetected.

Should the findings of the Royal Commission determine the need for changes to policy and legislation in terms of developing organisational cultures that foster a child-safe environment, CREATE strongly recommends the involvement of children and young people, along with key child protection organisations in the development of any proposed changes. In addition to consulting with state and territory governments and key non-government organisations, CREATE recommends consultation with

children and young people in care and key Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse organisations.

Prevention of child sexual abuse in OOHC

CREATE draws the Royal Commission's attention to our statements and recommendations in our responses to Issues papers 1, 3, 4, 10 and the *Redress and civil litigation* consultation paper.

Supportive and quality care environments

CREATE draws the Royal Commission's attention to our statements and recommendations in our responses to Issues papers 3, 4, and 10.

We support the Royal Commission's recommendations and in particular commend them for including increasing support when leaving care, and in the care leaver's post-care life. In addition to the areas covered CREATE wishes to highlight the following points.

Participation of children and young people in OOHC

CREATE believes listening and responding to the views of children and young people in the care system should be a cornerstone of best practice. Communication is meant to be a two-way process; however, communication with children and young people is often unbalanced. Children and young people in care tell us that they want to be heard, they want to participate in decision-making, and they also want to be informed about other decisions and issues that impact on them (e.g., why a family visit has been cancelled). We call for the continued involvement and consultation with children and young people in OOHC to develop and implement the relevant recommendations of the Royal Commission.

Principles required to deliver quality care and outcomes for children and young people in OOHC

In our response to the Senate Community Affairs Committee into out-of-home care (CREATE, 2014), CREATE outlined the principles to deliver quality care and outcomes for children and young people living in out-of-home care, which include:

- conducting child-focussed interventions;
- listening to children and young people;
- including children and young people in decision-making;
- enabling children to maintain contact, where appropriate, with members of their families;
- requiring good case planning and case management;
- expecting strong two-way communication;
- investing in staff and carers with access to training;
- adhering to the Aboriginal Child Placement Principle;
- minimising the number of placements a child will experience;
- focusing on placement stability and permanency planning;
- addressing deficits in education early;
- keeping siblings together, where it is safe to do so;
- involving children and young people in planning for a gradual and supported transition to independence, starting at 15 years old and looking beyond turning 18 years old;
- providing after care support to 25 years of age;
- ensuring flexibility to consider needs on a case-by-case basis; and
- establishing independent oversight and clear complaints mechanisms that are child and youth friendly.

In addition to the recommendations and advice already supplied to the Royal Commission we call its attention to our position papers on:

- Sibling placement and contact;
- Kinship care;
- Residential care; and
- Over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care.

We have attached copies of these to this submission as they provide clear direction in how to improve the system that cares for children and young people in OOHC. In turn an improved system will help minimise the level of sexual abuse perpetrated (see Appendices, or CREATE's website at http://create.org.au/what-we-do/research-and-advocacy/position-papers/).

CREATE thanks the Royal Commission for the opportunity to include the voices of children and young people with an out-of-home care experience to improve the systems to reduce incidences of child sexual abuse and improve mechanisms to provide safe, caring, and robust systems to support the most vulnerable children in Australia.

For any questions or further information about this submission please contact Noelle Hudson, National Policy and Advocacy Manager on 07 3062 4860 or by email on noelle.hudson@create.org.au

References

Australian Institute of Health and Welfare (AIHW). (2015). *National standards for out-of-home-care data.* Retrieved from http://www.aihw.gov.au/nfpac/out-of-home-care/data/

Commonwealth of Australia. (2015). *The Senate Community Affairs Reference Committee into out-of-home care.* Canberra: Commonwealth of Australia.

Council of Australian Governments. (2012). *Protecting children is everyone's business: National Framework for protecting Australia's children 2009-2020.* Canberra: Commonwealth of Australia.

CREATE. (2013a). *Response to issues Paper 1: Working with children check.* Brisbane: CREATE Foundation.

CREATE. (2013b). Response to Issues Paper 3 Child safe institutions. Brisbane: CREATE.

CREATE. (2013c). *Response to Issues Paper 4: Preventing sexual abuse of children in out-of-home care.* Brisbane: CREATE Foundation.

CREATE Foundation. (2014). *CREATE response to Senate Committee Inquiry into OOHC.* Brisbane: CREATE Foundation.

CREATE. (2015a). CREATE Position Paper: Complaints mechanisms in out-of-home care. Brisbane: CREATE Foundation.

CREATE. (2015d). *Response to Issues Paper 10: Advocacy and support and therapeutic treatment services.* Brisbane: CREATE Foundation.

CREATE. (2015b). *CREATE Response to Consultation Paper: Redress and Civil Litigation.* Brisbane: CREATE Foundation.

CREATE. (2015c). *Internal consultation report - Complaints mechanisms consultation Western Australia.* Perth: CREATE.

Lonne, B., Harries, M., & Lantz, S. (2012). Workforce Development: A Pathway to Reforming Child Protection Systems in Australia. *British Journal of Social Work*. Retrieved from http://bjsw.oxfordjournals.org

Lutman, E., & Barter, C. (2016). Peer violence in foster care: A review of the research evidence. *Child and Family Social Work*. Advance online publication.

McDowall, J. J. (2013). *Experiencing Out-of-Home Care in Australia: the Views of Children and Young People (CREATE Report Card 2013).* Sydney: CREATE Foundation.

Royal Commission into Institutional Responses to Child Sexual Abuse. (2016). *Consultation paper: Institutional responses to child sexual abuse in out-of-home care.* Sydney: Commonwealth of Australia.

UN General Assembly. (1989). *Convention on the Rights of the Child.* Retrieved from United Nations: http://www.un.org/documents/ga/res/44/a44r025.htm

Appendices

CREATE Position paper: Complaints Mechanisms in out-of-home care

Issue: Complaints Mechanisms in Out-of-Home Care

CREATE's Position

CREATE Foundation believes listening and responding to the views of children and young people in out-of-home care systems is a cornerstone of best practice. A well-functioning child protection system is underpinned by an independent, child and young person friendly, transparent, accessible, and responsive complaints mechanism. Independent oversight of out-of-home care systems is essential to ensure children's and young people's individual and systemic concerns are heard and addressed.

CREATE Foundation believes that an ideal complaints mechanism would have the following characteristics:

- Is safe, open, and independent of the providers of out-of-home care;
- Be easy to access online or face-to-face for children and young people;
- Allow for a support person to accompany a child or young person at any face-to-face meetings;
- Includes individual advocacy services to have complaints resolved;
- Provides a timeline noting expected dates for reporting and/or resolution of the matter; and
- Reports on systemic advocacy issues to improve the care experience for all children and young people.

Table 1
Out-of-Home Care National Standards that Apply to Complaints Mechanisms (FaHCSIA, 2011)

National Standards	Measures
1. Children and young people will be provided with stability and security during their time in care.	1.3 The proportion of children and young people in out-of-home care who report feeling safe in and secure in their current placement
2. Children and young people participate in decisions that have an impact on their lives.	2.1 The proportion of children and young people who report that they have opportunities to have a say in relation to decision that have an impact on their lives and that they feel listened to.

Evidence

- The sexual abuse of children in institutional settings is a problem affecting children and young people today as well as in the past (Office of the Children's Commissioner (NT), 2015; Royal Commission into Institutional Responses to Child Sexual Abuse, 2014).
- The specific mechanisms for complaining about treatment and conditions in out-of-home care vary depending on the jurisdiction in Australia (McDowall, 2013).
- Research and inquiries have found that even when cases of sexual abuse of children in institutions were brought to the attention of departments, police, and institutional providers they were ignored, not followed up, or disbelieved (Royal Commission into Institutional Responses to Child Sexual Abuse, 2014; Swain, 2014).
- Australia's ratification of the United Nations Convention on the Rights of the Child (CRC) in 1990 gives the Australian Human Rights Commission (2015) the power to refer to the CRC when considering complaints from children who believe their rights have been breached. In keeping with the CRC, "Charters of Rights" have been developed in each state and territory expressing the expectation that children and young people in out-of-home care should be able to:
  - feel safe and secure;
  - participate in decision making affecting their lives; and

Version 1, November 2015

- make a complaint about their treatment, if necessary.

- Most complaints systems expect that, in the first instance, a child or young person will raise the issue of the complaint with the person responsible, which generally would be their carer or caseworker, and usually through the department or non-government organisation responsible for their guardianship.

- Children and young people may see complaints systems located in departments and NGOs as biased or compromised (CREATE Think Tank, 2015).

- The CREATE Report Card 2013 (McDowall, 2013), in summarising the views of children and young people in out-of-home care in Australia regarding their knowledge and use of complaints about their treatment in out-of-home care found that:
  - about half of the children and young people surveyed (n = 1069) knew how to complain if they needed to, and 19% had made a complaint;
  - of the 204 children and young people who had made a complaint, 45% reported being at least quite satisfied with the outcome, compared with 24% who were quite dissatisfied;
  - older age groups had better knowledge of complaints systems and had used them more. The older groups were also more likely to have wanted to complain but chose not to; and
  - children and young people in residential care and permanent placements also reported more knowledge of complaints systems.

Actions

CREATE endorses The Senate Community Affairs References Committee (2015) recommendations that the Coalition of Australian Governments develop and implement nationally consistent powers for independent child commissioners and guardians to:

1. review individual out-of-home care cases;
2. address complaints and concerns by children and young people;
3. ensure the voice of children and young people is heard in all decision-making processes about placements and case planning; and
4. provide community visitors to visit all out-of-home care placements.

Independent complaints mechanisms are needed to encourage children and young people in out-of-home care to be able to express their concerns and make complaints outside of the organisation that makes decision about, provides, and/or funds their care.

CREATE Foundation also will continue to advocate strenuously, through its work providing independent oversight of the out-of-home care system based on the aggregated voices of children and young people, for improvements to the short, medium, and long-term outcomes of all who are living, or have been in care.

References:

Australian Human Rights Commission. (2015). Australia's commitment to children's rights and reporting to the UN. Retrieved from Australian Human Rights Commission: https://www.humanrights.gov.au/publications/australias-commitment-childrens-rights-and-reporting-un#1

Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). (2011). An outline of national standards for out-of-home care. Canberra: Commonwealth of Australia.

McDowall, J. J. (2013). Experiencing out-of-home care in Australia: The views of children and young people (CREATE Report Card 2013). Sydney: CREATE Foundation.

Office of the Children's Commissioner (NT). (2015). Annual Report 2014-2015, Northern Territory Children's Commissioner. Darwin: Northern Territory Government.

Royal Commission into Institutional Responses to Child Sexual Abuse. (2014). Interim Report: Volume 1 Royal Commission into Institutional Responses to Child Sexual Abuse. Canberra: Commonwealth of Australia.

Royal Commission into Institutional Responses to Child Sexual Abuse. (2015). Redress and Civil Litigation Report. Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse.

Swain, S. (2014). History of Australian inquiries reviewing institutions providing care for children. Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse.

The Senate Community Affairs References Committee. (2015). Out of home care. Canberra: Commonwealth of Australia.

Version 1, November 2015

CREATE Position Paper

Issue: Sibling Placement and Contact in Out-of-Home Care

CREATE's Position

CREATE believes that siblings in out-of-home care, wherever possible, must be supported to stay together; and where co-placement is not possible, they must be enabled to maintain regular contact with each other whilst in care. Sibling contact should be included in individual case planning and the frequency and method of contact (e.g., face-to-face, phone, mail/email etc.), should be directed by each individual child (as age appropriate) or young person in care, unless there is particular risk of harm.

CREATE urges state and territory governments to prioritise and monitor the implementation of the National Standards for Out-of-Home Care (FaHCSIA, 2011), particularly Standard 9, and others that impact the provision of contact between children and young people in care and their siblings.

National Standards	Measures
1. Children and young people will be provided with stability and security during their time in care.	1.3 The proportion of children and young people in out-of-home care who report feeling safe and secure in their placement.
2. Children and young people participate in decisions that have impact on their lives.	2.1 The proportion of children and young people who report that they have opportunities to have a say in relation to decisions that have impact on their lives and that they feel listened to.
9. Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.	9.1 The proportion of children and young people in out – of-home care who are placed with relatives and kin.
	9.2 The proportion of children and young people who report they have an existing connection with at least one family member which they expect to maintain.
	9.3 The proportion of children (as age appropriate) and young people who report having contact with family members, by the reported frequency of contact, by their reported satisfaction with contact arrangements.
10. Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.	10.1 The proportion of Aboriginal and Torres Strait Islander children and young people who have a current cultural support plan.
	10.2 The proportion of children (as age-appropriate) and young people who demonstrate having a sense of connection with the community in which they live.
11. Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn to for support and advice.	11.1 The proportion of children and young people who are able to nominate at least one significant adult who cares about them and who they believe they will be able to depend upon throughout their childhood or young adulthood.

Evidence

- Children and young people in care contact their siblings more frequently than any other family members (McDowall, 2013).
- Children and young people in care desired more frequent contact with their siblings, than with any other family members with whom they were not living (McDowall, 2013).
- Children and young people that are co-placed in care generally experience more placement stability and successful reunifications (Webster, Shlonsky, Shaw, & Brookhart, 2005).
- Children placed in intact sibling groups experienced more stability and fewer disruptions in care than those who were separated (Drapeau, Simard, Beaudry, & Charbonneau, 2000; Leathers, 2005)
- Nurturing sibling bonds while in care can reduce the impact of some of the negative occurrences while in care, and provide valuable support well into adulthood (Herrick & Piccus, 2005).
- Family and culture, particularly for Aboriginal and Torres Strait Islander children and young people, play a pivotal role in the child's development (Moss, 2009).

Actions

CREATE has compiled a national report into sibling placement and contact in out-of-home care (McDowall, 2014) that shows it is essential for governments to better accommodate the needs of siblings in care, including ensuring co-placement whenever possible (i.e., where harm is not a concern), and regular ongoing contact between siblings when co-placement is not possible.

In addition CREATE has developed information resources aimed at caseworkers, carers, and siblings in out-of-home care expressing the same messages and encouraging the active participation of all stakeholders. The resources outline the benefits for children and young people if siblings are enabled to stay together in care. Research tells us that when siblings stay together, children and young people:

- are happier;
- have more self-esteem;
- achieve better at school;
- have better relationships with their siblings.;
- form stronger bonds with their foster family and experience more stable placements; and
- are more likely to be reunited with their birth family.

References:

Drapeau, S., Simard, M., Beaudry, M., & Charbonneau, C. (2000). Siblings in family transitions. *Family Relations, 49*(1), 77–85.

FaHCSIA. (2011). *An outline of national standards for out-of-home care.* Canberra: Commonwealth of Australia.

Herrick, M. A., & Piccus, W. (2005). Sibling connections : The importance of nurturing sibling bonds in the foster care system. *Children and Youth Services Review, 27*, 845–861. doi:10.1016/j.childyouth.2004.12.013

Leathers, S. J. (2005). Separation from siblings : Associations with placement adaptation and outcomes among adolescents in long-term foster care. *Children and Youth Services Review, 27*, 793–819. doi:10.1016/j.childyouth.2004.12.015

McDowall, J. J. (2013). *Experiencing Out-of-Home Care in Australia: The views of children and young people.* Sydney: CREATE Foundation.

McDowall, J. J. (2014). *Sibling placement and contact in out-of-home care.* Sydney: CREATE Foundation.

Moss, M. (2009). Broken circles to a different identity: An exploration of identity for children in out-of-home care in Queensland, Australia. *Child & Family Social Work, 14*(3), 311–321. doi:10.1111/j.1365-2206.2008.00598.x

Webster, D., Shlonsky, A., Shaw, T., & Brookhart, M. A. (2005). The ties that bind II : Reunification for siblings in out-of-home care using a statistical technique for examining non-independent observations. *Children and Youth Services Review, 27*, 765–782. doi:10.1016/j.childyouth.2004.12.016

CREATE Position Paper

Issue: Kinship Care[1] of Children and Young People in formal Out-of-Home Care

CREATE's Position

CREATE takes the view that, while research shows that children and young people prefer kinship care over other out-of-home care placement types due to feelings of comfort, familiarity and connection to family and community, the unique issues faced by kinship carers require that they receive special consideration in recruitment and training, and support from governments (McHugh, 2009). Children and young people should be involved in decisions that impact their lives, particularly where and with whom they live.

CREATE supports the Aboriginal and Torres Strait Islander Child Placement Principal that prioritises placing Indigenous children in out-of-home care with kin or community members to allow continuity of children and young people's connections to family, culture and community.

National Standards for out-of-home care that can apply to placements in kinship care are Standards 1, 2, 3, 9, 10, 11 and 12 (Department of Families, Housing, Community Services, and Indigenous Affairs, 2011).

National Standards	Measures
1. Children and young people will be provided with stability and security during their time in care.	1.3 The proportion of children and young people in out-of-home care who report feeling safe in and secure in their current placement.
2. Children and young people participate in decisions that have an impact on their lives.	2.1 The proportion of children and young people who report that they have opportunities to have a say in relation to decisions that have an impact on their lives and that they feel listened to.
3. Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.	3.1 The proportion of Indigenous children and young people in out-of-home care placed with the child's extended family, with the child's Indigenous community, or with other Indigenous people, by care type.
9. Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.	9.1 The proportion of children and young people in out-of-home care who are placed with relatives and kin.
10. Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.	10.1 The proportion of Aboriginal and Torres Strait Islander children and young people who have a current cultural support plan. 10.2 The proportion of children (as age appropriate) and young people who demonstrate having a sense of connection with the community in which they live.
11. Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn to for support and advice.	11.1 The proportion of children and young people who are able to nominate at least one significant adult who cares about them and who they believe they will be able to depend upon throughout their childhood or young adulthood.
12. Carers are assessed and receive relevant ongoing training, development and support, in order to provide quality care.	12.3 The proportion of foster carers and kinship carers (who had a least one placement during the year) who report feeling supported in their role and who feel their developmental needs relevant to their role are catered for.

---

[1] Kinship care is where the carers of children and young people in out-of-home care are relatives or other people considered to be family, close friends or members of the child or young person's community (Australian Institute of Health and Welfare, 2014).

Evidence

- Children and young people consulted by CREATE expressed support for kinship care when deciding on a placement, with an important stipulation that jurisdictions continue to support and monitor those in kinship care placements to ensure children and young people are safe and thriving (CREATE Foundation, 2011).

- Most children and young people in out-of-home care in Australia live in kinship care (48% overall). In terms of jurisdictions, NSW has the highest proportion of children and young people in kinship care (56%) and Tasmania (28%) and Northern Territory (2.6%)2 have the lowest (Australian Institute of Health and Welfare, 2014).

- Research indicates the continued growth of kinship care in Australia is due to: changes in legislation and policy that favour kin placements; a decrease in availability of foster carers; substance abuse by parents leading to kin stepping in to care for children; children and families preferring kinship care; and an increase in the numbers of children requiring out-of-home care (Child Safety Services, 2011).

- In 2012-2013, 31% of Aboriginal and Torres Strait Islander children and young people were not placed with relatives/kin or other Indigenous carers/services, which means that the Child Placement Principle was not invoked for those Indigenous children and young people (Australian Institute of Health and Welfare, 2014).

- Kinship care has been found to provide, "placement stability, continuity of relationships and behavioural development", although definitive conclusions on its effectiveness are not available (Child Safety Services, 2011).

- CREATE's Report Card 2013 found children and young peoples' responses confirm findings of other research on the experiences of living in kinship care, including feeling happy in their placement, having more free time and greater stability in placements with fewer placement changes and school changes. Children and young people also reported being more likely to be placed together with siblings and higher rates of contact with siblings, grandparents and other relatives (McDowall, 2013).

- Kinship care is different from foster care. Policy, programming and practice need to be tailored to the unique benefits, risks and requirements (Child Safety Services, 2011).

Actions

CREATE recognises the benefits and the difficulties that may be experienced by children and young people cared for in kinship arrangements. CREATE advocates for respectful engagement with children, young people, kinship carers and other family members that recognises the complexity of family relationships in kinship care, and for addressing the special challenges in assessment, recruitment, training and support confronted by these carers.

CREATE urges governments to ensure children and young people are involved in decision-making about the issues that impact their lives, including where and with whom they live.

CREATE will explore with state and territory child protection agencies opportunities for CREATE Young Consultants to be involved in highlighting the particular needs of kinship carers.

References:

Australian Institute of Health and Welfare. (2014). *Child protection Australia 2012–13. Child welfare series no. 58. Cat. no. 49.* Canberra: AIHW.

Child Safety Services. (2011). *Kinship care: A literature review.* Brisbane: Queensland Department of Communities. Retrieved from http://www.communities.qld.gov.au/resources/childsafety/foster-care/kinship-care-literature-review.pdf

CREATE Foundation. (2011). *Living with Nan: Feedback from children and young people about their experiences in kinship care.* Brisbane: CREATE Foundation. Brisbane: CREATE Foundation.

Department of Families Housing Community Services and Indigenous Affairs (FaHCSIA). (2011). *An outline of national standards for out-of-home care.* Canberra: Commonwealth of Australia.

McDowall, J. J. (2013). *Experiencing Out-of-Home Care in Australia: The views of children and young people.* Sydney: CREATE Foundation.

McHugh, M. (2009). *A framework of practice for implementing a kinship care program.* Sydney: Social Policy Research Centre.

---

2 Northern Territory proportion may be higher due to difference in reporting care type and inclusion of kinship carers in foster care category (Australian Institute of Health and Welfare, 2014)

CREATE Position Paper

Issue: Residential Care

CREATE's Position

CREATE recognises that not all children and young people can be placed in home based care and acknowledges the role residential care plays within the care system. If residential care is chosen as the most appropriate placement option for a child or young person, the decision must be based on what would be in the best interests of the child or young person.

The chosen facility should be a "home like" environment in a clean and well-maintained building. Staff must be appropriately trained and able to respond to, and work with children and young people who have experienced and continue to experience trauma.

The following National Standards, while not specifically mentioning Residential Care, do address critical aspects of the care experience.

Table 1
Out-of-Home Care National Standards that Apply to Residential Care (FaHCSIA, 2011)

National Standards	Measures
1. Children and young people will be provided with stability and security during their time in care.	1.2 The rate and number of children in out-of-home care who were the subject of a child-protection substantiation and the person believed responsible was living in the household providing out-of-home care. 1.3 The proportion of children and young people in out-of-home care who report feeling safe and secure in their current placement
2. Children and young people participate in decisions that have an impact on their lives.	2.1 The proportion of children and young people who report that they have opportunities to have a say in relation to decisions that have an impact on their lives and that they feel listened to.
8. Children and young people in care are supported to participate in social and/or recreational activities of their choice, such as sporting, cultural or community activity.	8.1 The proportion of children and young people who report they may choose to do the same sorts of things (sporting, cultural or community activities) that children and young people their age who aren't in care do
9. Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings, or other family members.	9.1 The proportion of children and young people in out-of-home care who are placed with relatives and kin. 9.2 The proportion of children and young people who report they have an existing connection with at least one family member that they expect to maintain. 9.3 The proportion of children (as age-appropriate) and young people who report having contact with family members, by the reported frequency of contact, by their reported satisfaction with contact arrangements.

Evidence

- The Australian Institute of Health and Welfare's (AIHW) statistics show that as at June 30 2014, 93% of children and young people living in OOHC in Australia were in home based care and 5.5% in residential care placements (AIHW, 2015).

Version 1, November 2015

- Large variations exist across Australian jurisdictions as to how residential care is provided, funded, regulated, and reviewed. Whilst some jurisdictions actively discourage residential care facilities as out-of-home care (OOHC) placement options, others provide non-government organisations with additional funding to secure residential facilities and programs.

- CREATE's Report Card 2013 found that 83 per cent of children and young people in OOHC sampled stated they were happy in their placement; however, children and young people in residential care and "other" placements experienced more instability than those in home-based care (foster and kinship) (McDowall, 2013).

- Bath (2008a, 2008b) identified that residential care must recognise the diversity of need of each young person and tailor interventions to that need, rather than the shared needs of the group.

- Children and young people surveyed for the 2013 Report Card reported having a preference for kinship and foster care over residential care. Residential care was seen as the least favoured placement type, bringing forth more negative comments and suggestions for improvement (McDowall, 2013).

- The Commission for Children and Young People in Victoria (2015) reported that children and young people living in residential care:
  - are likely to be exposed to other young people exhibiting high-risk behaviours;
  - tend to lose contact with friends, family, culture, school, and community supports;
  - are at greater risk of developing life-long institutionalised behaviours, mental health issues, substance abuse, and to experience homelessness; and
  - have greater involvement with the youth justice system.

- In terms of understanding their rights in OOHC, children and young people in residential care indicated that they had a greater awareness of their rights within the child protection and/or residential care system and were more likely to have made a complaint and pursued resolution. However, a large proportion of this group was more likely not to raise an issue because of concerns about negative consequences (McDowall, 2013).

Actions

CREATE believes that residential care models, practices and staff recruitment and training require attention and reform to be suitable as a safe and secure placement option for children and young people in out-of-home care.

Whilst CREATE acknowledges that residential care in some states and territories must continue to operate as a placement option within the OOHC system, CREATE will continue to advocate for:

1. Targeted strategies to improve residential care models and placement options for children and young people that align with the overarching principles of the National Standards for Out-of-Home Care.
2. The provision of high quality care to children and young people in a nurturing environment by appropriately trained staff to maximise the outcomes for children and young people in care.
3. Purpose built residential facilities, maintained to a high standard, to provide a safe and caring environment for the children and young people who live there.

References:

Australian Institute of Health and Welfare (AIHW). (2015). Child protection Australia 2013-14. Canberra: AIHW.

Bath, H. (2008a). Residential care in Australia, Part I: Service trends, the young people in care, and needs-based responses. Children Australia, 33(2), 6–17.

Bath, H. (2008b). Residential care in Australia, Part II: A review of recent literature and emerging themes to inform service development. Children Australia, 33(2), 18–36.

Commision for Children and Young People. (2015). "...as a good parent would..." Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care. Melbourne: Commission for Children and Young People.

Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). (2011). An outline of national standards for out-of-home care. Canberra: Commonwealth of Australia.

McDowall, J. J. (2013). Experiencing out-of-home care in Australia. The views of children and young people (CREATE Report Card 2013). Sydney: CREATE Foundation.

Version 1, November 2015

CREATE Position Paper

Issue: Overrepresentation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care

CREATE's Position

CREATE believes that the overrepresentation of Aboriginal and Torres Strait Islander children and young people in statutory care is unacceptable in a developed, prosperous country such as Australia. CREATE urges state and territory governments to set as their highest priority actions for early intervention to curb the increasing number of Indigenous children entering care; and the implementation of the agreed National Standards for Out-of-Home Care (FaHCSIA, 2011) that apply to Indigenous peoples (particularly Standards 3 and 10) to ensure those in care feel culturally safe and stay strong in their culture.

National Standards	Measures
3. Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.	3.1 The proportion of Indigenous children and young people in out-of-home care placed with the child's extended family, with the child's Indigenous community, or with other Indigenous people, by care type.
10. Children and young people in care are supported to develop their identity, safety and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.	10.1 The proportion of Aboriginal and Torres Strait Islander children and young people who have a current cultural support plan.

Evidence

- More than a third of children in out-of-home care (OOHC) in Australia are Aboriginal or Torres Strait Islander (i.e., 13,952 Aboriginal and Torres Strait Islander children as at 30 June 2013) (AIHW, 2014).

- Aboriginal and Torres Strait Islander children make up only 5% of all Australian children 0-17 years of age (ABS, 2011).

- The rate of Aboriginal and Torres Strait Islander children being the subject of a child protection substantiation was 8 times that of non-Indigenous children in 2012-13 (AIHW, 2014)

- Nationally, the rate of Indigenous children in out-of-home care was 10.6 times the rate for non-Indigenous children (AIHW, 2014).

- In Western Australia an extreme difference between Indigenous and non-Indigenous groups has been observed with Aboriginal and Torres Strait Islander children, who make up only 5% of the total number of children (aged 0-17 years) in that state, comprising 49.5% of all children in out-of-home care (SNAICC, 2014a).

- In the Northern Territory, another significant difference has been recorded; Aboriginal and Torres Strait Islander children (aged 0-17 years) make up 44% of the Territory's child population, yet comprise 82% of all children on care and protection orders (SNAICC, 2013)

- In CREATE's Report Card 2013, the 309 Indigenous respondents reported having more placements (and greater instability) than those in other cultural groups (McDowall, 2013).

- Indigenous children and young people also have been involved in a greater number of attempts to return to their parents than those in the Anglo-Australian group (McDowall, 2013).

- Of the Indigenous participants, 30.1% felt they were "not at all" or "a little" connected to their culture or cultural community (McDowall, 2013).
- Only 10.4% Indigenous participants claimed to know of the existence of their personal cultural plan (McDowall, 2013).
- Family and culture, particularly for Aboriginal and Torres Strait Islander children and young people, have a pivotal role in the child's development (Moss, 2009).
- Positive self-identity for Indigenous children is reinforced by cultural and community connections (Lewis & Burton, 2014).

Actions

The overrepresentation of Aboriginal and Torres Strait Islander children and young people in statutory care demonstrates that current approaches to ensuring the safety and wellbeing of Aboriginal and Torres Strait Islander children and their families are not working. Governments are required under the UN Convention on the Rights of the Child to help families protect their children's rights – including their rights to live with their families and to practice their culture, language, and religion.

CREATE supports the actions advocated by SNAICC (2014b) to address the current unacceptable situation. Governments must take responsibility for:

1. Promoting understanding of, and respect for, Aboriginal and Torres Strait Islander rights and cultures;
2. Placing Aboriginal and Torres Strait Islander family and community decision making at the centre of ensuring the safety and wellbeing of children;
3. Increasing the proportion of government expenditure on Aboriginal and Torres Strait Islander developed and delivered prevention and early intervention services, and targeted family support services;
4. Increasing the number and capacity of Aboriginal and Torres Strait Islander child protection services available to provide prevention and early intervention services, targeted family support services and out of home care services.

References:

Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). (2011). *An outline of national standards for out-of-home care.* Canberra: Commonwealth of Australia.

Australian Bureau of Statistics (ABS). (2011). *3238.0.55.001 - Estimates of Aboriginal and Torres Strait Islander Australians, June 2011.* Canberra: ABS.

Australian Institute of Health and Welfare (AIHW). (2014). *Child protection Australia 2012-13.* Canberra: AIHW.

McDowall, J. J. (2013). *Experiencing Out-of-Home Care in Australia: CREATE Report Card 2013.* Sydney: CREATE.

Secretariat of National Aboriginal and Islander Child Care (SNAICC). (2014a). *Family Matters Western Australia Issues Paper.* Melbourne: SNAICC.

SNAICC. (2014b). *Family Matters Policy.* Retrieved from http://www.snaicc.org.au/policy-advocacy/dsp-default-e.cfm?loadref=279

SNAICC. (2013). *Family Matters Northern Territory Issues Paper.* Melbourne: SNAICC.

Moss, M. (2009). Broken circles to a different identity: An exploration of identity for children in out–of-home care in Queensland, Australia. *Child and Family Social Work, 14*(3), 311–321. doi:10.1111/j.1365-2206.2008.00598.x

Lewis, N., & Burton, J. (2014) Keeping kids safe at home is key to preventing institutional abuse. *Indigenous Law Bulletin, 8*(13), 11–14.