

Royal Commission into Institutional Responses to Child Sexual Abuse
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Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home Care

Thank you for the opportunity to provide a response to Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home Care.

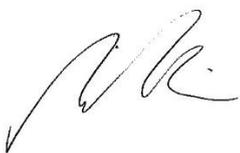
MacKillop Family Services (MacKillop) is a leading provider of services for children and young people in Victoria and NSW. MacKillop has recently also expanded into Western Australia.

In 2012/13 MacKillop provided out-of-home care to 647 children and young people in Victoria and NSW. We provide foster care, therapeutic foster care, residential care, therapeutic residential care, lead tenant, cluster housing and young people's homelessness services.

MacKillop is committed to preventing the abuse of children in care, providing robust responses to abuse in care and support for those with care experiences. In our view, key elements to prevent abuse in care include creating and promoting child safe organisations, providing therapeutic and trauma informed care, employing skilled staff, supporting staff and volunteer training and ensuring independent oversight of out-of-home care. We have expanded on these points, in response to the questions raised in the Issues Paper, in the submission that follows.

Thank you for the opportunity to provide comment on Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home Care. If you wish to discuss this submission further, please contact me or Dr Nick Halfpenny, General Manager, Policy and Innovation on 03 9699 9177.

Yours sincerely,



Micaela Cronin
CEO, MacKillop Family Services

JUSTICE
HOPE
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COMPASSION
RESPECT

MacKillop Family Services response to Issues Paper 4

Preventing Sexual Abuse of Children in Out-of-Home Care

1. An essential element of OOHC is for a child to be safe and secure. Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?

MacKillop is of the view that the principles for keeping children in out-of-home care safe and secure and the same as those underpinning the creation of child safe organisations. MacKillop draws these principles from a number of sources, including from the Victorian Commissioner of Children and Young People's (formerly the Child Safety Commissioner) "A Guide for Creating a Child-safe Organisation".

These principles include:

- Enabling and promoting participation of children and ensuring the views of children and young people are heard within the organisation,
- Strong recruitment practices (including advertising, position descriptions, interview processes, pre-employment checks),
- Strong support, supervision and performance monitoring,
- An open culture that encourages employees to speak up about any concerns, including appropriate responses to "whistle-blowers" and the issues they might raise, and
- Robust and thorough responses to concerns and allegations.¹

MacKillop is of the view that these principles will help to keep children in out-of-home care safe from sexual abuse and should apply to paid residential care workers and volunteers who provide foster care.

MacKillop notes that both NSW and Victoria have developed a Charter of Rights for Children and Young People in Out-of-Home Care. The documents provide a useful starting point to communicate to children, young people (and those who work with them) their rights and the expectations of organisations. We suggest continued work to further embed these rights into practice in out-of-home care.

¹ Victorian Child Safety Commissioner *A Guide for Creating a Child-safe Organisation*, 2006, State of Victoria

2. Is there evidence for having different strategies to keep children in OOHC safe from sexual abuse depending upon whether a child is in relative or kinship care, foster care or one of the forms of residential care?

The report of the Protecting Victoria's Vulnerable Children Inquiry in Victoria cited an unpublished Department of Human Services (DHS) report, that stated allegations of abuse or neglect in care in 2009-10, as a proportion of children in care, equates to 28 per 100 in residential care, and 7 per 100 in foster care.²

Additionally, in their examination of the prevalence of abuse in foster care and residential care in the Netherlands, Euser *et al*³ acknowledge the difficulties of comparing outcomes for children in residential care and foster care. The authors point out that children and young people are not placed randomly in one form of care or another. They argue that children and young people in residential care have "more severe problems" than those in foster care. The same study found that children placed in residential care have experienced child sexual abuse at greater rates than those in the general population.

Residential care

Mechanisms for keeping children safe in residential care include:

- a. Acknowledging that children in residential care are likely to present with more complex behaviours, requiring a highly skilled workforce of carers
- b. Training for the residential care workforce on how to recognise and respond to "grooming"
- c. Training for the residential care workforce on how to recognise and respond to externally sourced sexual exploitation
- d. Greater flexibility and choice around the placement and "matching" of children and young people in care
- e. Creating child safe organisations (see response to Question 1)
- f. Therapeutic care (see response to Question 5).

²Protecting Victoria's Vulnerable Children Inquiry, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, 2012, State of Victoria, Melbourne, p. 500

³Euser, S., Alink, L., Tharner, A., van IJzendoorn, M. and Bakermans-Kranenburg, M., "The Prevalance of Child Sexual Abuse in Out-Of-Home Care: A Comparison Between Abuse in Residential and in Foster Care", in *Child Maltreatment*, Sage Publications, May 2013.

a. Complex behaviours, requiring highly skilled workforce

Residential care homes typically house children and young people with the most complex needs of the out-of-home care cohort. Residential care provides support and accommodation for children and young people with highly challenging and disruptive behaviours, conduct disorders, neuro-developmental problems, mental illness and who are a risk to themselves and/or others.⁴

That greater rates of sexual abuse occur in residential care settings indicate that greater levels of training, work based skill development and support should be available to residential care staff, to deal with the impact of past abuse and to prevent abuse in care.

Euser *et al* argue that residential care settings can be associated with “structural neglect”. They suggest that the nature of residential care can make it more difficult for a child to develop and maintain stable relationships with their caregivers and peers. Additionally, a residential home may care for both boys and girls sometimes with severe problem behaviours. In the view of Euser *et al*, this may increase the risk of child sex abuse by peers.⁵

b. Grooming

Anne-Marie McAlinden argues that sex offenders are skilled at targeting and grooming entire organisations, as well as individual children and staff within an organisation. McAlinden writes that “institutional grooming” is a process where individuals make use of the organisational environment to abuse children. Offenders have organisational knowledge that allows them to exploit system weaknesses and avoid organisational procedures designed to protect children.⁶

MacKillop supports the view of McAlinden that approaches focusing on legal or institutional measures to address grooming and sexual abuse should be supported by training for staff within institutions as well as public education campaigns to dispel commonly held misconceptions regarding the nature of sexual offenders and sexual offending⁷ and to assist staff to identify and respond to grooming behaviours.

⁴ McLean, S., Price-Robertson, R. and Robinson, E., ‘Therapeutic residential care in Australia: Taking stock and looking forward’, *National Child Protection Clearinghouse Issues No 35*, 2011, page 1.

⁵ Euser *et al* page 8

⁶ McAlinden, A., ‘Grooming’ and the Sexual Abuse of Children: *Institutional, Internet, and Familial Dimensions*, Oxford Scholarship Online, 2013, pp. 147-8.

⁷ McAlinden, A., “Setting ‘Em Up’: Familial and Institutional Grooming in the Sexual Abuse of Children”, *Social & Legal Studies* 2006: 15, p. 354

c. Sexual exploitation

In MacKillop's experience some residential staff are not well equipped to deal with exploitation from "outsiders" (members of the public with whom children and young people in care have relationships).

Training is currently being offered in Victoria by the Centre for Excellence in Child and Family Welfare to provide residential care staff with a knowledge and awareness of the dynamics of sexual exploitation and skills to interrupt potential child sexual exploitation. Jointly facilitated by the Office of Professional Practice (DHS) and Victoria Police, the training recognises that children and young people living in residential care are particularly vulnerable to sexual exploitation.

The training is also an excellent example of high level coordination across government to improve the safety of children and young people in care.

The training targets staff working in residential care in community service organisations, DHS staff (including Child Protection) and members of Victoria Police. The training focuses on:

- understanding what constitutes sexual exploitation (including models of exploitation, the role of technology in exploitation, organised versus more opportunistic forms of sexual exploitation),
- redefining perceptions of young people's involvement in sexually exploitative situations ,
- the signs of sexual exploitative situations,
- roles and responsibilities in responding to potential or actual sexual exploitation.

d. Placement and "matching"

In MacKillop's view, a key component to create safety for children in residential care is a more flexible approach to the placement of children and young people in residential care, to respond to the unique needs of individuals in care. Ideally, this would mean having the capacity to have fewer placements in a home, or to house siblings together, or to house individuals alone (because of their vulnerability to abuse or risk of perpetrating abuse) or to house children and young people in a single-sex environment, depending on individual circumstances.⁸

⁸ While MacKillop acknowledges that abuse is perpetrated by male residents against other male residents, most abuse is perpetrated against female residents.

Foster care

Strategies for keeping children safe in foster care include the *Step by Step* competency based assessment frameworks resources used to assess potential foster carers in NSW (since 2012) and Victoria (since 2006). MacKillop supports the use of this framework in combination with the training package *Shared Stories Shared Lives*. In our view, these instruments provide a rigorous framework to screen, assess and train new and potential foster carers.

MacKillop is of the view that these types of assessment frameworks need to be applied by skilled practitioners who are supported to undertake thorough reviews, apply investigative interviewing techniques and make robust decisions about potential foster carers.

3. What are the strengths and weaknesses of models that check OOHC practices by an audit approach, a regular supervisory visit, or an irregular visit by someone like a community visitor?

MacKillop, as a provider of out-of-home care and other services for people with disabilities, families and education services, has experience working to a number of different oversight mechanisms, across different jurisdictions.

Based on our experience, MacKillop is of the view that a mix of audit and visitor models would be an appropriate approach, given the strengths and weaknesses associated with each.

Community visitors

Community visitor schemes have been criticised on the basis that they do not deal with systemic issues associated with residential care, and rather, are likely to get “bogged down” in individual issues associated with a particular residential home and the children and young people living there.

However, in MacKillop’s view, there are a number of advantages to a community visitor approach. Community visitors have the opportunity to speak to children and young people in residential care and get their views on what is going well and what needs improving in their home. This mechanism gives those in care a voice and capacity to talk about issues that they might not otherwise have. Additionally, although it has been argued that community visitors do not identify systemic issues, they may be able to identify issues that are as a result of system’s failure. Examples of this would be the impacts of poor placement decisions or organisation-wide quality deficits.

The report of Queensland’s child protection inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* reviewed Queensland’s community visitor program. *Taking Responsibility* proposed limiting the program to a more specialised advocacy service, related to children’s rights, with visits continuing to the most vulnerable children and young people in care.⁹ MacKillop supports this approach.

⁹ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, 2013, State of Queensland, p. 415

Given the possibility of different risks within foster care, a different approach is required. Community visitor schemes are less appropriate in the homes of foster carers, and are likely to be viewed as overly intrusive.

Audit approach

An audit approach that includes a range of elements may be beneficial, providing it is undertaken by an auditor who is independent from the out-of-home care provider and the funding body. Ideally, elements of an audit should include: desktop review; on-site inspections; file reviews; interviews with clients; and interviews with staff, volunteers and Board members.

MacKillop is of the view that there are some parts of the audit process that are critical to ensuring the safety of children in care, and other issues that are explored at audit that are less important. In MacKillop's view, audits should focus on critical systems, for example systems of governance, how an agency recruits, screens and supervises staff, and responds to allegations of abuse. MacKillop's experience is that, at times, auditors focus on details that are not critically important to the safety of children.

In MacKillop's view an audit approach is appropriate in foster and kinship care, as well as residential care. Audits should ideally include a robust assessment of supervision processes and ensuring that there are strong mechanisms in place for responding to allegations.

A clear imperative for systems of oversight is effective integration. Should a mixed methods of oversight mechanisms (e.g. community visitors, external audit) be implemented it must be effectively integrated to ensure clear roles and responsibilities and avoid needless duplication.

4. What are the strengths and weaknesses of having OOHC providers regulated by the child protection department, or regulated by a body separate from the child protection department?

It is MacKillop's view regulation should be separate from the care agency and independently administered. MacKillop provides out-of-home care services in Victoria and NSW and has the experience of two different approaches to regulation.

Victoria

As noted in the report of the Protecting Victoria's Vulnerable Children Inquiry, the regulation of out-of-home care in Victoria is complex because of "the number of related processes that DHS administers in order to fulfil its other roles and responsibilities. Several of these processes also constitute a form of regulation. These include:

- Registration and disqualification of carers;
- Investigation of critical incidents;
- Investigation of abuse in care and quality of care concerns; and
- Monitoring of CSOs as a result of their service agreements."¹⁰

It may be argued that there is an inherent conflict in the Victorian model, as the agency responsible for placement is also responsible for regulation. In MacKillop's experience, some of the most pressing problems in out-of-home care arise from lack of planning and rushed placement of children and young people. The authority responsible for these decisions also oversees and regulates the homes. In MacKillop's view, these roles would appear to be in conflict.

NSW

In MacKillop's view, the NSW system of regulation is preferable. The Children's Guardian in that State sees itself as an advocate for children and young people which allows it to view its oversight/regulatory role through the lens of an impartial, albeit child focussed, third party. An additional feature is the specialist expertise the Children's Guardian has developed in the accreditation and monitoring of out-of-home care.

¹⁰ Protecting Victoria's Vulnerable Children Inquiry, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, 2012, State of Victoria, Melbourne, p. 493

Independent regulation, supported by a national approach

In MacKillop's view, national standards guiding specialist independent oversight of out-of-home care would be preferable. If national standards such as these were introduced, they would ideally be explicit about child safety, child abuse, creating child safe organisations, and using quantitative and qualitative mechanisms to measure outcomes.

In MacKillop's view specialist independent oversight also includes the ability to communicate effectively with children and young people in care and has a thorough understanding of the out-of-home care system. The National Children's Commissioner's recent "Big Banter" is an excellent model for ensuring the concerns and wishes of children and young people can be heard. The Big Banter provided the opportunity for children and young people to communicate directly with the National Children's Commissioner through a wide range of mechanisms. Facilitating open communication with individuals and organisations which have some influence is an important element in ensuring the safety of children in care.

5. What are the core components of the training needs of those working with children who might be sexually abused including carers, caseworkers and staff of regulatory bodies? What priority should be given to training in relation to sexual abuse compared to other training needs?

As noted by the then Victorian Child Safety Commissioner in *A Guide for Creating a Child-safe Organisations*, people need to understand child harm and abuse if they are to prevent it. Carers need training to understand physical and emotional development of children and young people, to assist in their identifying behaviour that indicate the child may be at risk of harm. Additionally, carers need to be trained to recognise changes in behaviour that may indicate that abuse is occurring, and also be trained to take preventive action. Adults working closely with children, with a thorough understanding of child development, are best placed to identify and prevent abuse.¹¹

In MacKillop's experience, the critical skills and knowledge for a carer should include:

- Trauma theory and therapeutic care (see further information about the implementation of the Sanctuary Model at MacKillop)
- Understanding appropriate boundaries when working with children and young people
- Issues related to sexual exploitation of children and young people in care (see information in Question 2, above about Victorian training, delivered jointly by DHS and Victoria Police)
- Responding to complaints by other staff and by children and young people (communication skills) and
- Identify warning signs (for example, see information on grooming in Question 2).

The Sanctuary Model

MacKillop is currently implementing the Sanctuary model across all or services. Originating in the United States, the Sanctuary model is a framework for clinical and organisational change which, at its core, promotes safety and recovery from adversity through the active creation of a trauma-informed community. It recognises that adversity is pervasive in the experience of human beings, not only those who seek services, but equally on the people and systems that provide those services. A founding principle of the model is the commitment to open communication and the creation of transparent organisational practices. In our experience, children and young people in out-of-home care have

¹¹ Victorian Child Safety Commissioner *A Guide for Creating a Child-safe Organisation*, 2006, State of Victoria, p. 21

experienced the most profound trauma and Sanctuary aims to create safe and healing environments for our staff and the children and families we work with.

Through trauma-informed service provision, MacKillop aims to support families, including parents and foster carers, to achieve better outcomes for children and enhance parenting relationships. Sanctuary also aims to support staff to recognise emotions and the importance of safety and self-care.

Therapeutic care is a mechanism through which to provide trauma-informed services, and in MacKillop's view, Sanctuary is a framework to facilitate this. Therapeutic Foster Care, provided in some NSW and Victorian programs, is an enhanced model of care creating positive, safe, healing relationships, based on our understanding of trauma, attachment and developmental needs. Foster carers are intensively supported and assisted to provide therapeutic parenting techniques. A Care Team supports the foster carer by providing focused training, support and the implementation of a therapeutic plan. The aim of the program is to create an environment to assist the child recover from trauma and attachment disruption, promote positive relationships and assist in timely reunification of the child and their family or achieve long term stable care.

MacKillop also provides some therapeutic residential care (TRC) in Geelong. TRC has been defined as intensive and time-limited care that responds to the complex impacts of abuse, neglect and separation from family. In a supportive residential context, this is done through the creation of positive, safe, healing relationships and experiences informed by a sound understanding of trauma.¹²

Evaluations of TRC point to better outcomes including stability of placement, achievement of developmental milestones, better continuity of care and greater opportunities for family reunification¹³. Treatment for trauma in a residential setting may assist with addressing mental ill-health, and prevent or minimise other risk factors (low education, low employment, substance abuse). TRC also acts a protective mechanism against abuse, as it ensures that staff are equipped to deal with complex behaviours. Ideally, therapeutic care should also allow space for children and young people to discuss concerns about their care experience openly and honestly.

¹² McLean, S., Price-Robertson, R. and Robinson, E., 'Therapeutic residential care in Australia: Taking stock and looking forward', *National Child Protection Clearinghouse Issues* No 35, 2011, p. 1.

¹³ See for example, Verso Consulting, *Evaluation of the Therapeutic Residential Care Pilot Programs: final summary and technical report*, Department of Human Services, 2011.

6. Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?

While there is basic information and training available for carers working with children and young people who have experienced sexual abuse and trauma, many staff members are not prepared for the complex and challenging behaviours exhibited by children and young people as a result of the profound trauma and abuse they have experienced before entering care.

In MacKillop's view, current training is not adequate to prepare staff to work with these levels of trauma experienced by children and young people in out-of-home care, and the behaviours some children and young people exhibit in care. This applies equally to the skills needed to work with children and young people who have abused others.

Training needs for residential care staff and foster carers are also explored in our responses to Questions 1, 2 and 5.

7. How should the rate of sexual abuse of children in OOHC be determined, noting that the National Standards for Out-of-Home Care require reporting of substantiated claims of all types of abuse? Would a form of exit interview assist in capturing information? What should be introduced to ascertain whether information on child sexual abuse in OOHC is resulting in changed OOHC practices?

As noted by the Australian Centre for the Study of Sexual Assault, (ACSSA), the nature and incidence of sexual assault and abuse is difficult to determine in the Australian community.¹⁴ ACSSA argue that social barriers related to reporting sexual assault are compounded by limitations within existing data sets.

There is a connection between a person's perception about whether they will be believed if they disclose abuse and delayed reporting. Research conducted by Tucker highlights a "typology" in relation disclosure of abuse indicates that the following factors will prevent or inhibit disclosure:

- The background of the young person, or their "baggage". For example, if the young person is understood to be a "trouble maker" they are less likely to be believed if they disclose abuse
- The family of origin of the young person. For example, if the family is poor and/or family violence is a factor, workers may believe the young person does not have the right to be heard
- Reluctance and refusal on the part of the support workers to hear the child or young person because the risk to them in their employment is too great and required actions too onerous.
- A work or friendship relationship between the alleged abuser and the person hearing the allegation¹⁵

In this context it is unlikely that exit interviews with children and young people leaving care would assist in capturing information about the rate of sexual abuse. In MacKillop's opinion, concerns held by a young person about disclosing abuse they may have experienced will not be alleviated by the existence of a compulsory exit interview. Disclosure needs to be made easier through a range of mechanisms while a child or young person is in care, so that abuse can be dealt with and prevented. An

¹⁴Tarczon, C., and Quadara, A., "The nature and incidence of sexual assault and abuse in Australia", *Australian Centre for the Study Of Sexual Assault Resource Sheet*, Australian Institute of Family Studies, 2012.

¹⁵S. Tucker, "Listening and Believing: An Examination of Young People's Perceptions of why they are not Believed by Professionals when they Report Abuse and Neglect" in *Children & Society* Vol 25 (2011)

exit interview is unlikely to assist in determining the rates of abuse in care, nor prevent abuse in a systemic way.

MacKillop is of the view that taking the voice of children and young people seriously, throughout their care experience, is a critical element in preventing and responding to abuse in out-of-home care. Processes designed to allow children and young people in care to express their concerns, provide feedback and participate in service planning and design facilitate an organisational environment to overcome the powerlessness and silences that are features of unsafe organisations. In turn, such processes should create a context where children and young people are more able to report abuse.

MacKillop acknowledges the significant organisational and public policy reforms introduced in recent years to significantly improve the safety of children and young people in out-of-home care (for example, enhanced recruitment processes, pre-employment checks, screening and assessment of volunteers, registration and accreditation standards, independent audits, and improved processes for investigating abuse).

In MacKillop's view, these reforms suggest that the safety of children in out-of-home should have improved over the past five to ten years. However, the collection of data on the safety of children and young people in out-of-home care remains inadequate, meaning it is not yet possible to evaluate the effectiveness of these reforms.

In out-of-home care, MacKillop is of the view that there is scope for improved data collection and dissemination at a state and national level. It is difficult to calculate rates of abuse in care without first ensuring consistent definitions and data collection methods across jurisdictions. For example, in Australia there is no uniform definition of "sexual assault" with various legislative definitions across the states and territories.¹⁶

Similarly, the Australian Institute of Health and Welfare *Child Protection Australia Report 2011/12* (2013)¹⁷ presents data highlighting the considerable variation between jurisdictions in the proportion of sexual abuse substantiations as a proportion of all abuse substantiations. For example, the

¹⁶Tarczon and Quadara, 2012, p.3.

¹⁷AIHW 2013 p.59

proportion of abuse substantiations recorded as sexual abuse was 3 per cent in Northern Territory and 22 per cent in Western Australia. Such data strongly suggests considerable variation in definitions and/or practice.

MacKillop supports improved reporting of the incidence of abuse in out-of-home care. Currently there is limited data publically available. Jurisdictional differences in the response to allegations of abuse in out-of-home care, along with the lack of consistent data are significant impediments to monitoring the safety of children and assessing the efficacy of interventions.

The Productivity Commission's annual *Report on Government Services* already includes data about child protection.¹⁸ In particular, we note the report outlines the 'Child protection and out-of-home care services performance indicator framework' that includes indicators of safety in out-of-home care. In MacKillop's view, a useful addition to the indicator of 'safety in out-of-home care' would be the inclusion of data on the prevalence and response to allegations of abuse in out-of-home care. This data is currently collected in some jurisdictions (for example, the NSW Ombudsman records of reportable conduct investigations and DHS (Vic) records of quality of care investigations).

In MacKillop's view, the state based Commissioners for Children and Young People should have a role in analysing, disseminating and using the data for policy development. It would be appropriate for these bodies to have access to data to analyse, develop and evaluate strategies to address abuse in out-of-home care.

¹⁸Productivity Commission, *Report on Government Services 2013*, figure 15.4, p. 15.28.

8. What is the usefulness and validity of different ways to address allegations of sexual abuse brought against carers? In particular, which approaches enhance participation by the child particularly approaches best suited to seeking possible disclosures of abuse (including disclosures that might be inferred from behavioural changes) from children? Are the current processes fair? What appeal processes should be available for carers?

MacKillop prefers the Victorian approach to dealing with allegations of sexual abuse, as detailed in the *Guidelines for responding to quality of care concerns in out-of-home care*.¹⁹ MacKillop supports the principles that underpin the Guidelines:

- The best interests of the child will always be paramount
- Children and young people will be listened to and heard
- Carers will be treated fairly, honestly and with respect
- Parents will be told about concerns for the welfare of their child
- Child Protection and community service organisations will work together in a spirit of partnership, collaboration and cooperation to ensure fair and transparent investigation and decision-making and
- Decision making, investigation and formal care review processes will be well informed, clearly communicated and timely.

MacKillop is supportive of this model as it requires that the investigation being undertaken jointly, overseen by a DHS representative whose role is dedicated to quality of care investigations. The process promotes cooperation and communication between the agency concerned and DHS. Roles and responsibilities under this model are also very clear.

Additionally, MacKillop is strongly supportive of the express priority given to the child's best interests and the importance of listening to and hearing children and young people involved in the process.

Victoria's process also reviews a broader spectrum of conduct or behaviours, and is not limited by narrow definitions of abuse.

¹⁹ Children, Youth and Families Division, Department of Human Services, *Guidelines for responding to quality of care concerns in out-of-home care*, 2009, State of Victoria

The Victorian system has been criticised on the basis that the process can take too long, and this can impact negatively on all concerned, especially the person against whom the allegation is made. However, MacKillop is of the view that a thorough investigation is likely to take time, and the process and outcome must ensure the best interests of the child or young person are paramount. It is important throughout the process to ensure clear communication with all parties (including the subject of the allegation) and that support is made available.

9. What measures could be used to assess whether the safety of children from sexual abuse in OOHC is enhanced by independent oversight of the handling of allegations of sexual abuse?
10. What are the strengths and weaknesses of different oversight mechanisms in keeping children safe from sexual abuse in OOHC?

In MacKillop's view some of the mechanisms that could be used to assess the strengths and weaknesses of different oversight mechanisms and their effectiveness of keeping children and young people safe are already in place. However, the difficulty in using this information is that data collection methods and key definitions are inconsistent and there is an unwillingness to disseminate data for further analysis.

MacKillop supports a more streamlined approach to data collection, that would, in turn, allow for the identification of measures that could be used to assess the strengths and weaknesses of different oversight mechanisms.

Additionally, MacKillop is of the view that there would be a role of the national Commissioner for Children and her state-based counterparts in coordinating responses to systemic issues emerging in the data.

Oversight mechanisms

In relation to specific oversight mechanisms (for example, incident reporting processes and investigation processes), MacKillop has experience of both NSW and Victorian processes. MacKillop is of the view that the process detailed in the *Critical Client Incident Management Instruction*²⁰, and

²⁰Department of Human Services, *Critical Client Incident Management Instruction*, State of Victoria, 2012

applied in our Victorian services, provides a higher degree of internal and external organisational transparency and a broader range of incident types (including “behaviour – sexual exploitation”, “poor quality of care” and sexual assault). The reporting process also includes prompts to contact police and how to detail their involvement. While this is a mandatory requirement for MacKillop’s Victorian out-of-home care and disability services, it has been applied process to all operations, as we view it as best practice.

11. What implications exist for record keeping and access to records, from delayed reporting of child sexual abuse?

MacKillop’s history provides useful guidance in relation to record keeping and access to records. MacKillop was formed in 1997 by the Christian Brothers, the Sisters of Mercy and the Sisters of St Joseph. Over a period of 150 years the three congregations had established homes and orphanages in Victoria for children who were orphaned, destitute or neglected and homes for mothers who were in need of care and support.

Throughout the years, the original model of institutional care had evolved into different forms of residential care, foster care, education and family support services. In 1997, MacKillop was formed to take this work forward. The founders of MacKillop had a strong commitment to the rights of former residents. As a result, MacKillop decided to provide a service for the men and women who had experienced childhood care and for mothers who had stayed at the receiving homes. MacKillop believed that people who grew up in the homes and orphanages should be able to access their records with minimum constraints and with as much support as required.

MacKillop’s Heritage and Information Service, developed to support this work, was a core MacKillop program from the beginning.

MacKillop’s board and management at the time of founding also recognised that the new organisation had much to learn from recollections and experience of previous generations who had experienced institutional care and/or separation from their families of origin. One role for the Heritage and Information Service was to ensure that the thousands of personal and organisational stories dating back over 150 years that came into the newly formed MacKillop Family Services were not lost but

preserved for the future. It was hoped that anyone with a connection to the founding agencies would be able to find their individual or family story.

MacKillop has made a substantial investment to retain and store records and policies and procedures to support access. The Heritage and Information Service now supports and assists former residents to access the records related to their time in the care of MacKillop or our founding agencies.

This work illustrates the importance of accurate record keeping. In our view, when an allegation of past abuse is made, it is in the best interests of all concerned that the review of client files and related records contain: accurate dates of entry into and exit from care; the type of care (for example foster care, residential care); the staffing model and the names of carers; and dates and addresses of different placements.

Additionally, it is important that client files record any changes in behaviour of the young person that may be able to assist in establishing that there was something atypical occurring in the young person's life. As noted in relation to Question 5, this requires a skilled workforce that understands child development and behaviour.

In MacKillop's experience of resourcing the Heritage and Information Service, we have found that it is important to link client files to investigation files and investigation files to staff files. These measures will assist in establishing an accurate picture of the steps taken following an allegation. Additionally, investigation files need to clearly record the steps taken by an agency in undertaking an investigation.

In MacKillop's view, this approach requires significant investment and a commitment to the rights of former residents to be able to obtain information about their past, at the time of their choosing – which is often some years after they leave care.

Some researchers argue that it can take many years for victims of abuse to disclose abuse, for example research indicates that males abused by clergy as adolescents take an average of 25 years to disclose

abuse.²¹ For this reason, best practice would dictate that accurate and preserved record is essential to assist people who disclose abuse later in life.

Conclusion

In MacKillop's view there a number of components to ensuring the safety of children and young people in out-of-home care. Two key elements are the creation and promotion of child safe organisations and mechanisms to ensure children and young people have a say about issues that impact on them and their experience of care. Other elements include:

- Highly skilled foster carers and residential care staff,
- Independent audit, oversight and investigation processes, and
- Accurate record keeping.

²¹ J. Cashmore and R. Shackel, "Responding to child sexual abuse" in *Australian Review of Public Affairs* May 2013 http://www.australianreview.net/digest/2013/05/cashmore_shackel.html accessed 30/10/13